

CITY OF PRAIRIE VILLAGE

December 17, 2012

Council Committee Meeting 6:00 pm

City Council Meeting 7:30 pm



**COUNCIL COMMITTEE OF THE WHOLE
Council Chambers
December 17, 2012
6:00 PM**

AGENDA

CHARLES CLARK, COUNCIL PRESIDENT

AGENDA ITEMS FOR DISCUSSION

- *COU2012-59 Consider Bids for Project P5003 - 2012 Bridge Repairs, Mission Road Bridge Polymer Concrete Overlay
Keith Bredehoeft

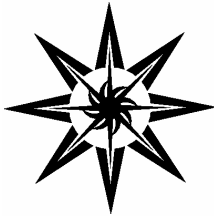
- *COU2012-60 Consider Project CONC2012: 2012 Concrete Repair Program
Construction Change Order #1 (Final)
Keith Bredehoeft

- *COU2012-56 Consider Resolution No. 2012-03 providing for the Reallocation of the Proceeds of the Series 2011-A Bond Issue
Lisa Santa Maria

Discussion regarding 83rd Street sidewalk safety at Corinth Elementary

EXECUTIVE SESSION

***Council Action Requested the same night**



PUBLIC WORKS DEPARTMENT

Council Committee Meeting Date: December 17, 2012

Council Meeting Date: December 17, 2012

***COU2012-59: CONSIDER BIDS FOR PROJECT P5003- 2012 BRIDGE REPAIRS, MISSION ROAD BRIDGE POLYMER CONCRETE OVERLAY.**

RECOMMENDATION

Approve the bid submitted by Wildcat Concrete Services for Project P5003- 2012 Bridge Repairs, Mission Road Bridge Polymer Concrete Overlay for \$49,400.00 and, if necessary, transfer \$30,000.00 from City General Contingency Fund to Project P5003, 2012 Bridge Repairs.

BACKGROUND

On November 30, 2012, the City Clerk opened bids for Project P5003, 2012 Bridge Repairs. Three bids were received:

Wildcat Concrete Services	\$49,400.00
PCI Roads	\$58,972.50
Mill Valley Construction Inc.	\$68,250.00
Engineer's Estimate	\$36,500.00

All bids have been reviewed.

This bridge is located on Mission Road between Tomahawk Road and 71st Street over Brush Creek. This project will place a Multi-Layer Polymer Concrete Overlay and is needed for maintenance of the existing bridge deck. This overlay is the same that was placed on the surface of the new bridge installed in 2009 on Mission Lane. It will provide a new wearing surface and will seal existing cracks in the deck. At this point, there is not any delaminated concrete on the deck surface so it is important to get the deck surface sealed before more extensive repairs are necessary.

The engineers estimate is under the three bids submitted. There are two primary things which contributed to this difference. The project is a stand-alone overlay project and was not a part of a larger street project or bridge project. We also required the contractor to submit a bid which maintained two lanes of traffic during construction. Both of these things affected bid prices to a greater extent than anticipated.

The three bids submitted average \$58,874.17, the low bid \$49,400.00 is a reasonable cost for this project. The City funds the Bridge Repair Project each year at the \$20,000 level for miscellaneous repairs to bridges around the City. There were not any other bridge repairs targeted in 2012 so the overlay of the Mission Road Bridge was selected to use the funds in this project.

FUNDING SOURCE

Funding for the project will come from Project, P5003 and from the transfer, if necessary, of \$30,000 from City General Contingency Fund to Project, P5003.

ATTACHMENTS

Construction Contract with Wildcat Concrete Services.

PREPARED BY

Keith Bredehoeft, Project Manager

December 13, 2012

**CONSTRUCTION CONTRACT
FOR
PROJECT P5003
2012 Bridge Repairs**

**BETWEEN
THE CITY OF PRAIRIE VILLAGE, KANSAS
AND
Wildcat Concrete Services**

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 Wildcat Concrete Services, hereinafter termed in this agreement, “Contractor”, for the construction and completion of Project , designated, described and required by the Project Manual and Bid proposal, to wit:

CONTRACT COST: The City shall pay the Contractor for the performance of the Work embraced in this Contract, and the Contractor will accept in full compensation therefore the sum (subject to adjustment as provided by the Contract) of **Forty Nine Thousand Four Hundred DOLLARS (\$ 49,400.00)** for all Work covered by and included in the Contract; payment thereof to be made in cash or its equivalent and in a manner provided in the Contract Documents.

LIQUIDATED DAMAGES: The contract is comprised of one large project (sometimes referred to as “Total Project Work”) and, in some cases, is partitioned into smaller subprojects referred to in this agreement as “Project Segments.” A total completion date shall be set forth for both the Total Project Work and, when applicable, the Project Segments. Liquidated damages shall apply to the Total Completion Date for the Total Project Work (as may be extended under the Contract) and, when applicable, the Total Completion Date for each Project Segment (as may be extended under the Contract), in accordance with this Agreement and the Special Conditions. Liquidated Damages are described in greater detail below and the applicable rates for the subject Project are set forth in the **Special Conditions**, attached hereto and incorporated herein by this reference.

Within ten (10) calendar days after receipt of written notice to commence from the City, the Contractor shall commence the Work to be done under this Contract. The Contractor agrees to complete the Total Project Work and Project Segments hereunder within the contract time period set forth in the Contract, or as it may be extended under the terms of this Contract. At the time of execution of this Contract, the Contractor shall furnish the Project Manager with a project schedule setting forth, in detail, the proposed sequence of activities and the dates on which such activities shall be completed. The schedule shall also set forth the dates on which the Project Segments (if applicable to the Contract) shall be totally complete.

Contractor agrees that time is of the essence and any term pertaining to Contractor timely performing so as to achieve Total Completion when required under the Contract is a material provision of this Contract. Further, the parties acknowledge that City’s damages in the event of delay are difficult to ascertain and consequently agree that, in the event and to the extent that actual date of Total Completion is delayed beyond the required date for Total Completion for the

Total Project or Project Segments attributable solely or concurrently to (i) an act or omission of Contractor or any of its subcontractors or suppliers, or (ii) in whole or in part, to any other event or condition within the Contractor's reasonable control (and not for reasons solely attributable to City), the Contractor shall be assessed a liquidated damage, and not as a penalty, in the amount set forth in the Special Conditions for each calendar day beyond the applicable Total Completion date. Such amount shall be deducted from any amounts due Contractor under this agreement.

The Contractor agrees that, in the event Project Segments are not Totally Complete, the City may also assess other liquidated damages for each calendar day beyond the date for Total Completion in an amount set forth in the Special Conditions. The Contractor agrees that such assessment is a reasonable estimate of the damages that may be sustained by the City in the event the project is delayed and that such amount is not a penalty.

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

1. **DEFINITIONS:**

1.1 Following words are given these definitions:

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

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

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

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

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 prescribed 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 specific date as designated in the Construction Agreement.

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

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

ENGINEER 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.

FIELD ORDER shall mean a written order issued by the Project Manager that orders minor changes in the work, but which does not involve a change in the contract price or contract time.

FIELD SUPERINTENDENT shall mean the Public Works Field Superintendent of the City of Prairie Village or designee.

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 Project Manager.

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.

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 or submitted by the Contractor to the City during the progress of the Work, all of which show the character and scope of the work to be performed.

PROJECT MANAGER shall mean the person appointed by the Public Works Director for this project as named in the Special Conditions.

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

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

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

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

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

TOTAL COMPLETION shall be defined as fulfilling 100 percent of the work required in this contract by the date specified herein.

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

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.

- 1.2 Whenever any word or expression defined herein, or pronoun used instead, occurs in these Contract Documents; it shall have and is mutually understood to have the meaning commonly given. Work described in words, which so applied have a well-known technical or trade meaning shall be held to refer to such, recognized standards.
- 1.3 Whenever in these Contract Documents the words "as ordered," "as directed", "as required", "as permitted", "as allowed", or words or phrases of like import are used, it is understood that the order, direction, requirement, permission or allowance of the Project Manager is intended.
- 1.4 Whenever any statement is made in the Contract Documents containing the expression "it is understood and agreed", or an expression of like import, such expression means the mutual understanding and agreement of the parties hereto.
- 1.5 The words "approved", "reasonable", "suitable", "acceptable", "properly", "satisfactorily",

or words of like effect in import, unless otherwise particularly specified herein, shall mean approved, reasonable, suitable, acceptable, proper or satisfactory in the judgment of the Project Manager.

- 1.6 When a word, term or phrase is used in the Contract, it shall be interpreted or construed, first, as defined herein; second, if not defined, according to its generally accepted meaning in the construction industry; and, third, if there is no generally accepted meaning in the construction industry, according to its common and customary usage.
- 1.7 All terms used herein shall have the meanings ascribed to them herein unless otherwise specified.

2. ENTIRE AGREEMENT:

- 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 Project Manager of any inconsistency, ambiguity, error or omission, which the Contractor may discover, or should have discovered, with respect to these documents before proceeding with the affected Work. The review, issuance, or the express or implied approval by the City or the Project

Manager of the Contract Documents shall not relieve the Contractor of the continuing duties imposed hereby, nor shall any such review be evidence of the Contractor's compliance with this Contract.

- 3.6 The City has prepared or caused to have prepared the Project Manual. **HOWEVER, THE CITY MAKES NO REPRESENTATION OR WARRANTY AS TO ACCURACY OR FITNESS FOR PARTICULAR PURPOSE INTENDED OR ANY OTHER WARRANTY OF ANY NATURE WHATSOEVER TO THE CONTRACTOR CONCERNING SUCH DOCUMENTS.** By the execution hereof, the Contractor acknowledges and represents that it has received, reviewed and carefully examined such documents, has found them to be complete, accurate, adequate, consistent, coordinated and sufficient for construction, and that the Contractor has not, does not, and will not rely upon any representation or warranties by the City concerning such documents as no such representation or warranties have been made or are hereby made.
- 3.7 As between numbers and scaled measurements in the Project Manual, the numbers shall govern; as between larger scale and smaller scale drawings, (e.g. 10:1 is larger than 100:1) the larger scale shall govern.
- 3.8 The organization of the Project Manual into divisions, sections, paragraphs, articles (or other categories), shall not control the Contractor in dividing the Work or in establishing the extent or scope of the Work to be performed by Subcontractors.
- 3.9 The Contract Documents supersedes all previous agreements and understandings between the parties, and renders all previous agreements and understandings void relative to these Contract Documents.
- 3.10 Should anything be omitted from the Project Manual, which is necessary to a clear understanding of the Work, or should it appear various instructions are in conflict, the Contractor shall secure written instructions from the Project Manager before proceeding with the construction affected by such omissions or discrepancies.
- 3.11 It is understood and agreed that the work shall be performed and completed according to the true spirit, meaning, and intent of the Contract Documents.
- 3.12 The Contractor's responsibility for construction covered by conflicting requirements, not provided for by addendum prior to the time of opening Bids for the work represented thereby, shall not extend beyond the construction in conformity with the less expensive of the said conflicting requirements. Any increase in cost of work required to be done in excess of the less expensive work of the conflicting requirements will be paid for as extra work as provided for herein.
- 3.13 The apparent silence of the Project Manual as to any detail, or the apparent omission from them of a detailed description concerning any point, shall be regarded as meaning that only the best general practice is to be used. All interpretations of the Project Manual shall be made on the basis above stated.
- 3.14 The conditions set forth herein are general in scope and are intended to contain requirements and conditions generally required in the work, but may contain conditions or requirements which will not be required in the performance of the work under contract and which therefore are not applicable thereto. Where any stipulation or requirement set forth

herein applies to any such non-existing condition, and is not applicable to the work under contract, such stipulation or requirement will have no meaning relative to the performance of said work.

- 3.15 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 based on 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 City and the Contractor regarding the signing of pay estimates, change orders, workday reports and other forms necessary for communication and Work status inquiries. Upon Work commencement, the City shall be notified, in writing, within five (5) working days of any changes in the Contractor's representative. In the absence of the Contractor or representative, suitable communication equipment, which will assure receipt of messages within one (1) hour during the course of the workday, will also be required.
- 4.5 The Contractor will be required to contact the Project Manager daily to advise whether and/or where the Contractor and/or the Subcontractor's crews will be working that day, in order that the Project Manager's representative is able to monitor properly the Work.

5. PROJECT MANAGER

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

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

work in accordance with the Project Manual. The Project Manager will not be responsible for the acts or omissions of the Contractor or any Subcontractor or any of its or their agents or employees, or any other person at the site or otherwise performing any of the work except as may otherwise be provided.

- 5.15 Any plan or method of work suggested by the Project Manager, or other representatives of the City, to the Contractor, but not specified or required, if adopted or followed by the Contractor in whole or in part, shall be used at the risk and responsibility of the Contractor, and the Project Manager and the City will assume no responsibility therefore.
- 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 Project Manager, such City representatives or observers as the City may deem proper, to observe the materials furnished and the work performed under the Project Manual, and to see that the said materials are furnished, and the said work performed, in accordance with the Project Manual therefore. The Contractor shall furnish all reasonable aid and assistance required by the Project Manager, or by the resident representatives for proper observation and examination of the Work and all parts thereof.
- 5.17 The Contractor shall comply with any interpretation of the Project Manual by the Project Manager, or any resident representative or observer so appointed, when the same are consistent with the obligations of the Project Manual. However, should the Contractor object to any interpretation given by any subordinate Project Manager, resident representative or observer, the Contractor may appeal in writing to the City Director of Public Works for a decision.
- 5.18 Resident representatives, observers, and other properly authorized representatives of the City or Project Manager shall be free at all times to perform their duties, and intimidation or attempted intimidation of any one of them by the Contractor or by any of its employees, shall be sufficient reason, if the City so decides, to annul the Contract.
- 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, within ten (10) calendar days after being instructed to do so in a written notice from the City, shall 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 Project Manager with a schedule setting forth in detail (in the critical path method) the sequences proposed to be followed, and giving the dates on which it is expected that portions of the work will be started and completed.
- 6.4 If at any time, in the opinion of the Project Manager or City, proper progress is not being maintained; such changes shall be made 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 The operation of any tool, equipment, vehicle, instrument, or other noise-producing device is prohibited to start before or continue after the hours of 7 AM and 10 PM, Monday through Friday (except Fridays which shall be until Midnight) and 8 AM and midnight on Weekends (except Sunday which shall be 10 PM). Violation of this requirement is Prima Facie Violation of City Municipal Code 11-202.
- 6.7 No work shall be undertaken on Saturdays, Sundays and Holidays (Christmas, New Years, Martin Luther King's Birthday, President's Day, Memorial Day, Independence Day, Labor Day and Thanksgiving) without the express written approval of the City Project Manager. If it is necessary to perform proper care, maintenance, or protection of work already completed or of equipment used, or in the case of an emergency verbal permission may be obtained through the Project Manager.
- 6.8 Night work may be established by the Contractor, as a regular procedure, with the written permission of the City; such permission, however, may be revoked at any time by the City if the Contractor fails to maintain adequate equipment for the proper prosecution and control of all operations performed as part of the Work.
- 6.9 The Contractor shall provide 24 hours notice prior to commencing any work to the City Project Manager. The Contractor shall communicate immediately any changes in the work schedule to the City Project Manager.

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

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 Project Manager, an average or usual number of inclement days when work cannot proceed are to be anticipated during the construction period and are not to be considered as warranting extension of time.
- 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 workday.
- 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:
- 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:
 - The weather experienced at the Work site during the Contract period is more severe than the adverse weather anticipated for the Work location during any given month.
 - The unusually severe weather actually caused a delay to the completion of the Work. The delay must be beyond the control and without fault or negligence by the Contractor.
- 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 affected by actual adverse weather (even if adverse weather occurred in the previous month), and shall be calculated chronologically from the first to the last day of each month, and be recorded as full workdays.
- 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 workday 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 workdays shall be given. If the number of actual adverse weather delays in a given month is less than the number of days anticipated as indicated above, the difference shall be multiplied by 7/5 to convert any workday increases to calendar days. The resulting number of qualifying extra days will be accumulated and subtracted from any future month's days lost due to unusually severe weather.
- 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 because of unusually favorable weather.
- 8.13 In converting workdays to calendar days, fractions 0.5 and greater shall be rounded up to the next whole number. Fractions less than 0.5 shall be dropped.
- 8.14 The Contractor shall summarize and report all actual adverse weather delay days for each month to the Project Manager by the tenth (10th) day of the following month. A narrative indicating the impact of adverse weather conditions on the scheduled critical activities shall be included.
- 8.15 Any claim for extension of time due to unusually severe weather shall be submitted to the Project Manager within 7 days of the last day of the commencement of the event giving rise to the delay occurred. Resolution of any claim shall follow the procedures 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 City.
- 9.4 The Contractor shall promptly pay each Subcontractor out of the amount paid to the Contractor because of such Subcontractor's Work the amount to which such Subcontractor is entitled. In the event the City becomes informed that the Contractor has not paid a Subcontractor as herein provided, the City shall have the right, but not the duty, to issue future checks in payment to the Contractor of amounts otherwise due hereunder naming the Contractor and such Subcontractor as joint payees. Such joint check procedure, if employed by the City, shall be deemed payment to the Contractor but shall create no rights in favor of any person or entity beyond the right of the named payees to payment of the check and shall not be deemed to commit the City to repeat the procedure in the future.
- 9.5 The Project Manager will, upon receipt of a written Application for Payment from the Contractor, review the amount of work performed during the preceding period and the value thereof at the unit prices contracted. From the amounts so ascertained, there shall be deducted ten percent (10%) to be retained until after final completion of the entire work to the satisfaction of the City. The Project Manager will submit an estimate each month to the City for payment to the Contractor, except that no amount less than \$500.00 will be submitted unless the total amount of the Contract remaining unpaid is less than \$500.00.
- 9.6 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.
- 9.7 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.
- 9.8 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.
- 9.9 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.
- 9.10 Neither the observation by the City or any of the City's officials, employees, or agents, nor any order by the City for payment of money, nor any payment for, or acceptance of, the whole or any part of the work by the City or Project Manager, nor any extension of time, nor any possession taken by the City or its employees, shall operate as a waiver of any provision of this Contract, or of any power herein reserved to the City, or any right to damages herein provided, nor shall any waiver of any breach in this Contract be held to be a waiver of any other or subsequent breach.

10. COMPLETION AND FINAL PAYMENT

- 10.1 Work completion shall be defined as all elements of the Work or work segment, being complete including all subsidiary items and "punch-list" items.
- 10.2 When all of the Work is finally complete and the Contractor is ready for a final inspection, it shall notify the City and the Project Manager thereof in writing. Thereupon, the Project Manager will make final inspection of the Work and, if the Work is complete in accordance with this Contract, the Project Manager will promptly issue a final Certificate for Payment certifying to the City that the Work is complete and the Contractor is entitled to the remainder of the unpaid Contract Price, less any amount withheld pursuant to this Contract. If the Project Manager is unable to issue its final Certificate for Payment and is required to repeat its final inspection of the Work, the Contractor shall bear the cost of such repeat final inspection(s), which cost may be deducted by the City from the Contractor's full payment.
- 10.3 The Contractor shall not be entitled to any payment unless and until it submits to the Project Manager its affidavit that all payrolls, invoices for materials and equipment, and other liabilities connected with the Work for which the City, or the City's property might be responsible, have been fully paid or otherwise satisfied; releases and waivers of lien from all Subcontractors and Suppliers of the Contractor and of any and all other parties required by the City; and consent of Surety, if any, to final payment. If any third party fails or refuses to provide a release of claim or waiver of lien as required by the City, the Contractor shall furnish a bond satisfactory to the City to discharge any such lien or indemnify the City from liability.
- 10.4 The City shall make final payment of all sums due the Contractor within thirty days of the later of the Project Manager's execution of a final Certificate for Payment.
- 10.5 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.

11. CLAIMS BY THE CONTRACTOR

- 11.1 All Contractor claims shall be initiated by written notice and claim to the Project Manager. Such written notice and claim must be furnished within seven calendar days after occurrence of the event, or the first appearance of the condition, giving rise to the claim.
- 11.2 The Contractor shall diligently proceed with performance of this Contract whether or not there be such a claim pending and the City shall continue to make payments to the Contractor in accordance with this Contract. The resolution of any claim shall be reflected by a Change Order executed by the City, the Project Manager and the Contractor.
- 11.3 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.
- 11.4 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.
- 11.5 The City reserves the right to increase or decrease quantities, and alter the details of construction including grade and alignment as the Project Manager may consider necessary or desirable, by approved Change Order. Such modifications shall not invalidate the Contract nor release the surety. Unless such alterations and increases or decreases change the total cost of the Work, based on the originally estimated quantities and the unit prices bid, by more than 25 percent, or change the total cost of any major item, based on the originally estimated quantities and the unit price bid, by more than 25 percent, the Contractor shall perform the work altered, increased or decreased, at a negotiated price or prices. (A major item shall mean any bid item, the total cost of which exceeds 12-1/2 percent of the total Contract amount based on the proposed quantity and the contract unit price).
- 11.6 When the alterations cause an increase or decrease in excess of the 25 percent indicated above, either the Contractor or the Project Manager may request an adjustment of the unit price to be paid for the item or items.
- 11.7 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.

- 11.8 In connection with any claim by the Contractor against the City for compensation in excess of the Contract Price, any liability of the City for the Contractor's costs shall be strictly limited to direct costs incurred by the Contractor and shall not include standby costs, indirect costs or consequential damages of the Contractor. The City shall not be liable to the Contractor for claims of third parties.
- 11.9 If the Contractor is delayed in progressing any task which at the time of the delay is then critical or which during the delay becomes critical, as the sole result of any act or neglect to act by the City or someone acting in the City's behalf, or by changes ordered in the Work, unusual delay in transportation, unusually adverse weather conditions not reasonably anticipated, fire or any causes beyond the Contractor's control, then the date for achieving Final Acceptance of the Work shall be extended upon the written notice and claim of the Contractor to the City, for such reasonable time as the City may determine. Any notice and claim for an extension of time by the Contractor shall be made not more than seven calendar days after the occurrence of the event or the first appearance of the condition-giving rise to the claim and shall set forth in detail the Contractor's basis for requiring additional time in which to complete the Work. In the event the delay to the Contractor is a continuing one, only one notice and claim for additional time shall be necessary. If the Contractor fails to make such claim as required in this subparagraph, any claim for an extension of time shall be waived.
- 11.10 The Contractor shall delay or suspend the progress of the work or any part thereof, whenever so required by written order of the City, and for such periods of time as required; provided, that in the event of such delay or delays or of such suspension or suspensions of the progress of the work, or any part thereof, the time for completion of work so suspended or of work so delayed by such suspension or suspensions shall be extended for a period equivalent to the time lost by reason of such suspension or suspensions; but such order of the City or Project Manager shall not otherwise modify or invalidate in any way, any of the provisions of this Contract. In the event that the work shall be stopped by written order of the City, any expense, which, in the sole opinion and judgment of the City, is caused by the City, shall be paid by the City to the Contractor.
- 11.11 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.
- 11.12 In addition to the Project Manual particular to Mobilization found elsewhere in this document, additional mobilization shall not be compensable for work outside of the designated areas for work deemed essential by the City. A quantity of work equal to as much as 10% of the total Contract may be required to be performed beyond the boundaries of the designated work areas

12. CHANGES IN THE WORK

- 12.1 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.
- 12.2 The Project Manager shall have authority to order minor changes in the Work not involving a change in the Contract Price or in Contract Time and consistent with the intent of the Contract. Such changes shall be effected by verbal direction and then recorded on a Field Order and shall be binding upon the Contractor. The Contractor shall carry out such Field Orders promptly.
- 12.3 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.
- 12.4 If no mutual agreement occurs between the City and the Contractor relative to a change in the Work, the Contractor shall proceed with the work that is the subject of the Change Order, and the change in the Contract Price, if any, shall then be determined by the Project Manager on the basis of the reasonable expenditures or savings of those performing, deleting or revising the Work attributable to the change, including, in the case of an increase or decrease in the Contract Price, a reasonable allowance for direct job site overhead and profit. In such case, the Contractor shall present, in such form and with such content to the City, as the Project Manager requires, an itemized accounting of such expenditures or savings, plus appropriate supporting data for inclusion in a Change Order. Reasonable expenditures or savings shall be limited to the following: reasonable costs of materials, supplies or equipment, including delivery costs, reasonable costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and worker's compensation insurance, reasonable rental costs of machinery and equipment exclusive of hand tools, whether rented from the Contractor or others, permit fees, and sales, use or other taxes related to the Work, and reasonable cost of direct supervision and job site field office overhead directly attributable to the change. In no event shall any standby time or any expenditure or savings associated with the Contractor's home office or other non-job site overhead expense be included in any change in the Contract Price. Further, in no event shall the Contractor's overhead expense exceed ten (10%) percent of the reasonable expenditures. Pending final determination of reasonable expenditures or savings to the City, payments on account shall be made to the Contractor on the Project Manager's Certificate for Payment.
- 12.5 If unit prices are provided in the Contract, and if the quantities contemplated are so changed in a proposed Change Order that the application of such unit prices to the quantities of Work proposed would cause substantial inequity to the City or to the Contractor, the applicable unit prices shall be equitably adjusted.
- 12.6 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.

13. INSURANCE AND HOLD HARMLESS.

- 13.1 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.
- 13.2 To the fullest extent permitted by law, the Contractor shall indemnify, defend, and hold harmless the City, the Project Manager, 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.
- 13.3 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.
- 13.4 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.
- 13.5 The Contractor shall give reasonable notice to the City 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 City or owners relative to the removal and replacement or protection of such property or utilities.
- 13.6 The Contractor shall satisfactorily shore, support, and protect 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 because 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.
- 13.7 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.

- 13.8 The City and the Project Manager 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.
- 13.9 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.
- 13.10 Satisfactory certificates of insurance shall be filled with the City prior to the Contractor 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, at the City option, may be the basis for the City exercising its right to terminate the Contract.
- 13.11 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.

14. INDEMNITY

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

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

- 14.2 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/her employees, agents, Subcontractors and suppliers.
- 14.3 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.
- 14.4 Nothing in this section shall be deemed to impose liability on the Contractor to indemnify the City or County for Loss when the negligence or other actionable fault the City is the sole cause of Loss.

14.5 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.

15. SUCCESSORS AND ASSIGNS

15.1 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.

15.2 The Contractor shall not assign or sublet the work, or any part thereof, without the previous written consent of the City, nor shall it assign, by power of attorney or otherwise, any of the money payable under this Contract unless by and with the like written consent of the City. In case the Contractor assigns all, or any part of any moneys due or to become due under this Contract, the instrument of assignment shall contain a clause substantially to the effect that it is agreed that the right of the assignee in and to any moneys due or to become due to the Contractor shall be subject to all prior liens of all persons, firms and corporations for services rendered or materials supplied for the performance of the Work called for in this Contract.

15.3 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.

15.4 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.

15.5 The Contractor shall not subcontract, sell, transfer, assign or otherwise dispose of the Contract or any portion thereof without previous written consent from the City. In case such consent is given, the Contractor, shall be permitted to subcontract a portion thereof, but shall perform with his/her own organization work amounting to not less than fifty five (55%) of the total Contract Price. No subcontracts, or other transfer of Contract, shall release the Contractor of its liability under the Contract and bonds applicable thereto.

15.6 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.

- 15.7 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.
- 15.8 The City shall, prior to the City's approval of the Contract bid, notify the successful bidder, in writing, if the City, after due investigation, has reasonable objection to any Subcontractor on such list, and the Contractor shall substitute a Subcontractor acceptable to the City at no additional cost to the City or shall be allowed to withdraw his/her Bid, and the City shall either re-bid the Work or accept the next best lowest and responsible bidder. The failure of the City to make objection to a Subcontractor shall constitute an acceptance of such Subcontractor but shall not constitute a waiver of any right of the City to reject defective work, material or equipment not in conformance with the requirements of the Project Manual.

16. NON-DISCRIMINATION LAWS

- 16.1 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.
- 16.2 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);
- 16.3 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;
- 16.4 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
- 16.5 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.
- 16.6 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.

17. RELATIONS WITH OTHER CONTRACTORS:

- 17.1 The Contractor shall cooperate with all other contractors who may be performing work on behalf of the City, and workers who may be employed by the City, or any other entity on any work in the vicinity of the Work to be done under this Contract, and the Contractor shall so conduct his/her operations as to interfere to the least possible extent with the work of such contractors or workers. The Contractor shall be responsible for any injury or damage, that may be sustained by other contractors, workers, their work or employees of the City, because of any fault or negligence on the Contractor's part, and shall, at his/her own expense, repair or pay for such injury or damage. If the work of the Contractor is delayed because of any acts or omissions of any other Contractor or Contractors, the Contractor shall have no claim against the City on that account other than for an extension of time.
- 17.2 When two or more Contracts are being executed at one time in such manner that work on one Contract may interfere with that on another, the City shall decide which Contractor shall progress at which time.
- 17.3 Other projects the Contractor may have to coordinate shall be listed in the Special Conditions.
- 17.4 When the territory of one Contract is the necessary or convenient means of access for the transportation or movement of workers, materials, or appliances required for the execution of another Contract, such privileges of access or any other responsible privilege may be granted by the City to the Contractor so desiring, to the extent such may be reasonably necessary.
- 17.5 Upon execution of the Contract, the Contractor shall furnish the City, in writing, the names of persons or entities proposed by the Contractor to act as a Subcontractor on the Work. The City shall promptly reply to the Contractor, in writing, stating any objections the City may have to such proposed Subcontractor. The Contractor shall not enter into a Subcontract with a proposed Subcontractor with reference to whom the City has made timely objection. The Contractor shall not be required to Subcontract with any party to whom the Contractor has objection.
- 18. RIGHT OF CITY TO TERMINATE**
- 18.1 If the Contractor persistently or repeatedly refuses or fails to prosecute the Work in a timely manner, or supply enough properly skilled workers, supervisory personnel or proper equipment or materials, or if it fails to make prompt payment to Subcontractors or for materials or labor, or persistently disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or if this Contract is assigned by Contractor without authorization or if Contractor is adjudged as bankrupt, or if a general assignment of assets be made for the benefit of creditors; or if a receiver is appointed, or otherwise is guilty of a substantial violation of a provision of this Contract, then the City may by written notice to the Contractor, without prejudice to any right or remedy, terminate the employment of the Contractor and take possession of the site and of all materials, equipment, tools, construction equipment and machinery thereon owned by the Contractor and may finish the Work by whatever methods it may deem expedient. In such case, the Contractor and its surety shall be liable to the City for all excess cost sustained by the City because of such prosecution and completion including any additional legal, Project Manager or bid-letting costs therefore. In such case, the Contractor shall not be entitled to receive further

payment. In the event the Contractor is found in a court of law to have been wrongfully terminated for cause, then such termination shall be deemed a termination for convenience and the Contractor shall be compensated as provided herein.

- 18.2 The City, within its sole discretion, may elect to terminate the Contract with the Contractor for convenience upon three (3) days written Notice to Contractor. In the event of such termination, Contractor shall cease immediately all operations and shall be compensated for all work performed as of the date of termination in accordance with the terms of payment in this contract. Contractor shall not be entitled to any anticipatory profits 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 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 near the Work, is hereby designated as the places to which all notices, letters, and other communications to the Contractor may be mailed or delivered. The delivering at either of the above named addresses, or depositing in any mailbox regularly maintained by the Post Office, of any notice, letter or other communication so addressed to the Contractor, and the date of said service shall be the date of such delivery or mailing. Such addresses may be changed at any time by an instrument in writing, executed by the Contractor, presented, and delivered to the Project Manager and to the City. Nothing herein contained shall be deemed to preclude or render inoperative the service of any notice, letter, or communication upon the Contractor personally.
- 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 City or of any other agency, which has contributed funds in connection with the Contract or to which the City is obligated to make such inspections available. In addition, this requirement shall be included in all subcontracts entered into in connection with this Contract.
- 19.7 Titles, subheadings used herein, and other Contract Documents are provided only as a matter of convenience and shall have no legal bearing on the interpretation of any provision of the Contract Documents.
- 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, Project Manager or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval or acquiescence in a breach hereunder, except as may be specifically agreed in writing.
- 19.14 Contractor specifically acknowledges and confirms that: 1.) he/she 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/she has furnished copies of all Contract Documents to his/her insurance carrier(s) and his/her surety(ies); and 3.) his/her 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/her, hers or their successors and assigns, or its, his/her, 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 five (5) 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, Kansas, 66208 _____

(date of execution)

By _____
(signed)

(typed name)

(typed title)

(typed company name)

(typed address)

(typed city, state, zip)

(typed telephone number)

(date of execution)

SEAL

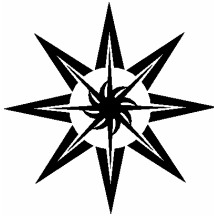
ATTEST:

APPROVED BY:

City Clerk, Joyce Hagen-Mundy

City Attorney, Catherine 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.)



PUBLIC WORKS DEPARTMENT

Council Committee Meeting Date: December 17, 2012

Council Meeting Date: December 17, 2012

***COU2012-60: CONSIDER PROJECT CONC2012: 2012 CONCRETE REPAIR PROGRAM CONSTRUCTION CHANGE ORDER #1 (FINAL)**

RECOMMENDATION

Move to approve construction change order #1(Final) with White and Son's Construction for Project CONC2012: 2012 Concrete Repair Program for \$ \$63,005.17.

BACKGROUND

This Final Change Order reflects the final field measured quantities for all bid items. These items include repairs to curb and gutter, sidewalks, driveways, and ADA ramp reconstruction.

Additional work was completed using funds listed below-

1. Additional ADA ramps were constructed and therefore the additional funds for these repairs will come from the ADA Project: ADARESV funding for 2012 in the amount of \$13,005.17
2. Additional concrete repairs were completed utilizing \$50,000.00 in unallocated funds from the Sidewalk and Curb Section of the CIP.

The final contract amount with White and Son's Construction for the project will be \$758,005.17.

FUNDING SOURCE

Funds for this work will come from two different sources as listed below.

Project ADARESV: ADA Compliance- \$13,005.17

Sidewalk and Curb Section of the CIP: Unallocated- \$50,000.00

RELATED TO VILLAGE VISION

TR1c. Ensure that infrastructure improvements meet the needs of all transportation users.

ATTACHMENTS

1. Construction Change Order #1 (FINAL) with White and Son's Construction.

PREPARED BY

Keith Bredehoeft, Project Manager

December 10, 2012



CITY OF PRAIRIE VILLAGE
PUBLIC WORKS DEPARTMENT
CONSTRUCTION CHANGE ORDER NO. 1

City's Project: CONC2012- 2012 Concrete Repair Program

Date Requested: December 17, 2012

Contract Date: June 1, 2010

Consultant's Name: N/A

Contractor's Name: White and Son's Construction

REQUIRED CHANGES TO PRESENT CONTRACT

Contract Quantity	Previous Amount	Unit	Item Description	Adj. Quant.	Unit Price	Adjusted Amount
0	\$0.00	LS	Finalizing Quantities for the 2010 Concrete Repair Program	LS	\$63,005.17	\$63,005.17

TOTAL \$0.00

TOTAL \$63,005.17
NET Increase \$63,005.17

EXPLANATION OF CHANGE - This change order is to cover the following items:

Finalizing quantities for the 2012 Concrete Repair Program- Funding- Project ADARESV: ADA Compliance- \$13,005.17 and Sidewalk and Curb Section of the CIP: Unallocated- \$50,000.00

The Consultant does **not** anticipate a related Engineering Change Order.

	Contract Value	Contract Days
Original Contract	\$695,000.00	
Current Contract including previous Change Orders	\$695,000.00	
NET This Change Order	\$63,005.17	
New Contract Price	\$758,005.17	

Contractor

Date

Keith Bredehoeft, Project Manager
City of Prairie Village, KS

Date

Ronald L. Shaffer, Mayor
City of Prairie Village, KS

Date



ADMINISTRATION

Committee Meeting Date: December 17, 2012
Council Meeting Date: December 17, 2012

***COU2012-56:** Consider Resolution No. 2012-03 Providing for the Reallocation of the Proceeds of the Series 2011-A Bond Issue

RECOMMENDATION

Staff recommends passage of Resolution No. 2012-03.

SUGGESTED MOTION

Recommend the City Council adopt Resolution No. 2012-03 that provides for the reallocation of the Series 2011-A Bond to various street projects.

BACKGROUND

The City allocated \$500,000 of the Series 2011-A Bond issue to energy projects. The final cost was \$438,239. The difference of \$61,761 is due to the additional grant funds of \$70,000 that the City received from the State Department of Energy (DOE).

We do not have other scheduled uses for these funds in public building projects. Therefore, we are asking the Governing Body authorize the reallocation of the \$70,000 from public building projects to the street projects already identified for the bond purposes.

FINANCIAL IMPACT

No financial impact on the General Fund.

ATTACHMENTS

- Resolution No. 2012-03
-

PREPARED BY:

Lisa Santa Maria
Finance Director

Date: December 13, 2012

RESOLUTION NO. 2012-03

A RESOLUTION PROVIDING FOR THE REALLOCATION OF PROJECT COSTS TO BE FINANCED WITH THE PROCEEDS OF THE CITY OF PRAIRIE VILLAGE, KANSAS' GENERAL OBLIGATION REFUNDING AND IMPROVEMENT BONDS, SERIES 2011-A.

WHEREAS, on October 3, 2011, the City of Prairie Village, Kansas (the "City"), adopted Ordinance No. 2243 and approved Resolution No. 2011-16 authorizing the issuance of the City's General Obligation Refunding and Improvement Bonds, Series 2011-A in the original principal amount of \$4,555,000 (the "Bonds"); and

WHEREAS, Ordinance No. 2243 provided that the proceeds of the Bonds would finance the cost of certain Improvements, as shown below:

<u>Project Description</u>	<u>Resolution/Ordinance Number</u>	<u>Authority</u>	<u>Allocable Portion of Principal Amount</u>
Various public building projects	Res. No. 2011-01	K.S.A. 12-1736 <i>et seq.</i>	\$ 500,000
Various street projects	Res. No. 2011-15 and Res. No. 2009-22	K.S.A. 12-685 <i>et seq.</i>	4,100,000
Total:			\$4,600,000

; and

WHEREAS, the Bonds were issued on October 19, 2011; and

WHEREAS, there are moneys remaining in the Improvement Fund after the completion of the public building projects and the City hereby finds it necessary and desirable to authorize the reallocation of the proceeds of the Bonds to pay certain costs of the Improvements constituting the street projects; and

WHEREAS, the proposed reallocation will not cause proceeds of the bonds allocated to the street projects to exceed the Financing Costs of such Improvements; and

WHEREAS, the proposed reallocation will not adversely affect the tax-exempt status of the Bonds under State or federal law; and

WHEREAS, in such instances, the Issuer is permitted pursuant to Section 504(b) of Resolution No. 2011-16 to reallocate the proceeds of the Bonds to the street projects.

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

Section 1. The Governing Body hereby authorizes reallocation of the proceeds of the Bonds to certain of the Improvements as follows:

<u>Project Description</u>	<u>Resolution/Ordinance Number</u>	<u>Initial Allocation of 2011-A Bonds</u>	<u>New Allocation of 2011-A Bonds</u>	<u>Change in Amount Financed</u>
Various public building projects	Res. No. 2011-01	\$ 500,000	\$ 430,000	\$ (70,000)
Various street projects	Res. No. 2011-15 and Res. No. 2009-22	<u>4,100,000</u>	<u>4,170,000</u>	70,000
Total:		\$4,600,000	\$4,600,000	

Section 2. The officers and officials of the City, including the Mayor, Clerk and City Administrator, are hereby authorized and directed to execute all documents and take such actions as they may deem necessary or advisable in order to carry out and perform the purposes of this Resolution and to make ministerial alterations, changes or additions in the foregoing agreements, statements, instruments and other documents herein approved, authorized and confirmed which they may approve, and the execution or taking of such action shall be conclusive evidence of such necessity or advisability.

Section 3. This Resolution shall take effect and be in full force immediately after its adoption by the governing body.

ADOPTED by the governing body of the City this 17 day of December, 2012.

Mayor

(SEAL)

ATTEST:

City Clerk

**COUNCIL MEETING AGENDA
CITY OF PRAIRIE VILLAGE
Council Chambers
December 17, 2012
7:30 PM**

- I. **CALL TO ORDER**
- II. **ROLL CALL**
- III. **PLEDGE OF ALLEGIANCE**
- IV. **PUBLIC PARTICIPATION**
- V. **CONSENT AGENDA**

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

By Staff

- 1. Approve Regular Council Meeting Minutes - December 3, 2012
- 2. Approve Claims Ordinance 2902
- 3. Approve the extension of the lease with Imagequest for three multi-functional copier/scanner/fax/printer units for the administration area and support of all administration printers.
- 4. Approve entering into a lease agreement with the Mid America Regional Council (MARC) to place microwave equipment on the City's existing cell tower for use in the Patriot E911 Phone System
- 5. Adopt an Ordinance amending Section 1-401, entitled "Personnel Policies and Guidelines" of Article 4, entitled "Personnel Policy and Employee Benefits" of Chapter 1, entitled "Administration" of the Municipal Code of the City of Prairie Village, Kansas
- 6. Ratify the Mayor's appointment of Julie Flanagan to the Prairie Village Arts Council filling an unexpired term until April, 2015

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

Council Committee of the Whole

- COU2012-52 Consider City Hall and Public Works Entrance Signs
- COU2012-55 Consider approval of Memorandum of Understanding with Johnson County for the implementation of a joint notification system with Johnson County, WaterOne and other cities and approve the participant agreement
- COU2012-59 Consider Bids for Project P5003 - 2012 Bridge Repairs, Mission

- COU2012-60 Road Bridge Polymer Concrete Overlay
Consider Project CONC2012: 2012 Concrete Repair Program
Construction Change Order #1 (Final)
- COU2012-56 Consider Resolution No. 2012-03 providing for the Reallocation
of the Proceeds of the Series 2011-A Bond Issue

Planning Commission

- PC2012-09 Consider proposed revisions to Zoning Regulations adding
Chapter 19.25 entitled "Overlay Zoning Districts"
- Consider Initiation of the Countryside East Neighborhood
Overlay District and Direct the Planning Commission to Set the
Public Hearing for Consideration

VIII. **STAFF REPORTS**

IX. **OLD BUSINESS**

Report on Use of Outside Consultants in the Development Review Process

Consider request from Highlawn Montessori

Consider Final Plat for PV Shopping Center - Applicant has requested deferral
to January 7th

X. **NEW BUSINESS**

XI. **ANNOUNCEMENTS**

XII. **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

CONSENT AGENDA

CITY OF PRAIRIE VILLAGE, KS

December 17, 2012

**CITY COUNCIL
CITY OF PRAIRIE VILLAGE
December 3, 2012**

The City Council of Prairie Village, Kansas, met in regular session on Monday, December 3, 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, Andrew Wang, Laura Wassmer, Brooke Morehead, Charles Clark, David Morrison, Ted Odell and David Belz.

Also present were: Wes Jordan, Chief of Police; 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

Charles Schollenberger, 3718 West 79th Terrace, expressed concern with the new location for the Ripple Glass container at Corinth Square. He feels the new location is dangerous and will result in an injury accident. The bin encroaches on the right turn lane entering the shopping center and also creates broken glass in the right turn lane. He urged the City to ask Lane4 to move the recycle bin to a safer location.

Mr. Schollenberger also urged one of the Council members to direct the City Attorney to research the appropriateness of Lane4 using CID funds to demolish the Waid's building and

constructing a new retail shop. He questioned the legality of constructing a privately owned building with CID funds. It was his understanding the CID funds were to be used for improvements to the center, not to build a new privately owned building for the benefit of Lane4. He feels this is totally inappropriate if not illegal.

Kathy Morrison, representing Highlawn Montessori, addressed the Council to appeal charges related to a traffic study review conducted at the direction of the City in conjunction with Highlawn's request for an amendment to their Special Use Permit to add additional space and students at their facility at 3531 Somerset. Ms. Morrison noted that Highlawn contracted with George Butler Associates to prepare a traffic study in conjunction with their application before the Planning Commission and does not feel it should be responsible for the costs of the study requested by the City. Ms Morrison referenced a letter prepared for the Council providing background information on the actions leading to their being charged \$1900 for an additional traffic review requested by the City.

Bruce McNabb responded TranSystems was directed to conduct a review of the traffic study prepared for the applicant by GBA. They did not conduct a second traffic study. This is standard procedure when an outside study is submitted for a project under review by the Planning Commission. The city does not have the staff resources and expertise to evaluate the accuracy and completeness of such studies. Mr. McNabb noted the study was received by city staff 8 days prior to the Planning Commission meeting giving staff only two and a half days in which to conduct its analysis. Anticipating the late submittal, he contacted TranSystems prior to receipt of the study to complete the review as a quick turnaround was necessary.

The code states that the applicant is obligated to pay all costs incurred by the City, including publication costs, including consultant's charges for application review if necessary.

In their analysis of the traffic study completed by GBA, TranSystems reviewed traffic during the noon hour as that was referenced in the study as having the highest volume.

Brooke Morehead asked if the applicant was advised of the charges in advance. Dennis Enslinger responded applicants are notified they are responsible for costs incurred by the city in the process of reviewing their application. These charges vary with each application and the difficulty of its review. Staff cannot predict what these costs will be, therefore a general cost advance is collected with applications and applicants are advised that any costs over that amount will be billed to them.

Andrew Wang stated he felt this was a reasonable procedure to review a study, but not to complete a duplicate study.

David Belz stated that if it is for the city's benefit and by its directive the review was conducted it would seem that it would be the city's responsibility to pay for the study. He does not feel the applicant should be required to pay for both their study and another.

Charles Clark stated someone has to do the review and the city does not have available staff to conduct such a review. Laura Wassmer stated it is not a city project, it is a private development and the property owner should be responsible.

Michael Kelly stated he does not have a problem with the policy and sees it as the city's due diligence. Dale Warman agreed the policy is good; however, questioned who pays if the city does not have staff to do the review, shouldn't it be the city paying for the cost.

Ted Odell stated he agreed with Ms Wassmer that this is a developer or property owner cost.

David Morrison agrees with the policy and that taxpayer dollars should not be paying for costs related to the improvement of private property. He was concerned whether the applicant was aware of the costs. Mr. Enslinger again replied applicants are advised there may be

additional outside costs, but they cannot be given a specific amount. Ms. Morrison stated she was unaware that she would be billed for this review which she noted came after she had paid the bill for Planning Commission review by Ron Williamson and related publication costs.

Ruth Hopkins stated she would like to have more information before taking any action. Kathy Morrison responded her concern is that the city will not release her final occupancy permit until all fees are paid. Mayor Shaffer stated the city would work with her on the occupancy permit. Quinn Bennion asked what additional information the Council wanted from staff. Mayor Shaffer responded how similar situations have been handled. Ruth Hopkins asked how Benton House was handled. Dennis Enslinger noted that each application is different and he would research the Benton House application.

Mayor Shaffer closed public participation at 8:00 p.m.

CONSENT AGENDA

Brooke Morehead asked that item #11 and Dale Warman requested item #7 be removed from the Consent Agenda for discussion. Charles Clark moved the approval of the Consent Agenda for December 3, 2012 excluding items #7 and #11:

1. Approve the Regular Council Meeting Minutes - November 19, 2012
2. Approve the issuance of Cereal Malt Beverage licenses to the following businesses for 2013: Walgreen's (4016 West 95th Street), Four B Corp (Hen House at 4050 West 83rd Street and Hen House at 6950 Mission Road) and Hy-Vee, Inc. (7620 State Line Road)
3. Approve an interlocal agreement between the City of Prairie Village and Johnson County Park & Recreation District for the use of City facilities for 50+ programming
4. Approve the agreement between the City of Prairie Village and Blue Valley Public Safety in the amount of \$3,648 for the City's Outdoor Warning Siren System Maintenance
5. Approve the agreement for Pavement Marking Services with K and G Striping for 2013 and renewal in 2014 and 2015
6. Approve the agreement for Building Sprinkler System Maintenance Service with Simplex Grinnell for 2013 and renewal in 2014 and 2015
7. Removed

8. Approve the agreement for Fire Alarm Maintenance Service with Simplex Grinnell for 2013 and renewal in 2014 and 2015
9. Approve the agreement for Fire Extinguisher Services to Keller Fire & Safety for 2013 and renewal in 2014 and 2015
10. Approve the agreement for Painting Service to Northeast Painting for 2013 and renewal in 2014 and 2015
11. Removed
12. Approve the user's agreement with Mill Creek Rifle Club for Police Department Range Training in 2013
13. Ratify the Mayor's appointment of the following individuals to the JazzFest Committee: Dan Andersen, Rod Atteberry, Kate Fields, Chris Huff, J.D. Kinney and Diane Mares
14. Approve a Lease and Maintenance Agreement with Midwest Office Technology for a 60-month term to replace the current lease that ends in January, 2013
15. Approve the continuation of the following multi-year agreements previously approved by the City Council for 2013:
 - Best Portable Toilets - Portable Toilets - expires 2014
 - City of Leawood - Porchlight Agreement - expires 2107
 - Coffee Plus - Coffee Services - expires 2013
 - DataMax - Public Works Copier - expires 2014
 - Great American Leasing - Postage Meter Lease - expires 2013
 - Icemasters - Ice maker services - expires 2014
 - ImageQuest - Administration copiers - expires 2013
 - Johnson County Key - Locksmith Services - expires 2014
 - Kansas City Power & Light - M-Power Agreement - expires 2013
 - Lawrence Pest Control - Pest control services - expires 2014
 - Lexington Plumbing - Plumbing services - expires 2013
 - O'Dell Services Company - HVAC services - expires 2014
 - Pitney Bowes - PW Postage Meter - expires 2013
 - Public Defender - Robin A. Lewis - expires 2013
 - Sanitol - Custodial services - expires 2013
 - Southwestern Bell - T1 Line lease - expires 2013
 - VanBooven Landscape & Tree - Tree Care Services - expires 2013
 - Weather or Not - Weather forecasting services - expires 2013
16. Approve revisions to Council Policy #055 entitled "Investment Policy for City Retirement Funds" as presented

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

Brooke Morehead requested additional information on the proposed 2013 compensation ranges including if they were salary only or included all benefit costs and how they were established.

Quinn Bennion responded the ranges cover salary only and are established based on the value assigned to each position. He noted the shift of the salary range does not affect salaries unless an employee's salary becomes lower than the minimum for the range or an employee who was at the maximum would become eligible for merit increases based on the new range. Employee salary increases are based on performance as documented in annual evaluations. The approved 2013 budget includes a 2 percent merit pool from which funding for employee salary increases are derived. The proposed salary ranges reflect an across the board 2% increase.

Brooke Morehead asked how the position values were determined. Quinn Bennion responded the values are based on what is required for the job description in terms of education, responsibilities, supervision, etc. He noted a comprehensive salary study was conducted in 2006. The proposed adjustments to the ranges were based on four indexes: Social Security COLA - 1.7%; Kansas City CPI index - 2.61%; Employment Cost Index for state and local governments - 1.1%; and CPI for wage earners - 2.64%.

Laura Wassmer noted the cost to do a comprehensive salary study is significant. Looking at a combination of factors such as economic indexes, salaries paid by neighboring cities and area salary surveys helps to keep the city competitive allowing it to hire qualified employees and retain its current employees.

Mrs. Morehead noted in today's economy she cautioned against blanket increases in position ranges without the benefit of a study. Mr. Bennion stated staff would welcome having a comprehensive benefits study, but noted the Council must be committed to following all the

recommendations of the study not just selected items as was done after the last compensation study.

Laura Wassmer noted there have been years when no changes were made to the salary ranges and no increases approved. Salary increases are not automatic but are based on performance reviews by supervisors and approved by the City Administrator. The city needs to acknowledge the value of its employees and the services they provide for the residents.

Michael Kelly noted that during 2013 budget discussion Council asked for new creative ways to look at addressing personnel costs as they represent a major portion of the city's budget. He would like to have that discussion before the next budget discussion begins.

Steve Noll moved the City Council adopt Resolution 2012-01 establishing 2013 compensation ranges for the City of Prairie Village subject to the review and approval of the City Attorney. The motion was seconded by Ruth Hopkins.

A roll call vote was taken with the following votes cast: "aye" Weaver, Warman, Hopkins, Noll, Wang, Wassmer, Clark, Morrison, Belz and "nay" Kelly, Morehead, Odell.

Dale Warman noted he reviewed the proposals received for electrical service and noted that the cost of labor was fairly consistent across the board for all bidders. The cost difference appeared to be in the equipment costs and cautioned staff to look closely at those when getting service. He does not oppose staff recommendation, but merely wanted to share his experiences in this area with staff.

Dale Warman moved the City Council approve the agreement for Electrical Services with R. F. Fisher for 2013 and renewal in 2014 and 2015. The motion was seconded by David Morrison.

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

MAYOR'S REPORT

Mayor Shaffer noted his report was given at the earlier Council Committee of the Whole meeting.

COMMITTEE REPORT

Council Committee of the Whole

COU2012-54 Consider approval of updated employee handbook and policies

On behalf of the Council Committee of the Whole, Charles Clark moved the City Council approve the Employee Handbook as presented and rescind listed existing personnel policies. The motion was seconded by Laura Wassmer and passed unanimously.

COU2012-58 Consider bid award for Tree Planting Services

On behalf of the Council Committee of the Whole, Charles Clark moved the City Council award the contract for Tree Planting Services to Rosehill Gardens for 2013 and renewal in 2014 and 2015. The motion was seconded by Laura Wassmer and passed by a vote of 11 to 0 with Ted Odell abstaining.

COU2012-57 Consider Resolution 2012-02 Establishing a Tax-Exempt Financing Compliance Procedure

On behalf of the Council Committee of the Whole, Charles Clark moved the City Council adopt Resolution 2012-02 establishing a Tax-Exempt Financing Compliance Procedure. The motion was seconded by Laura Wassmer and passed unanimously.

STAFF REPORTS

Mayor Shaffer stated that Staff Reports were given at the earlier Council Committee of the Whole meeting.

OLD BUSINESS

Consider Final Plat for “Prairie Village Shopping Center”

Dennis Enslinger reported that the applicant is still working out details on the final plat for the “Prairie Village Shopping Center”.

Charles Clark moved at the applicant’s request to table this item to the December 17, 2012 City Council meeting. The motion was seconded by Laura Wassmer and passed unanimously.

NEW BUSINESS

Discussion on process of selecting Council President

Charles Clark noted that he has already served as Council President and asked the Council to discuss the selection of a new Council President.

Michael Kelly moved Charles Clark be retained as Council President until next April. He stated Mr. Clark’s strong leadership and experience makes him the best choice to lead the City Council for the next few months. The motion was seconded by Ruth Hopkins.

David Belz noted there is a learning curve with the position of Council President and it would take a few months for a new president to get acclimated, Charles Clark would provide more continuity for the City.

The motion was voted on and passed by a vote of 11 - 0 with Mr. Clark abstaining.

Mayor Shaffer expressed his thanks to Mr. Clark for agreeing to continue as Council President.

Clarification on use of CID funds

Ashley Weaver asked the City Attorney to address the questions raised during public participation by Charles Schollenberger.

Katie Logan responded that the proposed use of CID funds for improvements to the Prairie Village Shopping Center is legal. She noted these dollars are not sales tax dollars that would otherwise be coming to the City, it is a sales tax layer above general city-wide tax. She stated the state statutes are broad in their interpretation on the use of CID funds and the proposed use at the Prairie Village Shops including the demolition of the Waids building and construction of a new building fall within state statutes and within the CID agreement.

Dennis Enslinger stated the specific CID agreement prohibits the use of CID funds for maintenance but approves its use for capital improvements. All three of the projects identified - Mission Lane, Hen House expansion and the demolition of Waids with a new building were identified as potential projects in the agreement.

Katie Logan reminded the Council this is not blank check. The funds are limited to approved reimbursements for expenditures approved by the City. The CID as established meets the purpose of the law adding an additional layer of sales tax that is specifically designated for use in an identified community improvement district.

ANNOUNCEMENTS

Board of Zoning Appeals	12/04/2012	6:30 p.m.
Planning Commission	12/04/2012	7:00 p.m.
JazzFest Committee	12/11/2012	7:30 p.m.
Parks & Recreation Committee Meeting	12/12/2012	7:00 p.m.
Council Committee of the Whole	12/17/2012	6:00 p.m.
City Council	12/17/2012	7:30 p.m.

=====

The Prairie Village Arts Council is pleased to announce an oil painting exhibit by Eileen McCoy in the R. G. Endres Gallery for the month of December. The reception will be held on December 14th from 6:30 to 8:30 p.m.

The Municipal Foundation will be hosting a Gingerbread House Decorating Party on Sunday, December 9th at Brighton Gardens, 7105 Mission Rd. There will be two sessions.

The employee holiday luncheon will be December 12th from 11:30 a.m. to 1:00 p.m. in the Council Chambers.

The Mayor's Holiday Gala for Volunteers will be Friday, December 14th at Homestead Country Club.

The City offices will be closed December 25th in observance of Christmas and January 1st in observance of the New Year's Holiday. Deffenbaugh observes both holidays so pick-up will be delayed one day.

The City will be offering holiday tree drop sites from December 17 through January 21 at Porter, Franklin and Taliaferro parks. Harmon Park **will not** be a drop off site this year.

ADJOURNMENT

With no further business to come before the City Council, the meeting was adjourned at 8:30 p.m.

Joyce Hagen Mundy
City Clerk

CITY TREASURER'S WARRANT REGISTER

DATE WARRANTS ISSUED:

Warrant Register Page No. 1

December 17, 2012

Copy of Ordinance
2902

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
EXPENDITURES:			
Accounts Payable			
3646-3647	11/2/2012	1,092.64	
3648-3649	11/5/2012	1,657.67	
3650-3742	11/9/2012	246,357.65	
3743	11/13/2012	35.00	
3744-3746	11/19/2012	759.00	
3747-3821	11/23/2012	1,038,153.80	
3822	11/26/2012	34,314.74	
3823-3838	11/30/2012	257,874.88	
Payroll Expenditures			
11/2/2012		236,614.81	
11/16/2012		242,552.56	
11/30/2012		246,069.46	
Electronic Payments			
Electronic Pmnts	11/1/2012		305.22
Electronic Pmnts	11/8/2012		502.28
Electronic Pmnts	11/9/2012		10,585.48
Electronic Pmnts	11/13/2012		242.92
Electronic Pmnts	11/15/2012		163.71
Electronic Pmnts	11/19/2012		4,415.47
Electronic Pmnts	11/26/2012		16,892.27
Electronic Pmnts	11/29/2012		4531.02
TOTAL EXPENDITURES:			\$ 2,635,306.21
Voided Checks			
UMB Bank-Trust Fees Dept	# 3734	(8,984.81)	
TOTAL VOIDED CHECKS:			(8,984.81)
GRAND TOTAL CLAIMS ORDINANCE			2,663,959.77

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

Passed this 17th day of December 2012.

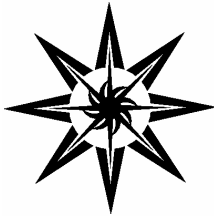
Signed or Approved this 17th day of December 2012.

(SEAL)

ATTEST: _____

City Treasurer

Mayor



CITY CLERK DEPARTMENT

Council Meeting Date: December 17, 2012

Consider extension of lease of multi-functional office equipment

RECOMMENDATION

Recommend the City Council extend the lease with Imagequest for three multi-functional copier/scanner/fax/printer units for the administration area and support of all administration printers.

BACKGROUND

In 2008, the Administration area moved to centralized multi-functional copier/scanner/fax/printer Xerox units with Imagequest Document Imaging. The primary copier is a high volume color unit in the City Clerk's area with a second black & white unit in the Codes area and a desk top black & white unit in the Municipal Court. All units serve as printers, copiers, scanners and faxes. There are small low volume desktop individual printers in the Accounting area, City Administrator's, Assistant City Administrator's, City Clerk's and HR offices to allow for the printing and receipt of secure information.

Although the current lease with Imagequest does not expire until mid 2013, they have presented a proposal for extension of the lease for an additional 60 months with the following changes:

- Replace the Xerox Workcentre 7345 with a newer but similar Xerox Workcentre 7545
- Replace the Xerox B/W Workcentre 505 with a new Xerox Workcentre 7125 color unit - The Code Enforcement Officer and Planning Commission packets require a large number of color copies.
- Replace the Xerox Phaser 3635 in Court with a new Xerox Phaser 3635
- Provide maintenance and toner on all administration units, including individual printers.
- The agreement includes 17,000 monthly B&W copies on the multi-functional units; 5,000 monthly B&W copies on the printers and 3,000 monthly color copies. Copy overages charges are .008, .014 and .065 respectively.

The City Attorney has reviewed and approved the proposed lease.

FINANCIAL IMPACT

The current monthly copy/printing costs for these services is \$1,274.96. The proposed cost for the services is \$1,167.56 for a monthly savings of \$107.40 and annual savings of \$1,288.80. Money has been budgeted in the 2013 budgets for each department.

ATTACHMENTS

Proposed Lease Agreement

PREPARED BY

Joyce Hagen Mundy
City Clerk

Date: December 12, 2012

The logo for QUEST, featuring the word "QUEST" in a bold, sans-serif font. The letter "Q" is significantly larger than the other letters and has a tail that extends downwards and to the left, resembling a speech bubble or a stylized arrowhead. The word "QUEST" is positioned to the right of the "Q".

QUEST

A Xerox Company

Rental Agreement



Rental Agreement

CUSTOMER INFORMATION

Full Legal Name _____ Phone Number with Area Code 913/381-6464
 Prime Village City of _____ Billing Address if Different _____ Fax Number with Area Code 913/381-7755
 Address _____
 7700 Mission Rd _____
 Prime Village KS 66208 _____
 Federal Tax ID Number _____ Purchase Order Reference Number _____
 Send Invoice to Attention of _____ DBA Name (if any) _____

INDIVIDUAL METER OPTION

Make/Model/Accessories	Base Monthly Rental	Monthly Page Allowance BLACK AND WHITE	Cost-Per-Page Additional Pages BLACK AND WHITE	Monthly Page Allowance COLOR	Cost-Per-Page Additional Pages COLOR	Meter Reading Frequency
1. _____	_____	_____	_____	_____	_____	<input type="checkbox"/> Monthly <input type="checkbox"/> Semi-Annually <input type="checkbox"/> Quarterly <input type="checkbox"/> Annually
2. _____	_____	_____	_____	_____	_____	<input type="checkbox"/> Monthly <input type="checkbox"/> Semi-Annually <input type="checkbox"/> Quarterly <input type="checkbox"/> Annually
3. _____	_____	_____	_____	_____	_____	<input type="checkbox"/> Monthly <input type="checkbox"/> Semi-Annually <input type="checkbox"/> Quarterly <input type="checkbox"/> Annually
4. _____	_____	_____	_____	_____	_____	<input type="checkbox"/> Monthly <input type="checkbox"/> Semi-Annually <input type="checkbox"/> Quarterly <input type="checkbox"/> Annually

BILLING PREFERENCE Each unit invoiced separately (include all billing locations on Information Schedule) All units on one invoice (with individual unit reports) Each unit invoiced separately to one billing location
 FOR ADDITIONAL UNITS ATTACH SCHEDULE A

CONSOLIDATED BILLING OPTION

Make/Model/Accessories	Initial Meter Reading	Make/Model/Accessories	Initial Meter Reading
1. See Schedule A	4		
2. _____	5		
3. _____	6		

ALL UNITS LISTED ABOVE ARE CONSOLIDATED UNDER THIS PLAN
 BILLING PREFERENCE
 Consolidated units with individual meter option above on one invoice
 Consolidated units separate from individual
 FOR ADDITIONAL UNITS ATTACH SCHEDULE A

Base Monthly Rental	Monthly Page Allowance	Cost-Per-Page Additional Pages	Meter Reading Frequency
BLACK & WHITE	17000/5000	008/014	<input checked="" type="checkbox"/> Monthly <input type="checkbox"/> Semi-Annually <input type="checkbox"/> Quarterly <input type="checkbox"/> Annually
COLOR	3000	0.065	<input checked="" type="checkbox"/> Monthly <input type="checkbox"/> Semi-Annually <input type="checkbox"/> Quarterly <input type="checkbox"/> Annually

PAYMENT

Term in Months	First Rental Payment	(PLUS)	Security Deposit	(PLUS)	Sales Tax	(EQUALS)	Total Payment Enclosed
60							

SALES TAX OPTION

Each payment is subject to sales tax of _____ % or amounts or percentages that may be in effect by location Exempt - Exemption Certificate Attached

CUSTOMER SIGNATURE

YOU AGREE TO ALL OF THE TERMS AND CONDITIONS CONTAINED ON THE REVERSE SIDE OF THIS AGREEMENT AND IN ANY ATTACHMENTS TO SAME (ALL OF WHICH ARE INCLUDED BY REFERENCE) AND BECOME PART OF THIS AGREEMENT YOU ACKNOWLEDGE TO HAVE READ AND AGREE TO ALL THE TERMS AND CONDITIONS AND UNDERSTAND THAT THIS IS A NON-CANCELABLE AGREEMENT FOR THE FULL TERM SHOWN ABOVE.

You acknowledge that the rented equipment is NEW USED

Signature _____ Date _____
 X _____
 Print Name _____ Title _____
 For _____ Legal Name of Corporation or Partnership _____

DELIVERY AND ACCEPTANCE

You acknowledge that the Equipment set forth above has been received, has been put in use, is in good working order and is satisfactory and acceptable.

Signature _____ Date _____
 X _____
 Print Name _____ Title _____
 For _____ Legal Name of Corporation or Partnership _____

GUARANTY

TO INDUCE OWNER TO ENTER INTO THE WITHIN RENTAL AGREEMENT THE UNDERSIGNED UNCONDITIONALLY GUARANTEES TO OWNER THE PROMPT PAYMENT WHEN DUE, OF ALL OF CUSTOMER'S OBLIGATIONS TO OWNER UNDER THE AGREEMENT OWNER SHALL NOT BE REQUIRED TO PROCEED AGAINST CUSTOMER OR THE EQUIPMENT OR ENFORCE ANY OTHER REMEDY BEFORE PROCEEDING AGAINST THE UNDERSIGNED. THE UNDERSIGNED WAIVES NOTICE OF ACCEPTANCE HEREOF AND ALL OTHER NOTICES OR DEMAND OF ANY KIND TO WHICH THE UNDERSIGNED MAY BE ENTITLED THE UNDERSIGNED CONSENTS TO ANY EXTENSIONS OR MODIFICATION GRANTED TO CUSTOMER AND THE RELEASE AND/OR COMPROMISE OF ANY OBLIGATIONS OF CUSTOMER OR ANY OTHER OBLIGORS AND GUARANTORS WITHOUT IN ANY WAY RELEASING THE UNDERSIGNED FROM HIS OR HER OBLIGATIONS HEREUNDER. THIS IS A CONTINUING GUARANTEE AND SHALL NOT BE DISCHARGED OR AFFECTED BY DEATH OF THE UNDERSIGNED SHALL BIND THE HEIRS, ADMINISTRATORS, REPRESENTATIVES, SUCCESSORS AND ASSIGNS OF UNDERSIGNED AND MAY BE ENFORCED BY OR FOR THE BENEFIT OF ANY ASSIGNEE OR SUCCESSOR OF OWNER THIS GUARANTY IS GOVERNED BY AND CONSTITUTED IN ACCORDANCE WITH THE LAWS OF THE STATE OF KANSAS AND THE UNDERSIGNED CONSENTS TO JURISDICTION IN ANY STATE OR FEDERAL COURT OF KANSAS.

Signature	Date	Signature	Date
X _____	_____	X _____	_____
Print Name		Print Name	
_____		_____	
Home Address		Home Address	
_____		_____	
Social Security Number	Phone	Social Security Number	Phone
_____	_____	_____	_____



Rental Agreement Service Terms and Conditions

CUSTOMER INFORMATION	Customer			Billing Name if Different	
	Prairie Village, City of			Prairie Village, City of	
	Address			Billing Address if Different	
	7700 Mission Rd				
	City	State	Zip	Billing City, State Billing Zip	
	Prairie Village	KS	66208		
Phone			Meter Read Contact		
913/381-6464					
Fax			Contact email		
913/381-7755			dlutner@pvkansas.com		

The following items are included and excluded as marked below.

ITEMS INCLUDED	<input checked="" type="checkbox"/> Service	<input checked="" type="checkbox"/> Color Fuser Kits	ITEMS EXCLUDED	<input checked="" type="checkbox"/> Paper & Media	<input type="checkbox"/> Fuser Oil
	<input checked="" type="checkbox"/> Labor	<input checked="" type="checkbox"/> Color Drum Kits		<input checked="" type="checkbox"/> Staples	<input type="checkbox"/> Waste Toner Bottle
	<input checked="" type="checkbox"/> Black Toner	<input checked="" type="checkbox"/> Black & White Fuser Kits		<input checked="" type="checkbox"/> Network Support	<input type="checkbox"/> Color Fuser Kits
	<input checked="" type="checkbox"/> Color Toner	<input checked="" type="checkbox"/> Black & White Drum Kits		<input type="checkbox"/> Service	<input type="checkbox"/> Color Drum Kits
	<input checked="" type="checkbox"/> Fuser Oil	<input type="checkbox"/> Duplicator Ink		<input type="checkbox"/> Parts	<input type="checkbox"/> Black & White Fuser Kits
	<input checked="" type="checkbox"/> Waste Toner Bottle	<input type="checkbox"/> Duplicator Masters		<input type="checkbox"/> Labor	<input type="checkbox"/> Black & White Drum Kits
				<input type="checkbox"/> Black Toner	<input checked="" type="checkbox"/> Duplicator Ink
				<input type="checkbox"/> Color Toner	<input checked="" type="checkbox"/> Duplicator Masters

Scanner Coverage

Scanner - 0025 per page

This covers the cost of increased document feeder parts replacement as well as the scanner hardware. This will be billed as checked. If not checked it will be billed annually.

Scanner coverage is required if you have a scanner

Monthly Quarterly Annually

Zero Based Color Coverage

If you have a zero based color plan the monthly base service cost is \$ YES NO

PER MONTH THIS DOES NOT INCLUDE ANY PAGE COUNT AS THIS WILL BE BILLED MONTHLY ON ACTUAL VOLUME

- We will provide Preventative Maintenance Calls on equipment or accessories described above in conjunction with regular service calls
- Service calls under this agreement will be made during OUR normal business hours. Monday through Friday 8-5. After hours service if performed due to emergency will be billed at triple OUR normal hourly service charge rate.
- During the term of this agreement, WE will provide without charge, all replacement parts which have been worn or broken through normal use unless they are noted as excluded on the front of the agreement. Installation of accessories, attachments and other devices after the initial agreed upon installation are not included in this agreement. Replacement of exterior doors and/or panels is excluded from this agreement. Damage caused by operators to photoconductors, drums, toner cartridges, supply items and rollers is not covered under this agreement. Service calls required due to improper throughput materials being run through the systems (including improper labels) are not covered and will be billed for parts & labor. Printers and connected copiers & faxes include the initial setup of print drivers. If YOU add additional work-stations or make changes to YOUR network which result in the need for US to reinstall drivers and/or reconfigure YOUR connected equipment this will result in a charge call for the time of the call at OUR prevailing network support hourly rate.
- Relocation of equipment after the initial installation is not covered under the agreement. If you would like US to relocate the equipment WE will provide you a quote for these services. Service calls caused by YOU moving the equipment are not covered under this agreement and will be handled on a charge basis.
- YOU shall provide US free access to the equipment and adequate space to perform necessary service. YOU shall provide equipment key operators for instruction in the use of the equipment and performance of normal operator functions. Normal operator functions as described in the manufacturer's operator manual should be performed by YOU. If YOU request US to do these functions this will be a charge call.
- Certain equipment must be installed according to specific requirements in terms of space, electrical and environmental conditions. Installation requirements are defined in the Equipment Operators Manual. YOU shall ensure that the equipment is placed in an area that conforms to these requirements. Failure to adhere to these requirements will adversely affect the equipment and will result in additional charges to YOU.
- YOU will provide US with true and accurate page count readings in a timely manner. YOU will be responsible to maintain adequate supplies for the equipment on your premises and provide us sufficient lead-time to deliver replenishments.
- Due to the sensitive nature of color laser and color copier technology we cannot assure acceptable color page and print quality unless original equipment manufacturer (OEM) supplies are used. We will not warranty or provide service if you buy recharge cartridges on color equipment. Any service calls caused due to NON OEM supplies will be a charge call for parts & labor. Use only supplies provided by US in color equipment.
- This Agreement will not apply to service made necessary by accident, acts of God, terrorism, improper electrical service, misuse, abuse, neglect, theft, vandalism, electrical power failure, fire, lightning, water or other casualty, or to repairs made necessary as a result of either service by personnel other than imageQUEST Inc. or the use of supplies or parts not meeting the manufacturers specifications. imageQUEST Inc. will charge customer for repairs and parts, due to the foregoing, at the rate in effect when such service work is performed.
- If toner is included in this agreement the cost of toner was computed by using the manufacturer's estimate for the toner yield for each piece of equipment and estimating 7.5% coverage for black & white and 35% coverage for color. If color equipment is included, if your toner usage is above these levels WE reserve the right to increase the cost of the agreement to reflect the increased cost of toner usage. A monthly supply delivery & handling fee will be charged on each invoice.
- If YOU make software, computer or network changes after the equipment is installed it is YOUR responsibility to ensure the new software, computer or network is backwards compatible with YOUR equipment on this agreement. Any service or updates, software or hardware, that we perform due to this issue will be a charge for time and material.
- Page count is computed per 8.5 x 11 page. Any page smaller than 8.5 x 11 counts as 1 page. 8.5 x 11 counts as 1 page. 8.5 x 14 counts as 1 page. 11 x 17 counts as 2 pages. 2 sided copies double the page count. The page count occurs with all printed pages whether copies, prints or faxes.

CUSTOMER APPROVAL	Signature	Date
	<input checked="" type="checkbox"/>	
	Print Name	
	Title	
	Legal Name of Company Prairie Village, City of	

RENTAL TERMS AND CONDITIONS

The words YOU and YOUR mean the Customer. The words WE, US, and OUR refer to the owner of the Equipment.

1. **RENTAL AGREEMENT ("AGREEMENT"):** WE agree to rent to YOU and YOU agree to rent from US the Equipment listed in the "Individual Meter Option" and/or "Consolidated Billing Option" section of this Agreement and/or in any attached schedules ("Equipment"). YOU promise to pay US the Base Monthly Rental ("Rental Payment") stated on the face of this Agreement plus the Cost-Per-Page Additional Pages ("Additional Page Charge") on pages in excess of the Monthly Page Allowance. The Additional Page Charges will be invoiced at the end of each meter reading period set forth on the face of this Agreement. YOU authorize US to insert in this Agreement the serial numbers of the Equipment when WE so determine them.

2. **NON-DELIVERY CHARGE:** Once YOU sign this Agreement WE will order the Equipment and begin the set-up and delivery process. WE will incur cost for administration, freight, handling and set-up. If YOU cancel this order prior to installation YOU will be charged a fee to cover administrative costs as well as a restocking fee charged to US by the manufacturer. The fee assessed will be an amount equal to the sum of twelve (12) monthly minimum Rental Payments.

3. **TERM:** This Agreement goes into effect on the date YOU sign the Delivery and Acceptance Form ("Effective Date"). The term of the Agreement begins on a date designated by US during the month of the Effective Date or on the first day of the month following the Effective Date ("Commencement Date") and continues for the number of months designated as "Term in Months" on the face of this Agreement. WE will apply the first Rental Payment to the first month of the term on the Commencement Date or any later date designated by US. The second Rental Payment is due on the date set forth in the invoice with subsequent payments due on the same day of each successive month thereafter until the balance of the Rental Payments and any additional Rental Payments or expenses chargeable to YOU under this Agreement have been paid in full. In addition, YOU agree to pay an interim Rental Payment in the amount of one-thirtieth (1/30th) of the Rental Payment for each day from and including the Effective Date until the day preceding the Commencement Date.

YOU agree to provide accurate and timely meter readings on the forms or other alternative means specified by US. If meter readings are not received in a timely manner charges may be estimated by US. YOUR obligation to pay the Rental Payments and other obligations hereunder shall be absolute and unconditional. This Agreement is NON-CANCELABLE.

WE have the right to increase the Rental Payment and the Additional Page Charge on an annual basis, in an amount not to exceed ten percent (10%) of the Rental Payment or the Additional Page Charge in effect at the end of the prior annual period.

4. **LATE CHARGES/DOCUMENTATION FEES:** Whenever any Rental Payment or Additional Page Charge is not made when due, YOU agree to pay US, within one month, a late charge of five percent (5%) for each delayed payment, but only to the extent permitted by law. YOU agree to pay US a fee of \$59.95 plus 1/10th of one percent (1%) of the original Equipment cost in excess of \$50,000.00 to reimburse OUR expenses for preparing financing statements and other documentation costs. If the Equipment is located in more than one location, YOU agree to pay US an additional fee of \$19.00 for each additional filing required for each additional location.

5. **USE, MAINTENANCE, REPAIR, SUPPLIES AND WARRANTIES:** YOU have selected the Equipment and the related maintenance program and supplies as described in a separate maintenance agreement with the Equipment dealer ("Dealer"). We are not the manufacturer of the Equipment and WE are renting the Equipment to YOU "AS-IS" WE MAKE NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE IN CONNECTION WITH THIS AGREEMENT OR THE EQUIPMENT WE transfer to YOU for the term of this Agreement all warranties, if any, made by manufacturer.

YOU ALSO ACKNOWLEDGE THAT NO ONE IS AUTHORIZED TO WAIVE OR CHANGE ANY TERM, PROVISION OR CONDITION OF THIS AGREEMENT AND EXCEPT FOR THE MANUFACTURER WARRANTIES, MAKE ANY REPRESENTATION OR WARRANTY ABOUT THIS AGREEMENT OR THE EQUIPMENT. WE SHALL NOT BE LIABLE FOR SPECIAL, RESULTING OR CONSEQUENTIAL DAMAGES OR LOSS OF PROFIT OCCASIONED BY ANY BREACH OF WARRANTY OR REPRESENTATION OR RESULTING FROM THE USE OR PERFORMANCE OF ANY UNIT OF EQUIPMENT. YOUR OBLIGATION TO PAY IN FULL ANY AMOUNT DUE UNDER THIS AGREEMENT SHALL NOT BE AFFECTED BY ANY DISPUTE, CLAIM, COUNTERCLAIM, DEFENSE OR OTHER RIGHT WHICH YOU MAY HAVE OR ASSERT AGAINST THE DEALER OR THE EQUIPMENT MANUFACTURER.

6. **TITLE, PERSONAL PROPERTY, LOCATION AND INSPECTION:** WE will have title to the Equipment. If this Agreement is deemed to be a security agreement, you grant us a purchase money security interest in the Equipment and all proceeds therefrom. YOU have the right to use the Equipment for the full term provided YOU comply with the terms and conditions of this Agreement. The Equipment is personal property even though the Equipment may become attached to any real estate. YOU agree not to permit a lien to be placed upon the Equipment or to remove the Equipment without OUR prior written consent. WE also have the right, at reasonable times, to inspect the Equipment.

7. **ASSIGNMENT:** YOU AGREE NOT TO TRANSFER, SELL, SUBRENT, ASSIGN, PLEDGE OR ENCUMBER EITHER THE EQUIPMENT OR ANY RIGHTS UNDER THIS AGREEMENT WITHOUT OUR PRIOR WRITTEN CONSENT. WE may sell, assign or transfer this Agreement. YOU agree that if WE sell, assign or transfer this Agreement, the new owner will have the same rights and benefits that WE have now and will not have to perform any of OUR obligations. YOU agree that the right of the new owner will not be subject to any claims, defenses, or set-offs that YOU may have against US or the Dealer.

8. **REDELIVERY AND RENEWAL:** Upon at least ninety (90), but not more than (150), days written notice to US prior to the expiration of the initial term of this Agreement, YOU shall advise US of YOUR intention to return the Equipment to US at the end of the initial term of this Agreement. Provided YOU have given such timely notice, YOU shall return the Equipment, freight and insurance prepaid, to US in good repair, condition and working order, ordinary wear and tear excepted, in a manner and to a location designated by US. If YOU do fail to so notify US, or having notified US, YOU fail to return the Equipment as provided herein, this Agreement shall renew for additional terms of twelve (12) months each with Rental Payments and Additional Page Charges equal to 100% of the Rental Payments and Additional Page Charges at the expiration of the initial term of this agreement.

9. **LOSS OR DAMAGE:** YOU are responsible for the risk of loss or destruction of, or damage to the Equipment. No such loss or damage releases YOU from any obligation under this Agreement.

10. **INDEMNITY:** WE are not responsible for any losses or injuries caused by the installation or use of the Equipment. YOU agree to reimburse US for and to defend US against any claim for losses or injuries caused by the Equipment.

11. **TAXES:** YOU agree to pay all license and registration fees, sale and use taxes, personal property taxes and all other taxes and charges, relating to the ownership, leasing, rental, sale, purchase, possession or use of the Equipment as part of the Rental Payment or as billed by US. YOU agree that if WE pay any taxes or charges on YOUR behalf, YOU shall reimburse US for all such payments and shall pay US interest and a late charge (as calculated in Section 4) on such payments with the next Rental Payment, plus reasonable costs incurred in collecting and administering any taxes, assessments or fees and remitting them to the appropriate authorities. YOU agree that WE have the right each year to estimate the yearly personal property taxes that will be due for the Equipment and that YOU will pay us 1/12th of the estimated taxes on each Rental Payment. If YOU are in default of the Agreement WE may begin to bill YOU for personal property taxes each month.

12. **INSURANCE:** During the term of this Agreement, YOU will keep the Equipment insured against all risks of loss or damage in an amount not less than the replacement cost of the Equipment, without deductible and without co-insurance. YOU shall also obtain and maintain for the term of this Agreement, comprehensive public liability insurance covering both personal injury and property damage of at least \$100,000 per person and \$300,000 per occurrence for bodily injury and \$50,000 for property damage. WE shall be the sole named loss payee on the property insurance and shall be named as an additional insured on the public liability insurance. YOU will pay all premiums for such insurance and shall deliver proof of insurance coverage satisfactory to US. If YOU do not provide such insurance, YOU agree that WE have the right, but not the obligation, to obtain such insurance, and add an insurance fee to the amount due from you, on which we make a profit.

13. **DEFAULT:** YOU are in default of this Agreement if any of the following occurs: (a) YOU fail to pay any Rental Payment or other sum when due; (b) YOU breach any warranty or other obligation under this Agreement, or any other agreement with US; (c) YOU, any partner or any guarantor dies, YOU become insolvent or unable to pay YOUR debts when due; YOU stop doing business as a going concern, YOU merge, consolidate, transfer all or substantially all of YOUR assets, YOU make an assignment for the benefit of creditors or YOU undergo a substantial deterioration in YOUR financial condition; or (d) YOU, any guarantor or any partner, shall voluntarily file or have filed against it involuntarily a petition for liquidation, reorganization, adjustment of debt or similar relief under the Federal Bankruptcy Code or any other present or future federal or state bankruptcy or insolvency law or a trustee, receiver or liquidator shall be appointed of it or a substantial part of its assets.

14. **REMEDIES:** WE have the following remedies if a default should occur:
 a. Upon written notice, declare the entire balance of the unpaid Rental Payments for the full term immediately due and payable, sue for and receive all Rental Payments and any other payments then accrued or accelerated under this Agreement or any other Agreement plus the estimated fair market value of the Equipment at the end of the originally scheduled Term, however, all accelerated Rental Payments and the estimated fair market value of the Equipment shall be discounted to the date of the default at six percent (6%) per year, but only to the extent permitted by law.
 b. Charge YOU interest on all monies due US at the rate of eighteen percent (18%) per year from the date of default until paid, but in no event more than the maximum rate permitted by law.
 c. Charge YOU a return-check or non-sufficient funds charge ("NSF Charge") OF \$25.00 for a check that is returned for any reason.
 d. Withhold providing services and/or supplies; and
 e. Require that YOU return the Equipment to US and in the event YOU fail to return the Equipment, enter upon the premises peacefully with or without legal process where the Equipment is located and repossess the Equipment. Such return or repossession of the Equipment shall not constitute a termination of this Agreement unless WE expressly notify YOU in writing. In the event the Equipment is returned or repossessed by US and unless WE have terminated this Agreement, WE will sell or re-rent the Equipment to such persons and upon such terms as WE may determine at one or more public or private sales and with or without notice to YOU and apply the net proceeds after deducting the costs and expenses of such sale or re-rent, to YOUR obligations with YOU remaining liable for any deficiency and with any excess being retained by YOU. The credit for any sums to be received by US from any such rental shall be discounted to the date of the rental agreement at six percent (6%) per year.

YOU are also required to pay (i) all expenses incurred by US in connection with the enforcement of any remedies, including all expenses of repossessing, storing, shipping, repairing and selling the Equipment, and (ii) reasonable attorneys' fees.

15. **SECURITY DEPOSIT:** WE will retain any required security deposit as security for YOUR performance of YOUR obligations. Any security deposit is non-interest bearing. WE may apply any security deposit to cure any default by YOU in which event YOU will promptly restore any amount so applied. If YOU are not in default, any security deposit will be returned to YOU at the termination of this Agreement.

16. **WARRANTY OF BUSINESS PURPOSE:** YOU hereby warrant and represent that the Equipment will be used for business purposes, and not for personal, family or household purposes.
 17. **UCC FILINGS AND FINANCIAL STATEMENTS:** YOU authorize US to file a financing statement with respect to the Equipment and grant US the right to sign such financing statement on YOUR behalf. If WE feel it is necessary, YOU agree to submit financial statements (audited if available) on a quarterly basis.

18. **UCC-ARTICLE 2A PROVISIONS:** YOU agree that this Agreement is a Finance Lease as that term is defined in Article 2A of the Uniform Commercial Code ("UCC"). YOU acknowledge that WE have given YOU the name of the supplier of the Equipment. WE hereby notify YOU that YOU may have rights under the contract with the Supplier and YOU may contact the supplier for a description of any rights or warranties that YOU may have under this supply contract. YOU also waive any and all rights and remedies granted by Sections 2A-508 through 2A-522 of the UCC.

19. **CHOICE OF LAW:** This Agreement has been made in Wichita, Kansas and, except for local filing requirements, is governed by and construed in accordance with the laws of the State of Kansas. YOU consent to and agree that personal jurisdiction over YOU and subject matter jurisdiction over the Equipment may at our option be with the courts of the State of Kansas, with respect to any provision of this Agreement.

20. **ENTIRE AGREEMENT; SEVERABILITY; WAIVERS:** This Agreement contains the entire agreement and understanding. No agreements or understandings are binding on the parties unless set forth in writing and signed by the parties. Any provision of this Agreement which for any reason may be held unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective without invalidating the remaining provisions of this Agreement. It is further agreed that the rights and remedies of the parties are governed by this Agreement.

21. **COPIES OF AGREEMENTS:** If you need copies of this Agreement after signing they can be provided for a \$25.00 fee to cover our administrative costs.

OWNER ACCEPTANCE	Signature _____	Date _____
	X _____	
	Print Name _____	Title _____
	For imageQUEST, Inc.	

041M004



imageQUEST, Inc.
 11021 E. 26th St. N.
 Wichita, KS 67226
 Phone: (316) 686-3200
 Fax: (316) 686-0066

Date
 12/12/2012

EQUIPMENT SERVICE & SUPPLY AGREEMENT

Bill To

Name Priare Village, City of
 Address 7700 Mission Rd
 City, State Priare Village, KS Zip 66208
 Phone 913/381-6461
 Contact Joyce Mundy

Skip To

Name Same as 'Bill To'
 Address _____
 City, State _____ Zip _____
 Phone _____
 Contact _____

Fax Number 913/381-7755

Meter Read Contact _____

Model Number	Department	Base Charge per Month	Monthly Page Allowance	Overage Per Page	Beginning Meter Read
WorkCentre 7545P/WorkCentre 7125PT/Phaser MFP 455X	Multifunction B/W	included in lease	17,000	0.0080	
WorkCentre 7545P/WorkCentre 7125PT	Multifunction Color	included in lease	3,000	0.0650	
HP P1505N/Samsung ML-2000/Lexmark X364/Samsung ML-2000/HP LJ 1320/HP LJ 3000/HP LJ P2035N	MPS B/W	included in lease	5,000	0.0140	

Notes

Items Included

Service	X	Color Fuser Kits	X
Parts	X	Color Drum Kits	X
Labor	X	Black & White Fuser Kits	X
Black Toner	X	Black & White Drum Kits	X
Color Toner	X	Duplicator Ink	N/A
Fuser Oil	X	Duplicator Masters	N/A
Waste Toner Bottle	X		

Excluded Items

Paper & Media	X	Fuser Oil	
Staples	X	Waste Toner Bottle	
Network Support	X	Color Fuser Kits	
Service		Color Drum Kits	
Parts		Black & White Fuser Kits	
Labor		Black & White Drum Kits	
Black Toner		Duplicator Ink	X
Color Toner		Duplicator Masters	X

Customer Approval

Signature _____

Print Name _____

Title _____

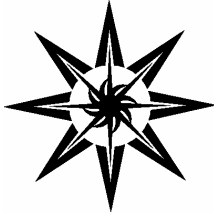
Legal Name of Company _____

Priare Village, City of

Date _____

THIS AGREEMENT IS SUBJECT TO THE TERMS AND CONDITIONS LISTED ON THE REVERSE SIDE

Email: sales@imageQUESTks.com
 Web: www.imageQUESTks.com



POLICE DEPARTMENT

City Council Meeting: December 17, 2012

Consent Agenda: Consider Entering into a Lease Agreement with the Mid America Regional Council (Public Safety Communications Board Tower) on the Patriot E911 Phone System

RECOMMENDATION

Staff recommends that the City Council approve entering into a lease agreement with the Mid America Regional Council (MARC) to place microwave equipment on the City's existing cell tower for use in the Patriot E911 Phone System.

COUNCIL ACTION REQUESTED ON: December 17, 2012

BACKGROUND

MARC's Public Safety division is in the process of upgrading all of the Public Safety Answering Points (PSAP's) in the MARC region over the next four years from the current 911 configuration to the Patriot work stations. The new Patriot system is IP-based, which will provide the opportunity to migrate 911 traffic to Next Generation 911 capabilities.

The present system uses leased T-1 phone lines; the Patriot system uses a host and remote configuration, eliminating the need for an on-site controller and reducing cost to the region. The new network utilizes 4.9Mhz microwave links, which replaces the leased T-1 lines. Once the entire region is switched to the microwave links, the T-1 lines will be disconnected.

The Patriot system will use microwave facilities, such as the City's existing tower, to mount the antenna equipment. Site shelters (such as the one at the base of the City's tower) will house the Patriot equipment.

FUNDING SOURCE:

The cost of the network and equipment to be installed is funded by the 911 Equipment Replacement Fund, which is part of the overall regional 911 budget (no city funds will be used for this project). This revenue is supported by the 911 tax.

ATTACHMENTS

- Public Safety Communications Board Tower Site Lease Agreement
-

PREPARED BY

Kyle Shipps, Technical Operations Officer

**PUBLIC SAFETY COMMUNICATIONS BOARD
TOWER SITE LEASE AGREEMENT**

THIS TOWER SITE LEASE AGREEMENT (this "Agreement") is made this _____ day of _____, 20____, by and between ____ The City of Prairie Village _____, with its principal offices located at 7700 Mission Road, Prairie Village, Kansas ("LESSOR") and Mid-America Regional Council, with its principal offices at 200 Rivergate Center, 600 Broadway, Kansas City, Missouri 64105 ("LESSEE"). The LESSOR and LESSEE are at times collectively referred to hereinafter as the "Parties" or individually as the "Party".

WITNESSETH

WHEREAS, MARC has coordinated the planning and implementation of the regional 9-1-1 system since its inception, and

WHEREAS, the City of Prairie Village, KS has signed and agreed to the terms set forth in the Master 9-1-1 Answer Point Sub-Agreement, and operates a 9-1-1 Public Safety Answering Point,

NOW, THEREFORE, in consideration of the mutual covenants contained herein and intending to be legally bound hereby, the Parties hereto agree as follows:

1. PREMISES. LESSOR hereby leases to the LESSEE a portion of that certain space on the LESSOR's tower ("Tower"), located at 7700 Mission Road, County of Johnson, State of Kansas (the "Property"), together with sufficient space for the installation of LESSEE's equipment generally as shown on Exhibit "A", attached hereto and made a part hereof, together with sufficient space for the installation and maintenance of wires, cables, conduits and pipes running from the space on the Tower to the equipment building, together with the non-exclusive right for ingress and egress, seven (7) days a week, twenty-four (24) hours a day, on foot or motor vehicle, including trucks, and for the installation and maintenance of utility wires, poles, cables, conduits, and pipes to the demised premises, said demised premises and right-of-way for access which tower space, demised premises, connection areas and right-of-way are collectively referred to hereinafter as the "Premises".

In the event any public utility is unable to use the aforementioned right-of-way, the LESSOR hereby agrees to grant an additional right-of-way either to the LESSEE or to the public utility at no cost to the LESSEE.

LESSOR hereby grants permission to LESSEE to install, maintain and operate the radio communications equipment, antennas and appurtenances described in Exhibit "B" attached hereto.

LESSEE reserves the right to replace the aforementioned equipment with similar and comparable equipment provided said replacement does not increase tower loading of said Tower with notification and securing applicable approvals and permits.

2. TERM. This Agreement shall be effective as of the date of execution by both parties, provided, however, the initial term shall be for ten (10) years and shall commence on the Commencement Date (as hereinafter defined) at which time rental payments will be due at an annual rental of One Dollar (\$ 1.00).

3. EXTENSIONS. This Agreement shall automatically be extended for four (4) additional five (5) year terms unless the LESSEE terminates it at the end of the then current term by giving the LESSOR written notice of the intent to terminate at least six (6) months prior to the end of the then current term.

4. USE. LESSEE shall use the Premises for the purpose of constructing, maintaining and operating a communications facility and uses incidental and all necessary appurtenances. LESSEE shall have the right to replace, repair, add or otherwise modify its equipment or any portion thereof, whether the equipment is specified or not on any exhibit attached hereto, during the term of this Agreement. LESSEE will maintain the Premises in a good condition reasonable wear and tear excepted. LESSOR will maintain the Property, excluding the Premises, in good condition, reasonable wear and tear excepted.

5. ACCESS TO TOWER. LESSOR agrees the LESSEE shall have free access to the Tower at all times for the purpose of installing and maintaining the said equipment. LESSOR shall furnish LESSEE with necessary means of access for the purpose of ingress and egress to this site and Tower location. It is agreed, however, that only authorized engineers, employees or properly authorized contractors of LESSEE or persons under their direct supervision will be permitted to enter said premises.

6. TOWER COMPLIANCE. LESSOR covenants that it will keep the Tower in good repair as required by all federal, state, county and local laws. The LESSOR shall also comply with all rules and regulations enforced by the Federal Communications Commission with regard to the lighting, marking and painting of towers. If the LESSOR fails to make such repairs including maintenance, the LESSEE may make the repairs and the costs thereof shall be payable to the LESSEE by the LESSOR on demand. If the LESSOR does not make payment to the LESSEE within ten (10) days after such demand, the LESSEE shall have the right to deduct the costs of the repairs from the succeeding monthly rental amounts normally due from the LESSEE to the LESSOR.

No materials may be used in the installation of the antennas or transmission lines that will cause corrosion or rust or deterioration of the Tower structure or its appurtenances.

INTERFERENCE. LESSEE agrees to have installed radio equipment of the type and frequency which will not cause measurable interference to the equipment of the LESSOR or other lessees of the Property existing as of the date this Agreement is executed by the Parties. In the event LESSEE's equipment causes such interference, and after LESSOR has notified LESSEE of such interference, LESSEE will take all steps necessary to correct and eliminate the interference. LESSOR agrees that LESSOR and any other tenants of the property who currently have or in the future take possession of the Property will be permitted to install only such radio equipment that is of the type and frequency which will not cause measurable interference to the

existing equipment of the LESSEE. The Parties acknowledge that there will not be an adequate remedy at law for non-compliance with the provisions of this paragraph and therefore, either Party shall have the right to equitable remedies, such as, without limitation, injunctive relief and specific performance.

7. LESSEE COMPLIANCE. All installations and operation in connection with this Agreement by LESSEE shall meet with all applicable Rules and Regulations of the Federal Communications Commission, Federal Aviation Agency and all applicable codes and regulations of the township, county and state concerned. Under this Agreement, the LESSOR assumes no responsibility for the licensing, operation, and/or maintenance of LESSEE's radio equipment. LESSEE will provide copies of necessary permits to the LESSOR.

8. INDEMNIFICATION. Subject to Paragraph 12 below, each Party shall indemnify and hold the other harmless against any claim of liability or loss from personal injury or property damage resulting from or arising out of the use and occupancy of the Premises or the Property by the Party, its servants or agents, excepting, however, such claims or damages as may be due to or caused by the acts or omissions of the other Party, or its servants or agents.

9. INSURANCE. The Parties hereby waive and release any and all rights of action for negligence against the other which may hereafter arise on account of damage to the premises or to property, resulting from any fire, or other casualty of the kind covered by standard fire insurance policies with extended coverage, regardless of whether or not, or in what amounts, such insurance is now or hereafter carried by the Parties, or either of them. These waivers and releases shall apply between the parties and they shall also apply to any claims under or through either party as a result of any asserted right of subrogation. LESSOR and LESSEE each agree that at its own cost and expense, each will maintain Commercial General Liability Insurance on an occurrence form with minimum limits of \$1,000,000 per occurrence, \$2,000,000 general aggregate and \$1,000,000 products/completed operations, subject to the Sovereign Immunity Cap of \$500,000 in the State of Kansas. All policies of insurance covering property damage obtained by either party concerning the Property shall waive the insurer's right of subrogation against the other party and shall be named an Additional Insured on such policies. Primary and Non-Contributory wording shall apply.

10. RIGHTS UPON SALE. Should the LESSOR, at any time during the term of this Agreement, decide to sell all or any part of the Property to a purchaser other than LESSEE, such sale shall be under and subject to this Agreement and LESSEE's rights hereunder, and any sale by the LESSOR of the portion of this Property underlying the right-of-way herein granted shall be under and subject to the right of the LESSEE in and to such right-of-way.

11. QUIET ENJOYMENT. LESSOR covenants that LESSEE, on paying the rent and performing the covenants shall peaceably and quietly have, hold and enjoy the Premises.

12. TITLE. LESSOR covenants that LESSOR is seized of good and sufficient title and interest to the Property and has full authority to enter into and execute this Agreement. LESSOR further covenants that there are no other liens, judgments or impediments of title on the Property, or affecting LESSOR's title to the same and that there are no covenants, easements or restrictions which prevent the use of the Premises by the LESSEE as set forth above.

13. INTEGRATION. It is agreed and understood that this Agreement contains all agreements, promises and understandings between the LESSOR and LESSEE and that no verbal or oral agreements, promises or understandings shall be binding upon either the LESSOR or LESSEE in any dispute, controversy or proceeding at law, and any addition, variation or modification to this Agreement shall be void and ineffective unless made in writing signed by the Parties. In the event any provision of the Agreement is found to be invalid or unenforceable, such finding shall not effect the validity and enforceability of the remaining provisions of this Agreement. The failure of either Party to insist upon strict performance of any of the terms or conditions of this Agreement or to exercise any of its rights under the Agreement shall not waive such rights and such Party shall have the right to enforce such rights at any time and take such action as may be lawful and authorized under this Agreement, either in law or in equity.

14. GOVERNING LAW. This Agreement and the performance thereof shall be governed, interpreted, construed and regulated by the laws of the State in which the Property is located.

15. NOTICES. All notices hereunder must be in writing and shall be deemed validly given if sent by certified mail, return receipt requested or by commercial courier, provided the courier's regular business is delivery service and provided further that it guarantees delivery to the addressee by the end of the next business day following the courier's receipt from the sender, addressed as follows (or any other address that the Party to be notified may have designated to the sender by like notice):

LESSOR: City of Prairie Village, Kansas
7700 Mission Road
Prairie Village, Kansas 66208
Attention: Assistant City Administrator

LESSEE: Mid-America Regional Council
200 Rivergate Center
600 Broadway
Kansas City, Missouri 64105
Attention: Director of Public Safety

Notice shall be effective upon actual receipt or refusal as shown on the receipt obtained pursuant to the foregoing.

16. DEFAULT. In the event there is a default by the LESSEE with respect to any of the provisions of this Agreement or its obligations under it, the LESSOR shall give LESSEE written notice of such default. After receipt of such written notice, the LESSEE shall have thirty (30) days in which to cure any default, provided the LESSEE shall have such extended period as may be required beyond the thirty (30) days if the nature of the cure is such that it reasonably requires more than thirty (30) days and the LESSEE commences the cure within the thirty (30) day period and thereafter continuously and diligently pursues the cure to completion. The LESSOR may not

maintain any action or effect any remedies for default against the LESSEE unless and until the LESSEE has failed to cure the same within the time periods provided in this paragraph.

17. SUCCESSORS. This Agreement shall extend to and bind the heirs, personal representatives, successors and assigns of the Parties hereto.

18. SUBORDINATION AND NON-DISTURBANCE. At LESSOR's option, this Agreement shall be subordinate to any mortgage or other security interest or other security interest by LESSOR which from time to time may encumber all or part of the Property or right-of-way; provided, however, every such mortgage or other security interest or other security interest shall recognize the validity of this Agreement in the event of a foreclosure of LESSOR's interest and also LESSEE's right to remain in occupancy of and have access to the Premises as long as LESSEE is not in default of this Agreement. LESSEE shall execute whatever instruments may reasonably be required to evidence this subordination clause. In the event the Property is encumbered by a mortgage or other security interest, the LESSOR immediately after this Agreement is executed, will obtain and furnish to LESSEE, a non-disturbance agreement for each such mortgage or other security interest in recordable form. In the event the LESSOR defaults in the payment and/or other performance of any mortgage or other security interest encumbering the Property, LESSEE, may, at its sole option and without obligation, cure or correct LESSOR's default and upon doing so, LESSEE shall be subrogated to any and all rights, titles, liens and equities of the holders of such mortgage or security interest and the LESSEE shall be entitled to deduct and setoff against all rents that may otherwise become due under this Agreement the sums paid by LESSEE to cure or correct such defaults.

19. ENVIRONMENTAL.

a. LESSOR will be responsible for all obligations of compliance with any and all environmental and industrial hygiene laws, including any regulations, guidelines, standards, or policies of any governmental authorities regulating or imposing standards of liability or standards of conduct with regard to any environmental or industrial hygiene conditions or concerns as may now or at any time hereafter be in effect, that are or were in any way related to activity now conducted in, on, or in any way related to the Property, unless such conditions or concerns are caused by the activities of the LESSEE.

b. LESSOR shall hold LESSEE harmless and indemnify the LESSEE from and assume all duties, responsibility and liability at LESSOR's sole cost and expense, for all duties, responsibilities, and liability (for payment of penalties, sanctions, forfeitures, losses, costs, or damages) and for responding to any action, notice, claim, order, summons, citation, directive, litigation, investigation or proceeding which is in any way related to: a) failure to comply with any environmental or industrial hygiene law, including without limitation any regulations, guidelines, standards, or policies of any governmental authorities regulating or imposing standards of liability or standards of conduct with regard to any environmental or industrial hygiene concerns or conditions as may now or at any time hereafter be in effect, unless such compliance results from conditions caused by the LESSEE; and b) any environmental or industrial hygiene conditions arising out of or in any way related to the

condition of the Property or activities conducted thereon, unless such environmental conditions are caused by the LESSEE.

20. CASUALTY. In the event of damage by fire or other casualty to the Premises that cannot reasonably be expected to be repaired within forth-five (45) days following same or, if the Property is damaged by fire or other casualty so that such damage may reasonably be expected to disrupt LESSEE's operations at the Premises for more than forty-five (45) days, then LESSEE may at any time following such fire or other casualty, provided LESSOR has not completed the restoration required to permit LESSEE to resume its operation at the Premises, terminate this Lease upon fifteen (15) days written notice to LESSOR. Any such notice of termination shall cause this Lease to expire with the same force and effect as though the date set forth in such notice were the date originally set as the expiration date of this Lease and the Parties shall make an appropriate adjustment, as of such termination date, with respect to payments due to the other under this Lease. Notwithstanding the foregoing, all rental shall abate during the period of repair following such fire or other casualty.

21. CONDEMNATION. In the event of any condemnation of the Property, LESSEE may terminate this Lease upon fifteen (15) days written notice to LESSOR if such condemnation may reasonably be expected to disrupt LESSEE's operations at the Premises for more than forty-five (45) days. LESSEE may on its own behalf make a claim in any condemnation proceeding involving the Premises for losses related to the antennas, equipment, its relocation costs and its damages and losses (but not for the loss of its leasehold interest). Any such notice of termination shall cause this Lease to expire with the same force and effect as though the date set forth in such notice were the date originally set as the expiration date of this Lease and the Parties shall make an appropriate adjustment as of such termination date with respect to payments due to the other under this Lease.

22. SUBMISSION OF LEASE. The submission of this Lease for examination does not constitute an offer to lease the Premises and this Lease becomes effective only upon the full execution of this Lease by the Parties. If any provision herein is invalid, it shall be considered deleted from this Lease and shall not invalidate the remaining provisions of this Lease. Each of the Parties hereto warrants to the other that the person or persons executing this Lease on behalf of such party has the full right, power and authority to enter into and execute this Lease on such Party's behalf and that no consent from any other person or entity is necessary as a condition precedent to the legal effect of this Lease.

23. APPLICABLE LAWS. LESSEE shall use the Premises as may be required or as permitted by applicable laws, rules and regulations. LESSOR agrees to keep the Property in conformance with all applicable, laws, rules and regulations and agrees to reasonably cooperate with the LESSEE regarding any compliance required by the LESSEE in respect to its use of the Premises.

24. SURVIVAL. The provisions of the Agreement relating to indemnification from one Party to the other Party shall survive any termination or expiration of this Agreement. Additionally, any provisions of this Agreement which require performance subsequent to the termination or expiration of this Agreement shall also survive such termination or expiration.

IN WITNESS WHEREOF, the Parties hereto have set their hands and affixed their respective seals the day and year first above written.

LESSOR:

By: _____

Name: Quinn Bennion

Title: City Administrator

Date: _____

LESSEE:

MID-AMERICA REGIONAL COUNCIL

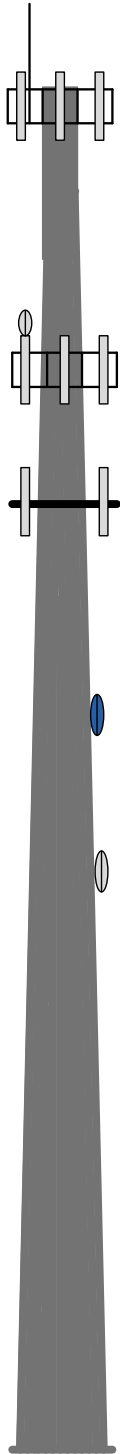
By: _____

Name: David Warm

Title: Executive Director

Date: _____

Exhibit "A"
(Sketch of Property)



TYPE	ELEVATION	TYPE	ELEVATION
(2) F 72 X 6	148 FT	RFS APXVERR18-C-2-19101	110 FT
(2) F 72 X 6	148 FT	RFS APXVERR18-C-2-19101	110 FT
(2) F 72 X 6	148 FT	Low Profile Platform	110 FT
15'-0 Platform	148 FT	(3) 1900 RRU	110 FT
12' x 2.9" Omni	148 FT	(3) 1900 RRU	110 FT
(3) 731DG65VTAXM	125 FT	(3) 1900 RRU	110 FT
(3) 731DG65VTAXM	125 FT	(3) RRU 1800	110 FT
(3) 731DG65VTAXM	125 FT	(3) RRU 1800	110 FT
(3) TMA	125 FT	(3) RRU 1800	110 FT
(3) TMA	125 FT	(2) Combiner	110 FT
(3) TMA	125 FT	(2) Combiner	110 FT
Low Profile Platform	125 FT	(2) Combiner	110 FT
Andrew 2' w/Radome	125 FT	(6) Filter	110 FT
RR65-17-00DPL2	110 FT	(6) Filter	110 FT
RR65-17-00DPL2	110 FT	(6) Filter	110 FT
Argue HPX311R	110 FT	(6) Filter	110 FT
Argue HPX311R	110 FT	RR65-17-00DPL2	110 FT
Argue HPX311R	110 FT	12" x 12" Cambium antenna	90 FT
RFS APXVERR18-C-2-19101	110 FT	3" Dia 20' Omni	57 FT
		Pirod 4' Side Mount Standoff (57 FT

Proposed 12" x 12" Cambium Networks Integrated Dual Polar Antenna @ 90 ft pointing to Leawood PD

Exhibit “B”

(Equipment):

LESSEE is authorized to install and maintain the following equipment:

The equipment list includes HP ProCurve 3610 Switches (24 Port W/OSPF), IP Tube, Motorola 4.9 GHz antennas, 5 MHz wireless backhaul link with 12”x12” dish, PTP surge protector kits, (1) 19” equipment rack and Aurora server equipment. Equipment shall be located on tower described in Exhibit A, or in communications equipment room on property.



CERTIFICATE OF COVERAGE

6/22/2012

This certificate is issued as a matter of information only and confers no rights upon the certificate holder.
This certificate does not amend, extend or alter the coverage afforded by the policies below.

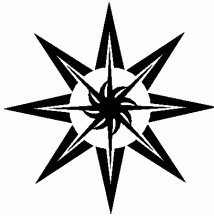
Insured: Midwest Public Risk of Missouri 600 Broadway, Suite 300 Kansas City, MO 64105-1554 <i>Mid-America Regional Council</i>	Companies affording Coverage: <hr/> A. Midwest Public Risk of Missouri <hr/> B. Alliant Insurance Services, Inc. <hr/> C. Munich Re American/ Governmental Entities
---	---

This is to certify that the coverages listed below have been issued to the member named above for the period indicated, notwithstanding any requirement, term or condition of any contract or other document with respect to which this certificate may be issued or may pertain. The coverage described herein is subject to all the terms, exclusions and conditions of the relevant coverage document.

Coverage Type	Policy Number	Effective Date	Expiration Date	Covered Property	Limits
<input checked="" type="checkbox"/> Property	MPR00	07/01/2012	6/30/2013	<input checked="" type="checkbox"/> Buildings <input checked="" type="checkbox"/> Personal Property <input checked="" type="checkbox"/> Contents <input checked="" type="checkbox"/> Inland Marine <input checked="" type="checkbox"/> Auto Physical Damage	\$350,000,000
<input checked="" type="checkbox"/> General Liability <input checked="" type="checkbox"/> Occurrence <input type="checkbox"/> Claims Made	MPR00	07/01/2012	06/30/2013	Each Occurrence Medical Expense Personal/Advertising Injury General Aggregate Pool Aggregate	\$2,618,230 \$5,000 \$2,618,230 \$2,618,230 \$20,000,000
<input checked="" type="checkbox"/> Auto Liability <input checked="" type="checkbox"/> Any Auto <input checked="" type="checkbox"/> Owned/Scheduled <input checked="" type="checkbox"/> Hired/Non-Owned <input checked="" type="checkbox"/> Drive Other Car	MPR00	07/01/2012	06/30/2013	Combined Single Limit (per occ) Bodily Injury (per person) Bodily Injury (per occ) Property Damage (per occ)	\$2,618,230
<input checked="" type="checkbox"/> Workers' Compensation	AGC-3A	07/01/2012	06/30/2013	<input checked="" type="checkbox"/> Statutory Limits <input checked="" type="checkbox"/> Employers' Liability Each Accident Policy Limit	\$1,000,000 \$1,000,000
<input checked="" type="checkbox"/> Other <input checked="" type="checkbox"/> Crime and Employee Fidelity <input checked="" type="checkbox"/> Boiler & Machinery	MPR00	07/01/2012	06/30/2013		

Description of operations / locations / vehicles / exclusions added by endorsement / special provisions:

Certificate Holder: City of Prairie Village Attn: Robert Pryzby, Public Works Director 7700 Mission Rd Prairie Village, KS 66208	Cancellation: Should any of the above described coverages be cancelled before the expiration date thereof, MPR will not be held liable or obligated to the Member, its agents or representatives. <div style="text-align: right;"> Terry W. Norwood, CEO </div>
---	---



CITY CLERK DEPARTMENT

Council Meeting Date: December 17, 2012

Consent Agenda: Consider Ordinance Revision

RECOMMENDATION

Recommend the Governing Body adopt an Ordinance amending Section 1-401, entitled "Personnel Policies and Guidelines" of Article 4, entitled "Personnel Policy and Employee Benefits", of Chapter 1, entitled "Administration" of the Municipal Code of the City of Prairie Village, Kansas

BACKGROUND

At the December 3rd Council meeting the Council adopted the Employee Handbook for the City of Prairie Village and rescinded the previous city personnel policies. The attached ordinance revises the Municipal Code to reflect this action making the changes noted below:

ARTICLE 4. PERSONNEL POLICY AND EMPLOYEE BENEFITS

1-401. PERSONNEL POLICIES AND GUIDELINES. There is hereby incorporated by reference for the purpose of establishing employee personnel rules and regulations the document entitled "~~The Personnel Manual of Prairie Village, Kansas.~~" "**Employee Handbook, City of Prairie Village, Kansas.**" No fewer than three copies of said document shall be ~~marked or stamped "Official Copy as adopted by the Code of the City of Prairie Village" and which there shall be attached a copy of this section.~~ Said official copies shall be filed with the city clerk and shall be open to inspection and available to the public at all reasonable hours. All departments of the city shall be supplied with copies of such rules and regulations as may be deemed necessary. (Code 2003)

ATTACHMENT

Proposed Ordinance

PREPARED BY

Joyce Hagen Mundy
City Clerk

Date: December 12, 2012

ORDINANCE NO. 2267

AN ORDINANCE AMENDING SECTION 1-401, ENTITLED "PERSONNEL POLICIES AND GUIDELINES" OF ARTICLE 4, ENTITLED "PERSONNEL POLICY AND EMPLOYEE BENEFITS", " OF CHAPTER 1, ENTITLED "ADMINISTRATION" OF THE MUNICIPAL CODE OF THE CITY OF PRAIRIE VILLAGE, KANSAS

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

Section I

Section 1-401 of the Prairie Village Municipal Code is hereby amended by repealing existing Section 1-401 and enacting in lieu thereof a new Section 1-401 to read as follows:

1-401 PERSONNEL POLICIES AND GUIDELINES. There is hereby incorporated by reference for the purpose of establishing employee personnel rules and regulations the document entitled "Employee Handbook, City of Prairie Village, Kansas". No fewer than three copies of said document shall be filed with the City Clerk and shall be open to inspection and available to the public at all reasonable hours. All departments of the City shall be supplied with copies of such rules and regulations as may be deemed necessary.

Section II

This ordinance shall take effect and be in force effective upon publication.

PASSED AND APPROVED THIS 17th day of December, 2012

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

ATTEST:
/s/ Joyce Hagen Mundy
Joyce Hagen Mundy
City Clerk

APPROVED AS TO FORM:
/s/ Catherine P. Logan
Catherine P. Logan
City Attorney



MAYOR

**Council Meeting Date: December 17, 2012
CONSENT AGENDA**

Consent Agenda: Consider appointment to Prairie Village Arts Council

RECOMMENDATION

Mayor Shaffer requests Council ratification of his appointment of Julie Flanagan to the Prairie Village Arts Council filling an unexpired term until April, 2015.

BACKGROUND

Julie, a 30 year resident of Prairie Village, brings extensive background in the arts as owner for ARTrageous Creative Studio. Her volunteer bio is attached.

ATTACHMENTS

Volunteer application

PREPARED BY

Joyce Hagen Mundy
City Clerk

Date: December 11, 2013



**City of Prairie Village
APPLICATION TO VOLUNTEER**

Please complete this form and return it to the City Clerk's Office, 7700 Mission Road, Prairie Village, Kansas 66208. If you have any questions, please contact the City Clerk's Office at 913-381-6464 or send an e-mail to cityclerk@pvkansas.com.

Name JULIE FLANAGAN Spouse's Name TERRY

Address 8920 CATALINA P.V. KS. Zip 66207 Ward _____

Telephone: Home 913-642-8122 Work — Fax —

E-mail JFLANAGAN.ART@KC.VR.CO.KS Other Number(s): CEL - 913-710-6804

Business Affiliation ART TEACHER, OWNER SMALL ART SCHOOL, NELSON-ATKINS TEACHER TOO

Business Address (HOME)

What Committee(s) interests you? ARTS COUNCIL

Please tell us about yourself, listing any special skills or experiences you have which would qualify you for a volunteer with the City of Prairie Village.

SEE ATTACHED. THANKS.

Thank you for your interest in serving our community.

Committee Appointment Record

(NEW)

Committee/Position	Date Elected	Date Appointed	Length of Term	Replacing	Termination/Resignation

Julie Flanagan

Owner: **ARTrageous Creative Studio**

Art classes for all ages

8920 Catalina, Prairie Village, KS 66207

ARTrageousKC.com

913-642-8122

jflanaganart@kc.rr.com

September 2012

Points of Interest:

- Julie is a 5th generation Kansas City native.
- Resident of Prairie Village 30 years.
- Prairie Village small business owner of her Art School for 6 years, ARTrageous Creative Studio, first year hosting 30+ students to present year having 300+ through her studio.
- Monthly guest on KCTV5's "Better KC" doing Art with Craft segments showing creative ways to repurpose household materials artistically and functionally.
- Numerous presentations on Art History as it relates to Christian History including use of Power Point and Movie-Maker tools, at Rolling Hills Presbyterian Church. Content based on international travel through Holy Lands of four countries, 2½ years of Art History college courses, experience on teaching at Nelson Atkins museum of Art 28 years.
- Lots of Public Service: Homeless of Kansas City: provided Art experiences for ages 4-16 years at reStart Inc. 2008-2010. Homeless of Johnson County: providing Art Experiences for families through IHN, Interfaith Hospitality Network, also participated in their Marketing and branding strategies and graphic arts.
- Through the Nelson Atkins Museum of Art's Community Services: Providing Art experiences for children from Swope Park Corridor Operation Breakthrough, on site at King Elementary 42nd & Indiana, through the LINC (Local Investment Commission).
- Kansas City Irish Fest, Corporate Sponsor with art booth for all the children. Prairie Village Art Fair, donated art experiences to families attending the fair, Misc. School programs and Auctions, donations and art experiences provided.
- Traveling the world, Egypt, Israel, Turkey, Jordan, Italy, Greece, Germany, Holland, Ireland, England.... Member Kansas City Visitors Council hosting international visitors from as far as Azerbaijan.
- Happily married for 30 years to Terry, employed 32 years with Kansas City's own HNTB Corp. as Civil Engineer/Corporate Manager.
- Mother of 3 successful daughters:
 - Shannon-Civil engineer AE Com and Alumni of Teacher for America and international service to 3rd world countries,
 - Kelly - In Grad school at Johns Hopkins School for Advanced International Studies emphasizing in Middle Eastern conflict resolution and Arabic,
 - Bridget - Akira Co., advancing to Boutique manager/Stylist of the largest of their 18 boutiques, achieving the best store sales record of all boutiques in company.
- Maiden name of Hodes, the largest family in Kansas City with 850 relatives.
- KU Diving team, ranked 8th in the Big 8, 3 meter and 1 meter diving boards.
- Kansas University Graduate: Visual communications, Loyola Rome Center: Studied European art and art history, Avila University: Graduate Art Education, Baker University studying Brain-Based Teaching

Julie Flanagan

Owner: **ARTrageous Creative Studio**

www.ARTrageousKC.com

Art classes for all ages

8920 Catalina, Prairie Village, KS 66207

ARTrageousKC.com

913-642-8122

jflanaganart@kc.rr.com

November 2012

Work Experience:

- Nelson Atkins Museum of Art, Ford Learning Center, Community Services – Art Instructor/tour guide, and going off site teaching to programs in need, August 1989 - present
- Nativity Parish School Art Educator - August 1992 – May 2007
- Nelson Atkins Museum of Art, Creative Arts Center – June 1989 – August 1995
- Leawood Aquatic Center – Diving Coach – 8 summers 1996 - 2005
- Julie Flanagan Arts – Art director, freelance 1983 – 1991
- Artex Mfg. Co. – Designer, Illustrator 1981 - 1983
- Swicegood Commercial Art Studios – Internship 1981
- Leawood South Country Club – Diving Coach/Instructor/Lifeguard, 9 summers 1971 – 1980

Education:

- Avila College – Education Certification 20 education credit hours, master degree in progress 4.0 GPA
- Kansas University – Bachelor Fine Arts, in Visual Communications, 60 Art credits, 48 other credits. 1976 – 1980 3.5 GPA
- Loyola Rome Center – Rome Italy, 13 Art/art history credit hours '78 4.0 GPA
- Brain Based Teaching. Baker University, 2005, 3 credit hours. 4.0, Baker University 2005, 3 credit hours. 4.0

Certification:

- Kansas Teacher Certification, renewed 2005 4.0 GPA

Teacher Training:

- Instructional Strategies, methods, interventions. 10 hours: '97, '98, '03, '04
- Cooperative Learning Foundation Week long, 40 hours Course 1995
- Behavior management, Interventions, bullying, strategies. 22.5 hours: '96, '98, '01, '03, '04
- Multiple Intelligences 3 hours, '07, Brain based Learning 2 hours: '98. Virtus Certified (sex abuse awareness) '04.
- Curriculum. 8 hours: '04. Catholic Spirituality: 7 hours: '98 – '03, Sex abuse awareness
- CPR and First Aid. 7 hours: '98, '01
- Computer skills, art applications, teaching/grading applications, Windows 2000, Excel: Spread sheets, Power grade, Chalk Waves, Power Point, Movie Maker. 49+ hours: '97, '98, '99, '01, '02, '03, '04, '05, '06

Recent Public Service:

- Kansas City Irish Fest, Corporate Sponsor with art booth for all the children.
- Prairie Village Art Fair, donated art experiences to families attending the fair.
- Misc. School programs and Auctions, donations and art experiences provided.
- Homeless of Kansas City: provided Art experiences for ages 4-16 years at reStart Inc. 2008-2010

- Homeless of Johnson County: providing Art Experiences for families through IHN, Interfaith Hospitality Network, also participated in Marketing strategies and Branding strategies.
- Through the Nelson Atkins Museum of Art's Community Services: Providing Art experiences for children from Swope Park Corridor Operation Breakthrough, on site at King Elementary 41st and Benton, through their LINC program.

Clubs, Associations:

- Kansas City International Visitors Council
- Kansas University Diving Team 1976 – 1980 Varsity, KU Letter Club
- National Art Education Association
- National Catholic School Education Association 1998-2009
- National Parents of Preschoolers PTA – 1998 – 1992, President 1992, VP 1991
- National Early Childhood Education Association – 1990 – 1991

Public Speaking:

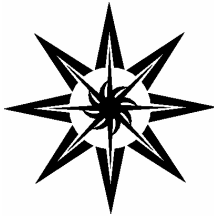
- Monthly guest on KCTV5's "Better KC" doing Art with Craft segments showing creative ways to repurpose household materials artistically and functionally.
- Numerous presentations on Art History as it relates to Christian History including use of Power Point and Movie-Maker tools, at Rolling Hills Presbyterian Church. Overland Park KS.
- Three presentations to 75+ archdiocesan teachers: "Integrating Visual Arts across the Curriculum." 2002
- Two presentations, power point to 100+ archdiocesan teachers: "Promote Catholicity Across Curriculum" '05
- Two presentations to 40+ archdiocesan teachers: "School-wide Art Activities to Promote the Catholic Seasons." 2004
- Three presentations to 35+ archdiocesan teachers: "Behavior Management in the Art Room" 1999
- Thirteen annual promotional speeches to 200+ parents: "My Jr. High Art Program," year 15 years.

Writing:

- "From the Director" 10 weekly articles for the Nativity Web sight.
- "Art at Nativity" four annual articles for each of eight grades for my Art web page, Nativity Parish web sight.

Worthwhile Endeavors/Committees:

- Hosting guests through the International Visitors Council - recently: Two guest from Azerbaijan for 10 days.
- Director: Nativity 8th grade play/musical, April '06, eighty speaking parts, songs, dancing, 8 committees, 70 volunteers
- Spear headed the Annual Nativity Art Festival 1993 – 2006, 40 parent volunteers, visiting artists, activities, and projects.
- Chair of Nativity Liturgical Committee (spiritual leader for the faculty and school, several activities per year) '02 – 2006
- Co-Chaired Decorations for Miede Auction, netting \$150,000.00 annually 2000 – 2006 35+ volunteers
- Initiated and headed the Cultural Arts Committee of Cure of Ars School (assemblies, fieldtrips, school band) '87 – '95
- Initiated and headed the Student Enrichment After School Program of Cure of Ars (after school classes) '92 – '94



PUBLIC WORKS DEPARTMENT

Council Committee Meeting Date: November 5, 2012
Planning Commission Meeting Date: December 4, 2012
Council Meeting Date: December 17, 2012

COU2012-52: CONSIDER CITY HALL AND PUBLIC WORKS ENTRANCE SIGNS

RECOMMENDATION

Move to approve the construction of new entrance signs at City Hall and Public Works and to approve funding of \$20,000.00 from City General Contingency Fund.

BACKGROUND

In the last several years new city entrance signs and park entrance signs have been installed around Prairie Village. It is proposed to update the entrance signs to City Hall and Public Works to similar style signs. By adding the two new signs at both City Hall and Public Works these facilities will have a much more visible and identifiable sign. If this is completed now, then all of the entrance, park, and building signs will all be new and similar in architectural style.

The City Hall sign will have two columns with the sign face attached as shown in the attachment. The Public Works sign will be constructed the same at the park entrance signs as shown in the attachment. The \$20,000.00 includes up to \$2,000.00 for electrical work to light the sign at City Hall and any possible changes that could take place.

FUNDING SOURCE

Funding for this project will come from the City General Contingency Fund.

RELATED TO VILLAGE VISION

TR1c. Ensure that infrastructure improvements meet the needs of all transportation users.

ATTACHMENTS

1. City Hall Sign Design Layout
2. Park Sign Example(Similar to proposed Public Works Sign)

PREPARED BY

Keith Bredehoeft, Project Manager

October 31, 2012

Existing Public Works Sign



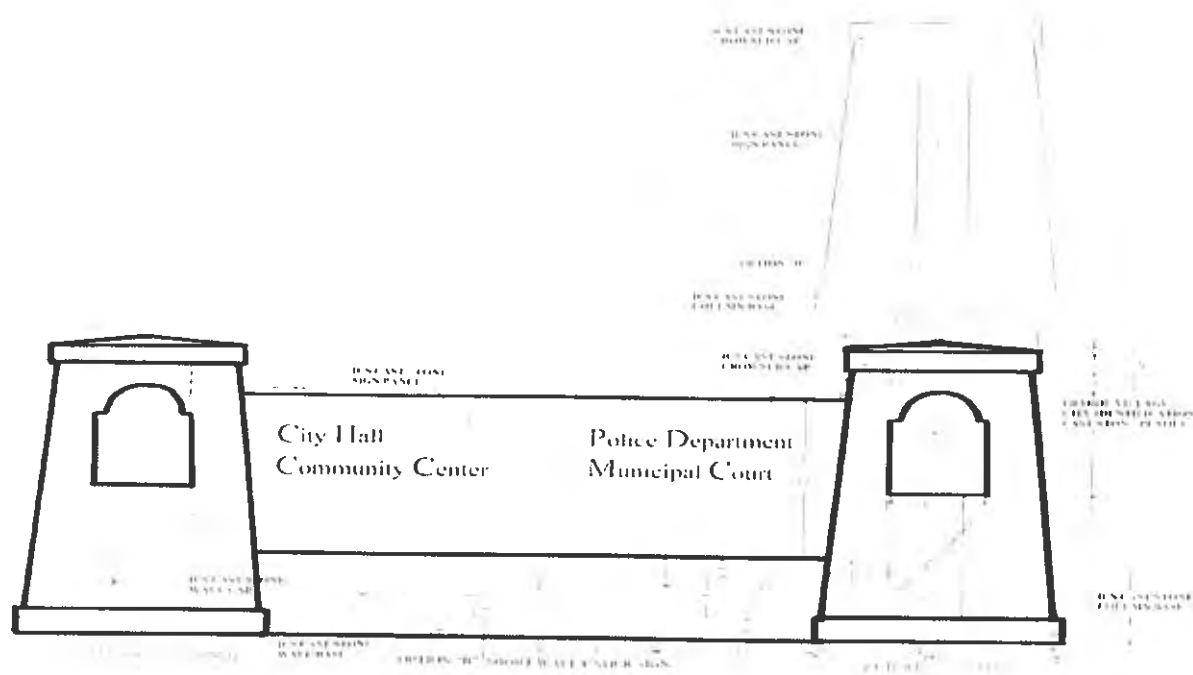
Existing City Hall Sign



Existing Park Sign/New Public Works Sign



New City Hall Sign





Location of New
Public Works Sign

CORINTH DR

SOMERSET DR

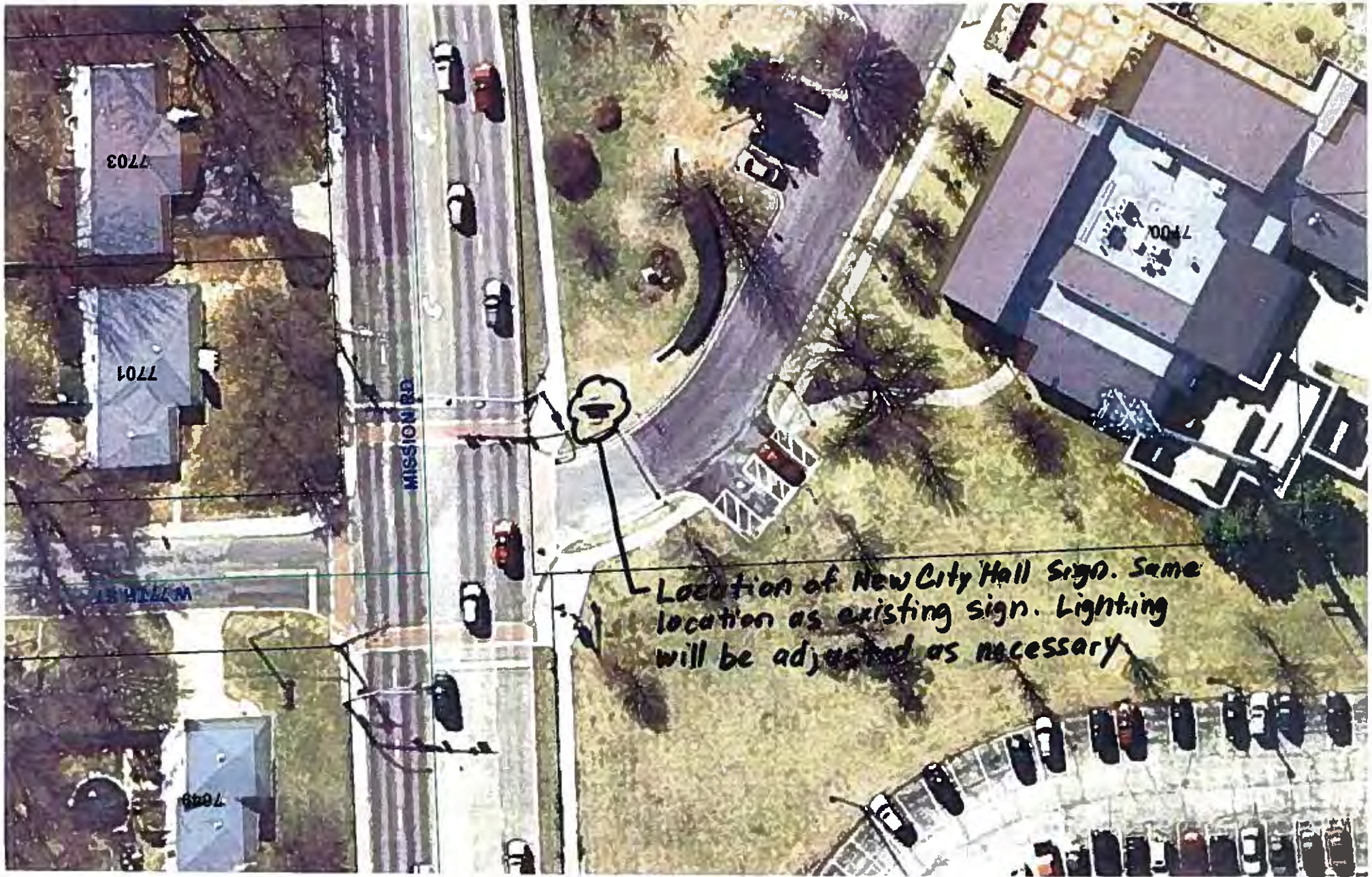
8018

8018

3531

8018

8018



Location of New City Hall Sign. Same location as existing sign. Lighting will be adjusted as necessary

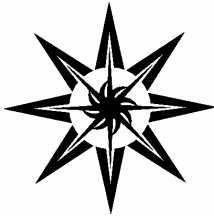
7703

7701

7700

7099

MISSION RD



COUNCIL COMMITTEE

Council Committee Meeting Date: December 3, 2012

Council Meeting Date: December 17, 2012

Agenda Item: Consider approval of a Memorandum of Understanding and Agreement to Participate with Johnson County for the implementation of a joint notification system with Johnson County, WaterOne and other cities.

SUGGESTED MOTION

Move that Council approve the Memorandum of Understanding with Johnson County and approve an Agreement to Participate in the Memorandum of Understanding.

STAFF RECOMMENDATION

Staff recommends approval of the Memorandum of Understanding and agreement with Johnson County for participation in the County's joint mass notification system.

BACKGROUND

Prairie Village currently utilizes the Code Red system for emergency mass notification. The system is shared with Mission Hills and has been successful in reaching a large group of residents in a short period of time to inform or alert of an emergency. The Police Department, primarily through dispatch, initiates calls as needed.

WaterOne and Johnson County Emergency Management initiated a procurement process to secure a mass notification system for multiple agencies within Johnson County. The cities of Lenexa, Olathe and Overland Park were included in the inaugural group of entities. The RFP identified several functional specifications including vendor hosted system, voluntary subscriptions, strong GIS component and group notifications. The Selection Committee reviewed the nine responses in April 2012 and interviewed three finalists. The group selected EverBridge as the preferred vendor to implement a shared system in Johnson County. The initial five entities proposed implementation of the new system by the end of 2012 with the plan of adding other interested cities later in 2013. The implementation of the system has been delayed a few months to work out customization requirements and training.

With the delay, the steering committee and Johnson County emergency management approved Prairie Village and Shawnee to join the initial start-up group. The joint venture has a working name of NotifyJoco and holds many advantages to a shared system:

- Shared software, licensing and implementation costs
- Shared training opportunities and costs
- Support of Johnson County IT resources
- Able to communicate with residents across jurisdictional boundaries for emergencies or events that impact multiple cities
- Residents only need to register with one system for notifications from their respective city, County, Sheriff and WaterOne
- Joint marketing and campaign efforts to encourage residents throughout the county to self-register

NotifyJoCo will operate similar to the City's CodeRed system. The system is a strong GIS based with the notification selections to include the whole city, neighborhood associations, trash day area, streets or other smaller areas. The system can use email, cell phone, home phone and/or text. Each resident can sign up for up to five addresses within the County and designate the type and method of communication desired. The NotifyJoCo group is planning for a mass marketing campaign in early 2013 for general public awareness and to encourage self registrations.

Each participating entity can determine the types and frequency of non-emergency notifications available. City staff anticipates possible notifications to include zoning applications, temporary no parking zones, trash day changes, reports on significant fire and police incidents, special events in a particular area, road closures and water breaks. Staff proposes that the non-emergency notifications be sent via email or text with the emergency notifications primarily through phone contacts. Staff recommends continuing the CodeRed contract through the end of 2013. The new system will not be implemented for several months and could be as late as May 2013. City staff will continue to use the CodeRed system in Prairie Village and Mission Hills for emergency notifications until a transition to the new system is feasible. The non-emergency communication notices can begin through NotifyJoCo once the city's customized preferences are instituted, training of staff and the internal process is formalized. Staff proposes that the police department will continue the coordination of the emergency communications and city hall staff will coordinate the non-emergency notifications. Further discussions are needed with Mission Hills administration to determine if their participation level extends beyond the emergency notifications.

The attached MOU provides for contract administration and general coordination of usage of the system by the county on behalf of the Participating agencies which are the local government agencies who enter into the MOU and agree to fund an equal part of the system's costs. Each Participating Agency would have a system administrator. The MOU establishes a Steering Committee which has a voting member from each Participating Agency and which can establish general policies for multi-agency use of the system.

City staff has recently become involved with the NotifyJoCo effort with the City Administrator serving on the Steering committee as a non-voting member and Jeanne Koontz serving on the marketing committee.

The attached memorandum of understanding and agreement was drafted by Johnson County legal staff, reviewed by the five initial participating entities, and has been reviewed by City's legal counsel.

The proposed Memorandum of Understanding included in the Dec. 3rd committee packet has been modified to reflect minor changes by the County and the Attorney General review. The final version is attached.

BUDGET IMPACT

The cost for participation in the NotifyJoCo system is \$5,000 for a city with a population below 25,000. Currently, the CodeRed annual subscription is approximately \$10,000 and is split with Mission Hills. The annual amount is included within the 2013 Police Department budget. The cost of the first year of NotifyJoCo will be taken from the IT fund as a budgeted project (notification system). Starting in 2014, the cost of NotifyJoCo will be part of the annual operating budget and it is anticipated to be similar to current costs. It is anticipated that the annual cost will be less in future years as other entities join.

ATTACHMENTS

- Final version of Memorandum of Understanding from Johnson County
- Agreement to participate in the Memorandum of Understanding

Prepared By:
Quinn Bennion
City Administrator
Date: Dec. 13, 2012

**MEMORANDUM OF UNDERSTANDING FOR USE OF
THE COUNTYWIDE MASS NOTIFICATION SYSTEM**

This Memorandum of Understanding for Use of the Countywide Mass Notification System (“MOU”) is made and entered into by and between the Board of County Commissioners of Johnson County, Kansas (“County”) and the City of Lenexa, Kansas, the City of Olathe, Kansas, the City of Overland Park, Kansas, and Water District Number 1 of Johnson County, Kansas (“WaterOne”) (the County, the Cities, and WaterOne are collectively referred to as the “Participants”).

1. PURPOSE

The purpose of this MOU is to establish mutually agreeable terms and conditions for the use of the Countywide Mass Notification System (“System”). On March 1, 2012, the County issued a request for proposal (RFP No. 2012-003) for a hosted mass notification system. The purpose of this System will be to provide mass notifications to the estimated 550,000 residents of Johnson County for emergency and non-emergency notifications issued by the County, cities located in the County’s boundaries, utility companies that provide services to County residents, and other potential participating entities that are governmental agencies. Mass notifications will be provided using common communication methods such as telephone and internet. Each of these Participants requires the ability to issue emergency notifications to their citizens and employees and also to provide subscription options for a variety of non-emergency notifications.

2. PARTIES

- A. System Administrator. The County will be the lead agency and will be responsible for contracting with the selected vendor on RFP No. 2012-003. The County will serve as the overall system administrator for the System and will be responsible for managing and coordinating with the vendor regarding implementation services and support and maintenance of the System. The Cities of Lenexa, Olathe, and Overland Park, and WaterOne will use the System once it is successfully implemented.
- B. Participants. The County, the Cities of Lenexa, Olathe, and Overland Park, and WaterOne are the initial Participants in the System. To be a Participant, an entity must be a governmental agency or utility located within the County’s boundaries and must participate in the cost sharing of the System as set forth in this MOU. Participants must agree in writing to comply with the terms and conditions of this MOU and to cooperate in the use of the System. Additional Participants may be added in the future subject to written acceptance of all terms and conditions in this MOU and participation in the cost sharing of the System.
- C. Nonparticipating Agencies. Nonparticipating Agencies are governmental agencies and utilities located within the County’s boundaries that are not Participants but who require the ability to issue emergency mass notifications under specific circumstances through a request to a Participant.

3. SCOPE AND USE

Use of the System and its data, including but not limited to contact information, shall be governed by the terms and conditions set forth in the Public Mass Notification System Policies and Guidelines (“Policies and Guidelines”) approved by the Steering Committee, as hereinafter defined, attached hereto as Exhibit A. Each Participant, including each of its agents, officers, employees and representatives with access to the System, agree to the terms and conditions contained in the Policies and Guidelines. The Policies and Guidelines may only be modified by majority vote of the Steering Committee.

Participant’s use of the System is limited to using the System to distribute business communications to Participant’s own internal resources and to communicate emergency and non-emergency notifications to the public. Any other uses not authorized by the vendor agreement are prohibited. No other uses are authorized. Each Participant agrees to comply with all federal, state, and local laws and regulations applicable to its use of the System.

4. OWNERSHIP AND CONFIDENTIALITY

The System may utilize the 911 database only for emergency notifications. The information contained in the 911 database should be treated as confidential and shall not be disclosed or utilized except by authorized personnel for purposes of emergency notifications.

Each Participant agrees to share with and provide to the System its notification communication data, records, and information, including but not limited to all contact-related information, data, and records for non-employees (“Participant’s Data”). Each Participant agrees to maintain the confidentiality of all related records and information provided to the System by the other Participants pursuant to all state and federal laws and regulations related to privacy, confidentiality, and non-disclosure of records that currently exist or exist at any time during the term of this MOU. All Participants will have use of all System data including all Participant’s Data. Participants shall not disclose other Participant’s Data to any third parties. The County, as System Administrator, will be the custodian of all Participant’s Data. The County shall not disclose Participant’s Data to any third parties except with the express written approval of that Participant or as required by the Kansas Open Records Act, K.S.A. 45-215 et seq. (“KORA”), or any applicable federal or state laws, or court order.

Each Participant retains ownership of its own employee contact-related information, data and records. Each Participant shall be responsible for maintaining and updating its employee data. Upon termination of this MOU or of a Participant’s participation in this MOU, such Participant shall be entitled to remove and/or delete all of its employee data from the System.

If a Participant other than the County receives a KORA request or other documentation requesting or requiring disclosure of its own notification communication data, information, or records, the Participant shall respond to such request, except that under no circumstances shall Participant’s response include or pertain to other Participant’s Data except as otherwise required by the Kansas Open Records Act, K.S.A. 45-215 et seq. (“KORA”), or any applicable federal or

state laws, or court order. If the County receives a KORA request or other documentation requesting or requiring disclosure of notification communication data, information, or records, the County shall notify any Participants whose data may be included in such request. The County shall attempt to consult and coordinate with any such Participants in responding to such request but the County shall respond as required by law. The County may respond to KORA requests or other documentation requesting or requiring disclosure of other data, information, reports, or records regarding the System subject to KORA, any applicable federal or state laws, or court order.

5. COST SHARING

- A. Implementation Costs. The Participants agree that they desire to cooperate in providing and supporting the System by sharing in the costs of implementation, operation, and maintenance of the System. Upon selection of a vendor to perform the services set forth in RFP No. 2012-003, the County will negotiate the terms and conditions of the contract with the selected vendor including the costs for licensing, implementation services, hosting, training, System software and hardware and other System equipment, support and maintenance, and any other costs related to acquisition, implementation, and maintenance of the System. Each Participant agrees to pay a share of these costs, which amount is based upon the current population of the Participant, as listed in Exhibit B. The County will be the contracting party and will be responsible for making payments upon receipt and acceptance of deliverables under the agreement with the vendor without requiring additional, specific authorization of the Participants. Following the County's payment to the vendor, the County will invoice each Participant (other than itself) in the appropriately corresponding amount listed in Exhibit B. . Each Participant agrees to pay such amount to the County within thirty (30) days of receipt of the invoice.
- B. Ongoing Costs. Ongoing costs directly related to operation of the System following implementation, including but not limited to hosting fees and maintenance and support, shall be shared among the Participants. The County, as System Administrator, will be responsible for receiving and initially paying such costs as they are billed by the vendor. Following each such annual payment to the vendor, the County will invoice each Participant (other than itself) in the amount listed in Exhibit B for the corresponding year based upon the Participant's population. . Each Participant agrees to pay such amount to the County within thirty (30) days of receipt of the invoice. No additional, specific authorization of the Participants shall be required for routine hosting fees, maintenance, support and similar costs required to keep the System operational. Prior to the conclusion of the third year of this MOU, the Steering Committee shall review and adopt an updated cost sharing allocation to address the ongoing costs after Year 3. Upon its adoption by the Steering Committee, such updated cost sharing allocation will replace the current Exhibit B. When reasonably practicable, the System Administrator will use its best efforts to provide advance notice to the Participants of increases in ongoing operational costs.
- C. Additional Costs. Prior to incurring additional System costs not included in subsections A and B but subject to cost-sharing, an affirmative vote of a majority of the Steering

Committee shall be required. Such additional costs may include, but are not limited to, customizations, modifications, and enhancements made subsequent to implementation, additional training, or hardware, software, and equipment replacements, updates, and improvements. Upon such affirmative vote, the County will be the contracting party for such additional enhancements, customizations, services, hardware, software, or equipment, and will be responsible for making payments upon receipt and acceptance of deliverables under any agreements with the vendor without requiring additional, specific authorization of the Participants. Following each payment to the vendor, the County will invoice each Participant (other than itself) in an amount agreed upon by the Steering Committee. Each Participant agrees to pay such amount to the County within thirty (30) days of receipt of the invoice.

- D. Individual Participant Costs. Participants may elect to add additional functionality related to their use of the System. Any Participant doing so shall be solely responsible for the costs of such additional functionality and shall directly work with the County to develop and execute an amendment to the contract with the vendor for such functionality.
- E. Cash Basis/Budget. The Participants understand and agree that the Participants are only obligated to make payments under this MOU as may be lawfully made from funds budgeted and appropriated for the purposes as set forth in this MOU during the Participant's current budget year. In the event a Participant does not so budget and appropriate the funds, the Participants acknowledge and agree that such lack of funding shall be deemed a termination by such Participant and the termination provisions of Section 8 shall apply.
- F. Increase in Number of Participants. In the event the number of Participants increases during the term of this MOU, the additional Participants shall pay the amount listed in Exhibit B for their population base. The full annual amount set forth in Exhibit B shall be due from any such additional Participants regardless of the point during the annual billing cycle that they join this MOU.
- G. Billing Cycle. The timing of the annual billing cycle shall be determined by the contract between the County and the vendor.

6. STEERING COMMITTEE

The Mass Notification System Steering Committee ("Steering Committee") shall be made up of: (1) one representative designated by each Participant, who shall be the voting members of the Steering Committee; (2) two at-large non-voting members, who shall be elected by the voting members of the Steering Committee; and (3) a chairperson, to be appointed by the County Manager. The chairperson shall not vote on any matter unless a tie vote exists. The Steering Committee shall meet at least once per year. The Steering Committee may meet as often as necessary to vote on matters coming before the Committee including the addition of Participants pursuant to Section 9. The Steering Committee shall be responsible for administering this MOU. With the exception of the chairperson, if a designated Committee representative cannot attend the annual meeting, a proxy may be sent in his or her place.

7. ACCOUNTING

The County agrees to and shall maintain accurate books and records to account for all expenditures directly related to the System and subject to cost-sharing. Such books and records shall be made available for inspection by any Participant upon request.

8. TERM AND TERMINATION

This MOU shall be effective upon execution by all the Participants, approval of the Attorney General, and filing with the Department of Records and Tax Administration (in its capacity as Register of Deeds) and the Kansas Secretary of State, whichever occurs last. It is contemplated that the term of this MOU shall be perpetual; however, the County may terminate this MOU upon not less than one hundred eighty (180) days prior written notice to all other parties. Upon termination by the County, one or more of the remaining Participants shall have the option of assuming the System contract with the vendor so long as the vendor is agreeable and the County is released from any further liability under the contract and this MOU. In the event there is no such assumption and release, then this MOU shall terminate according to the County's notice.

Each Participant may terminate its individual participation in this MOU without cause upon not less than one hundred eighty (180) days prior written notice to all other parties. Each Participant may individually terminate its participation in this MOU for cause upon thirty (30) days prior written notice to the County if the County fails to cure a default under this MOU after a reasonable opportunity to cure. Upon termination, the terminating Participant shall stop using the System and shall relinquish to the County all System access, user accounts, passwords, and any System data, records or information. The terminating Participant's Data, except for Participant's employee contact-related information, data and records, shall remain in the System and shall be available to the County for notification use as needed. The terminating Participant shall be entitled to remove and/or delete all of its employee data from the System. Termination by a Participant shall not relieve such Participant of the cost-sharing obligations set forth in this MOU for eligible costs incurred prior to termination, nor shall a terminating Participant be entitled to a refund of any amounts paid hereunder.

In the event a Participant breaches the terms and conditions of this MOU, the Steering Committee shall have the authority to take reasonable action to enforce the terms and conditions of this MOU, including termination of a Participant for cause upon thirty (30) days prior written notice to the Participant if the Participant fails to cure a default under this MOU after reasonable opportunity to cure.

Except as provided above, upon termination, each Participant shall retain personal property owned by it. It is not contemplated that Steering Committee will acquire or own equipment under this MOU.

9. ADDITIONAL PARTICIPANTS

Any non-participating agency that meets the criteria for being a Participant may become a Participant by joining this MOU through approval by majority vote of the Steering Committee and execution of a written agreement accepting and agreeing to the terms and conditions of this MOU. As of the effective date of such agreement, the agency shall become a Participant with all the same rights, benefits, and obligations under this MOU. New Participants shall be responsible for paying for any costs of joining the System that may be imposed by the vendor within thirty (30) days of receipt of an invoice for such costs. The System Administrator shall bill new Participants in the amount listed in Exhibit B for the corresponding population of the new Participant and the year in which the new Participant joins. New Participants agree to pay the full annual amount for the year in which they join regardless of the time during the annual billing cycle in which they join. New Participants agree to pay any amounts that become due and payable under the terms of this MOU following the effective date of any such new Participant's agreement to join. New Participants agree to pay any such amounts described in this paragraph to the County within thirty (30) days of receipt of an invoice from the County.

10. INDEMNIFICATION

To the extent permitted by law, each party to this MOU shall indemnify and hold harmless the other parties from any and against all claims, losses, damages or costs to the extent caused by the negligent or intentional act, error, or omission of such party, its officers, employees or agents, in performing under this MOU or its use of the System. Under no circumstances shall any party be liable for any indirect, incidental, special, punitive, or consequential damages or losses resulting from or arising out of or connected with this MOU or related to the services provided or performed pursuant to this MOU or its use of the System. Nothing in this MOU shall be deemed to waive or abrogate any immunity or other limitation from liability under the Kansas Tort Claims Act.

11. PERSONNEL

The County's and each Participants' employees providing services under this MOU shall remain employees of such party for all purposes and shall not be deemed employees of any other party under any circumstances.

12. NOTICES

Any notices required or permitted by this Agreement shall be in writing and shall be sent by U.S. mail, facsimile, or hand-delivery to the following addresses:

TO THE COUNTY: Johnson County Emergency Management & Communications
Attn. Walt Way, Director
11880 S Sunset Dr.
Olathe, KS 66061
Fax: 913-826-1018

TO THE PARTICIPANTS: As set forth below each Participant's signature.

13. CONTROLLING LAW AND VENUE

This Agreement shall be governed by and construed in accordance with the laws of the State of Kansas and venue shall be in the district court of Johnson County, Kansas.

14. ENTIRE AGREEMENT, WAIVER, AND AMENDMENT

This Agreement contains the entire understanding between the parties and supersedes all prior agreements or understandings between the parties with respect to the subject matter hereof. The waiver of any breach of any provision of this Agreement shall not constitute a waiver of any subsequent breach of the same or other provisions herein. Any modification or waiver of any provision in this Agreement shall not be effective unless made in writing and agreed to and signed by all the parties.

15. SEVERABILITY

Should any provision of this MOU 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 MOU shall be unaffected thereby and shall continue to be valid and enforceable.

16. ASSIGNMENT

No party shall assign, transfer, convey, subcontract, resell or otherwise dispose of this Agreement or any of the rights and obligations hereunder.

17. EXECUTION IN COUNTERPARTS

It is contemplated that this MOU shall be executed in multiple counterparts by the County and the Participants rather than circulating a single document among the Participants. Each counterpart when executed shall be deemed to be an original, and all of which together shall constitute one and the same agreement.

BOARD OF COUNTY COMMISSIONERS
OF JOHNSON COUNTY, KANSAS

Ed Eilert, Chairman

ATTEST:

Stephen Powell, Clerk of the Board

APPROVED AS TO FORM:

Cynthia Dunham, Assistant County Counselor

CITY OF OVERLAND PARK, KANSAS

Carl Gerlach, Mayor

ATTEST:

Marion Cook, City Clerk

APPROVED AS TO FORM:

ADDRESS FOR NOTICE PURPOSES:

City of Overland Park, Kansas
ATTN: City Clerk
8500 Santa Fe Drive
Overland Park, KS 66212

CITY OF LENEXA, KANSAS

Michael Boehm, Mayor

ATTEST:

David Bryant, City Clerk

APPROVED AS TO FORM:

ADDRESS FOR NOTICE PURPOSES:

City of Lenexa, Kansas
ATTN: City Clerk
12350 West 87th Street Parkway
Lenexa, KS 66215

CITY OF OLATHE, KANSAS

Michael Copeland, Mayor

ATTEST:

Donald Howell, City Clerk

APPROVED AS TO FORM:

ADDRESS FOR NOTICE PURPOSES:

City of Olathe, Kansas
ATTN: City Clerk
100 East Santa Fe
Olathe, KS 66051

WATER DISTRICT NUMBER 1 OF JOHNSON COUNTY, KANSAS

Robert Olson, Chairman

ATTEST:

Printed Name & Title: _____

APPROVED AS TO FORM:

ADDRESS FOR NOTICE PURPOSES:

Water District Number 1 of Johnson County, Kansas
ATTN: _____
10747 Renner Boulevard
Lenexa, KS 66219

EXHIBIT A

ALERT Johnson County Public Mass Notification System Policy and Guideline

Effective:

I. PURPOSE

The purpose of this document is to provide governance and guideline on the use and administration of a Countywide Public Mass Notification System, hereinafter referred to as "System". This document is intended to be general, describing countywide policies, jurisdictional roles and responsibilities and activation guidelines rather than specific procedures. The step-by-step procedures for activation and use will be maintained in a separate document maintained by each Participant. The written procedure of any Participant must be in compliance with this policy.

II. SYSTEM DESCRIPTION

The primary intent of the System is to disseminate early warning and time sensitive information to county businesses and residents during time of an emergency event. The System is only one component of the County and Local Public Warning Systems. As deemed fit by County and Local authorities, the System should be used in conjunction with the other public warning mechanisms including, but not limited to, Emergency Alert System and sirens.

The System is available 24/7 and has been pre-loaded with countywide geographic maps. Citizens have the option to opt-in and provide contact information via self-registration from County and Participant websites. Upon Participant decision to activate, the System will be used to send a message, describing the situation and recommended action the public should take, to affected businesses and households via telephone, e-mail and/or text.

Johnson County is the Administrator of the system and will take appropriate measures to ensure that the System is in a state of operational readiness at all times. It is the responsibility of all Participants to maximize citizen benefits from the System.

While the County's intent for implementing and maintaining the System is for "emergency" use, Participants may optionally use the system to disseminate non-emergency notifications to citizens and organization resources within its jurisdiction.

III. GOVERNANCE

Johnson County will manage the System as a countywide asset under the rules and protocols approved by the Mass Notification Steering Committee, hereinafter referred to as "Steering Committee" and agreed upon by each Participant when they opt into the system.

Use of the System by each Participant is contingent upon that Agency abiding by the contract with the mass notification vendor, and the protocols established by the Steering Committee.

The System utilizes contact information entered in the self-registry or from vendor provided contact databases. The information contained in the database is confidential and shall not be disclosed or utilized except by authorized personnel for the purpose of mass notifications.

Johnson County is responsible to ensure that the provisions of the contract are implemented properly. Authorized users must respect the integrity of the database, understand the privacy issues and fully comply with the policies and protocols outlined in this document. If violations of the contract provisions or the Steering Committee-approved protocols are made by an individual or Participant, Johnson County Department of Emergency Management and Communications reserves the right to disable that individual's or Participant login(s).

IV. AUTHORIZED USE

The System is designed to be a countywide asset, available to all municipalities in the County for emergency use. Only Participants are allowed to access and activate the System for emergency and non-emergency use. Nonparticipating Agencies may contact the Johnson County Department of Emergency Management and Communications to request activation of the System for emergency events.

A. Emergency Use

Use of the System for emergency activity contains two components: (1) the need to disseminate critical, safety-related information to individuals within a short timeframe, and (2) communicating with safety-responder staff, volunteers and involved parties about an approaching or present emergency event.

Emergency Public Notifications are limited to:

1. Imminent or perceived threat to life or property
2. Disaster notifications
3. Evacuation notices
4. Public health emergencies
5. Public safety emergencies
6. Any notification to provide emergency information to a defined community

As a general rule, the System is to be used when the public is being asked to take some action (e.g. evacuate, prepare to evacuate, shelter in place, boil tap water before drinking, missing child, notification of closure of the incident). The following criteria should be utilized to assist with determining the need to issue an alert:

1. Severity. Is there a significant threat to public life and safety?
2. Public Protection. Is there a need for members of the public to take a protective action in order to reduce loss of life or substantial loss of property?
3. Warning. Will providing warning information assist members of the public in making the decision to take proper and prudent action.
4. Timing. Does the situation require immediate public knowledge in order to avoid adverse impact?
5. Geographical area. Is the situation limited to a defined geographical area? Is that area of a size that will allow for an effective use of the system, given the outgoing call capacity?
6. Are other means of disseminating the information inadequate to ensure proper and time delivery of the information?

If the answer to ALL of these questions is "Yes", then an activation of the System for emergency purposes is warranted.

Emergency Response Notifications are limited to:

1. Contacting first responders to advise of an emergency
2. Contacting first responders to report for duty due to an emergency
3. Contacting key staff regarding an emergency or crisis situation
4. Contacting agency employees to report at a different time or location (or provide an update) due to an emergency

5. Exercises

Emergency considerations:

1. Notification shall clearly state situation is an emergency
2. Short messages are recommended.
3. Always provide a phone number, website or other information sources where the public can obtain additional or updated information
4. An all clear notification should be sent when applicable

B. Inter-Department Communication

Participants may use the System for non-emergency inter-departmental business communications as needed. It is recommended that Participants identify where this would add value to their operations and establish separate written protocols and procedures for this use (e.g. First Responder call-outs or notifications).

C. Non-Emergency Public Use

Use of the System for non-emergency public announcements requires pre-authorization from the Participant. Non-emergency use shall be consistent and in compliance with the non-emergency guidelines included within. Participants who contract to use the System for non-emergency activity agree to give precedence to emergency notification call-outs by delaying or terminating non-emergency notification sessions if needed to increase emergency message success.

Non-emergency **public** notification use is **prohibited** for any of the following purposes:

1. Any message of commercial nature
2. Any message of a political nature
3. Any non-official business (e.g. articles, retirement announcements, etc.)

Non-emergency considerations:

1. Citizens can become desensitized if they receive too many government messages
2. Clearly identify sender or announcement as non-emergency

VI. AUTHORIZED SYSTEM USERS

In general, those authorized to make notifications will be designated staff in the Participating Agency Public Safety Answering Points and key individuals in City and County departments.

System Administrator: The Johnson County Department of Emergency Management and Communications will act as the Countywide Public Mass Notification System Administrator. This Administrator is responsible for providing logins and procedural training to County Users of the System.

County User: Designated Johnson County personnel will be setup as “County” users. County Users will have permission to access and launch notifications to all jurisdictions within Johnson County consistent with the Steering Committee-approved protocols.

Participant Administrator: A minimum of one designated Administrator will be required for each Participant. This Administrator is responsible for providing logins and procedural training to Participant Users of the System. This individual will be the primary Participant contact for Johnson County concerning the System.

Participant User: Participants may have an unlimited number of users. Participant Users will be authorized and managed by the Participant Administrator. Participant Users will have permission to access and launch notifications consistent with the Steering Committee-approved protocols.

VII. ACTIVATION OF THE SYSTEM

In general, each Participant is responsible for launching messages to affected citizens and businesses within their jurisdiction. Determination of authority to request activation of the System rests with the Participant. Detailed activation procedures shall be included in Participant Operations Procedure documents.

A. Public Notifications

1. Johnson County is authorized to use the System to send notifications of countywide emergencies to any and all residents within the County's geographic boundaries. Upon sending a countywide notification, the County User making the notification will as soon as possible notify the Participants that mass notifications have been sent by the County to residents of their jurisdictions.
2. Other than countywide emergency notifications, public notifications are the responsibility of the Participant. In the event that the geographical location of an incident crosses jurisdictional boundaries, the Participant User must establish contact with the appropriate local jurisdictions/agencies and inform them that a mass notification message will be sent. The County will be responsible for activating emergency notifications for any Nonparticipating Agencies.
3. If a Participant experiences difficulty in sending an **emergency** notification, Johnson County is available to act on the Participant's behalf.
4. Participants are authorized to develop pre-established notification lists and messages to meet their individual needs. These lists may include special populations (e.g. in-home care, schools, etc.) or those susceptible to certain risks. It is the responsibility of the Participant to create, maintain and update these lists.

B. Emergency Response and Inter-Department Notifications

1. Each Participant is authorized to create employee and department call lists and pre-recorded messages.
2. It is the sole responsibility of each Participant to maintain these lists and to launch notifications as deemed necessary.

VIII. MAINTENANCE AND SUPPORT

Johnson County Emergency Management and Communications will be the primary point of contact for vendor support.

IX. ROUTINE TESTING

Participants may choose to test the system on a quarterly or bi-annual basis with their internal employee pool.

All external contacts will be tested once annually based on their test rotation schedules (see below). External Email tests will include brief reminder to keep contact information current."

External Testing Scheduled (first Wednesday of the assigned month)

Month Last Name Starts With

JAN A, B, C, D
 MAR E, F, G, H
 APR I, J, K, L
 JUN M, N, O, P
 AUG Q, R, S, T
 OCT U, V, W, X, Y, Z

Test exercises will be geared towards insuring that use of the System in an emergency is optimized. This includes testing operational readiness, activation procedures and system effectiveness as well as validating data and system processes. Through test exercises, System Administrators and Users will be able to observe the mode of operation to augment and refresh System and process knowledge.

Specific test exercise routines, roles, responsibilities and schedule will facilitated by Johnson County Emergency Management and Communications.

Revision History:

Revision Date	Author	Description
	Steering Committee	Document originated

EXHIBIT B

Participants in the Countywide Mass Notification System provided under contract with Everbridge Inc., will be assessed the following base annual fees for usage of the system.

Population Range	Year 1 Cost	Year 2 Cost	Year 3 Cost
100,000+	\$28,000	\$24,500	\$24,500
45,000 to 99,999	\$15,000	\$13,000	\$13,000
25,000 to 44,999	\$ 7,500	\$ 6,000	\$ 6,000
Under 25,000	\$ 5,000	\$ 4,500	\$ 4,500

**AGREEMENT TO PARTICIPATE IN THE
MEMORANDUM OF UNDERSTANDING FOR USE OF
THE COUNTYWIDE MASS NOTIFICATION SYSTEM**

This Agreement to Participate in the Memorandum of Understanding for the Use of the Countywide Mass Notification System is made and entered into by the City of Prairie Village, Kansas, on this ____ day of _____, 2012 (“Effective Date”).

1. APPROVAL BY STEERING COMMITTEE. The City of Prairie Village has requested to become a Participant under the Memorandum of Understanding for the Use of the Countywide Mass Notification System (“MOU”), which request has been approved by the Mass Notification System Steering Committee pursuant to Section 9 of the MOU.

2. TERMS AND CONDITIONS. In consideration of the Steering Committee’s approval, the City of Prairie Village accepts and agrees to the terms and conditions of the MOU and agrees to pay all participation costs as set forth in the MOU.

3. EFFECTIVE DATE. This Agreement shall be effective upon execution by the City of Prairie Village. As of the Effective Date, the City of Prairie Village shall be a Participant with all the same rights, benefits, and obligations under the MOU as the other Participants.

Accepted and agreed to by the City of Prairie Village, Kansas, as of the date written above.

CITY OF PRAIRIE VILLAGE, KANSAS

Ronald L. Shaffer, Mayor

ATTEST:

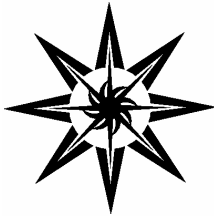
Joyce Hagen Mundy, City Clerk

APPROVED AS TO FORM:

Catherine P. Logan, City Attorney

ADDRESS FOR NOTICE PURPOSES:

City of Prairie Village, Kansas
ATTN: City Clerk
7700 Mission Road
Prairie Village, KS 66208



PUBLIC WORKS DEPARTMENT

Council Committee Meeting Date: December 17, 2012

Council Meeting Date: December 17, 2012

***COU2012-59: CONSIDER BIDS FOR PROJECT P5003- 2012 BRIDGE REPAIRS, MISSION ROAD BRIDGE POLYMER CONCRETE OVERLAY.**

RECOMMENDATION

Approve the bid submitted by Wildcat Concrete Services for Project P5003- 2012 Bridge Repairs, Mission Road Bridge Polymer Concrete Overlay for \$49,400.00 and, if necessary, transfer \$30,000.00 from City General Contingency Fund to Project P5003, 2012 Bridge Repairs.

BACKGROUND

On November 30, 2012, the City Clerk opened bids for Project P5003, 2012 Bridge Repairs. Three bids were received:

Wildcat Concrete Services	\$49,400.00
PCI Roads	\$58,972.50
Mill Valley Construction Inc.	\$68,250.00
Engineer's Estimate	\$36,500.00

All bids have been reviewed.

This bridge is located on Mission Road between Tomahawk Road and 71st Street over Brush Creek. This project will place a Multi-Layer Polymer Concrete Overlay and is needed for maintenance of the existing bridge deck. This overlay is the same that was placed on the surface of the new bridge installed in 2009 on Mission Lane. It will provide a new wearing surface and will seal existing cracks in the deck. At this point, there is not any delaminated concrete on the deck surface so it is important to get the deck surface sealed before more extensive repairs are necessary.

The engineers estimate is under the three bids submitted. There are two primary things which contributed to this difference. The project is a stand-alone overlay project and was not a part of a larger street project or bridge project. We also required the contractor to submit a bid which maintained two lanes of traffic during construction. Both of these things affected bid prices to a greater extent than anticipated.

The three bids submitted average \$58,874.17, the low bid \$49,400.00 is a reasonable cost for this project. The City funds the Bridge Repair Project each year at the \$20,000 level for miscellaneous repairs to bridges around the City. There were not any other bridge repairs targeted in 2012 so the overlay of the Mission Road Bridge was selected to use the funds in this project.

FUNDING SOURCE

Funding for the project will come from Project, P5003 and from the transfer, if necessary, of \$30,000 from City General Contingency Fund to Project, P5003.

ATTACHMENTS

Construction Contract with Wildcat Concrete Services.

PREPARED BY

Keith Bredehoeft, Project Manager

December 13, 2012

**CONSTRUCTION CONTRACT
FOR
PROJECT P5003
2012 Bridge Repairs**

**BETWEEN
THE CITY OF PRAIRIE VILLAGE, KANSAS
AND
Wildcat Concrete Services**

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 Wildcat Concrete Services, hereinafter termed in this agreement, “Contractor”, for the construction and completion of Project , designated, described and required by the Project Manual and Bid proposal, to wit:

CONTRACT COST: The City shall pay the Contractor for the performance of the Work embraced in this Contract, and the Contractor will accept in full compensation therefore the sum (subject to adjustment as provided by the Contract) of **Forty Nine Thousand Four Hundred DOLLARS (\$ 49,400.00)** for all Work covered by and included in the Contract; payment thereof to be made in cash or its equivalent and in a manner provided in the Contract Documents.

LIQUIDATED DAMAGES: The contract is comprised of one large project (sometimes referred to as “Total Project Work”) and, in some cases, is partitioned into smaller subprojects referred to in this agreement as “Project Segments.” A total completion date shall be set forth for both the Total Project Work and, when applicable, the Project Segments. Liquidated damages shall apply to the Total Completion Date for the Total Project Work (as may be extended under the Contract) and, when applicable, the Total Completion Date for each Project Segment (as may be extended under the Contract), in accordance with this Agreement and the Special Conditions. Liquidated Damages are described in greater detail below and the applicable rates for the subject Project are set forth in the **Special Conditions**, attached hereto and incorporated herein by this reference.

Within ten (10) calendar days after receipt of written notice to commence from the City, the Contractor shall commence the Work to be done under this Contract. The Contractor agrees to complete the Total Project Work and Project Segments hereunder within the contract time period set forth in the Contract, or as it may be extended under the terms of this Contract. At the time of execution of this Contract, the Contractor shall furnish the Project Manager with a project schedule setting forth, in detail, the proposed sequence of activities and the dates on which such activities shall be completed. The schedule shall also set forth the dates on which the Project Segments (if applicable to the Contract) shall be totally complete.

Contractor agrees that time is of the essence and any term pertaining to Contractor timely performing so as to achieve Total Completion when required under the Contract is a material provision of this Contract. Further, the parties acknowledge that City’s damages in the event of delay are difficult to ascertain and consequently agree that, in the event and to the extent that actual date of Total Completion is delayed beyond the required date for Total Completion for the

Total Project or Project Segments attributable solely or concurrently to (i) an act or omission of Contractor or any of its subcontractors or suppliers, or (ii) in whole or in part, to any other event or condition within the Contractor's reasonable control (and not for reasons solely attributable to City), the Contractor shall be assessed a liquidated damage, and not as a penalty, in the amount set forth in the Special Conditions for each calendar day beyond the applicable Total Completion date. Such amount shall be deducted from any amounts due Contractor under this agreement.

The Contractor agrees that, in the event Project Segments are not Totally Complete, the City may also assess other liquidated damages for each calendar day beyond the date for Total Completion in an amount set forth in the Special Conditions. The Contractor agrees that such assessment is a reasonable estimate of the damages that may be sustained by the City in the event the project is delayed and that such amount is not a penalty.

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

1. **DEFINITIONS:**

1.1 Following words are given these definitions:

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

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

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

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

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 prescribed 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 specific date as designated in the Construction Agreement.

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

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

ENGINEER 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.

FIELD ORDER shall mean a written order issued by the Project Manager that orders minor changes in the work, but which does not involve a change in the contract price or contract time.

FIELD SUPERINTENDENT shall mean the Public Works Field Superintendent of the City of Prairie Village or designee.

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 Project Manager.

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.

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 or submitted by the Contractor to the City during the progress of the Work, all of which show the character and scope of the work to be performed.

PROJECT MANAGER shall mean the person appointed by the Public Works Director for this project as named in the Special Conditions.

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

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

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

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

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

TOTAL COMPLETION shall be defined as fulfilling 100 percent of the work required in this contract by the date specified herein.

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

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.

- 1.2 Whenever any word or expression defined herein, or pronoun used instead, occurs in these Contract Documents; it shall have and is mutually understood to have the meaning commonly given. Work described in words, which so applied have a well-known technical or trade meaning shall be held to refer to such, recognized standards.
- 1.3 Whenever in these Contract Documents the words "as ordered," "as directed", "as required", "as permitted", "as allowed", or words or phrases of like import are used, it is understood that the order, direction, requirement, permission or allowance of the Project Manager is intended.
- 1.4 Whenever any statement is made in the Contract Documents containing the expression "it is understood and agreed", or an expression of like import, such expression means the mutual understanding and agreement of the parties hereto.
- 1.5 The words "approved", "reasonable", "suitable", "acceptable", "properly", "satisfactorily",

or words of like effect in import, unless otherwise particularly specified herein, shall mean approved, reasonable, suitable, acceptable, proper or satisfactory in the judgment of the Project Manager.

- 1.6 When a word, term or phrase is used in the Contract, it shall be interpreted or construed, first, as defined herein; second, if not defined, according to its generally accepted meaning in the construction industry; and, third, if there is no generally accepted meaning in the construction industry, according to its common and customary usage.
- 1.7 All terms used herein shall have the meanings ascribed to them herein unless otherwise specified.

2. ENTIRE AGREEMENT:

- 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 Project Manager of any inconsistency, ambiguity, error or omission, which the Contractor may discover, or should have discovered, with respect to these documents before proceeding with the affected Work. The review, issuance, or the express or implied approval by the City or the Project

Manager of the Contract Documents shall not relieve the Contractor of the continuing duties imposed hereby, nor shall any such review be evidence of the Contractor's compliance with this Contract.

- 3.6 The City has prepared or caused to have prepared the Project Manual. **HOWEVER, THE CITY MAKES NO REPRESENTATION OR WARRANTY AS TO ACCURACY OR FITNESS FOR PARTICULAR PURPOSE INTENDED OR ANY OTHER WARRANTY OF ANY NATURE WHATSOEVER TO THE CONTRACTOR CONCERNING SUCH DOCUMENTS.** By the execution hereof, the Contractor acknowledges and represents that it has received, reviewed and carefully examined such documents, has found them to be complete, accurate, adequate, consistent, coordinated and sufficient for construction, and that the Contractor has not, does not, and will not rely upon any representation or warranties by the City concerning such documents as no such representation or warranties have been made or are hereby made.
- 3.7 As between numbers and scaled measurements in the Project Manual, the numbers shall govern; as between larger scale and smaller scale drawings, (e.g. 10:1 is larger than 100:1) the larger scale shall govern.
- 3.8 The organization of the Project Manual into divisions, sections, paragraphs, articles (or other categories), shall not control the Contractor in dividing the Work or in establishing the extent or scope of the Work to be performed by Subcontractors.
- 3.9 The Contract Documents supersedes all previous agreements and understandings between the parties, and renders all previous agreements and understandings void relative to these Contract Documents.
- 3.10 Should anything be omitted from the Project Manual, which is necessary to a clear understanding of the Work, or should it appear various instructions are in conflict, the Contractor shall secure written instructions from the Project Manager before proceeding with the construction affected by such omissions or discrepancies.
- 3.11 It is understood and agreed that the work shall be performed and completed according to the true spirit, meaning, and intent of the Contract Documents.
- 3.12 The Contractor's responsibility for construction covered by conflicting requirements, not provided for by addendum prior to the time of opening Bids for the work represented thereby, shall not extend beyond the construction in conformity with the less expensive of the said conflicting requirements. Any increase in cost of work required to be done in excess of the less expensive work of the conflicting requirements will be paid for as extra work as provided for herein.
- 3.13 The apparent silence of the Project Manual as to any detail, or the apparent omission from them of a detailed description concerning any point, shall be regarded as meaning that only the best general practice is to be used. All interpretations of the Project Manual shall be made on the basis above stated.
- 3.14 The conditions set forth herein are general in scope and are intended to contain requirements and conditions generally required in the work, but may contain conditions or requirements which will not be required in the performance of the work under contract and which therefore are not applicable thereto. Where any stipulation or requirement set forth

herein applies to any such non-existing condition, and is not applicable to the work under contract, such stipulation or requirement will have no meaning relative to the performance of said work.

- 3.15 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 based on 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 City and the Contractor regarding the signing of pay estimates, change orders, workday reports and other forms necessary for communication and Work status inquiries. Upon Work commencement, the City shall be notified, in writing, within five (5) working days of any changes in the Contractor's representative. In the absence of the Contractor or representative, suitable communication equipment, which will assure receipt of messages within one (1) hour during the course of the workday, will also be required.
- 4.5 The Contractor will be required to contact the Project Manager daily to advise whether and/or where the Contractor and/or the Subcontractor's crews will be working that day, in order that the Project Manager's representative is able to monitor properly the Work.

5. PROJECT MANAGER

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

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

work in accordance with the Project Manual. The Project Manager will not be responsible for the acts or omissions of the Contractor or any Subcontractor or any of its or their agents or employees, or any other person at the site or otherwise performing any of the work except as may otherwise be provided.

- 5.15 Any plan or method of work suggested by the Project Manager, or other representatives of the City, to the Contractor, but not specified or required, if adopted or followed by the Contractor in whole or in part, shall be used at the risk and responsibility of the Contractor, and the Project Manager and the City will assume no responsibility therefore.
- 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 Project Manager, such City representatives or observers as the City may deem proper, to observe the materials furnished and the work performed under the Project Manual, and to see that the said materials are furnished, and the said work performed, in accordance with the Project Manual therefore. The Contractor shall furnish all reasonable aid and assistance required by the Project Manager, or by the resident representatives for proper observation and examination of the Work and all parts thereof.
- 5.17 The Contractor shall comply with any interpretation of the Project Manual by the Project Manager, or any resident representative or observer so appointed, when the same are consistent with the obligations of the Project Manual. However, should the Contractor object to any interpretation given by any subordinate Project Manager, resident representative or observer, the Contractor may appeal in writing to the City Director of Public Works for a decision.
- 5.18 Resident representatives, observers, and other properly authorized representatives of the City or Project Manager shall be free at all times to perform their duties, and intimidation or attempted intimidation of any one of them by the Contractor or by any of its employees, shall be sufficient reason, if the City so decides, to annul the Contract.
- 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, within ten (10) calendar days after being instructed to do so in a written notice from the City, shall 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 Project Manager with a schedule setting forth in detail (in the critical path method) the sequences proposed to be followed, and giving the dates on which it is expected that portions of the work will be started and completed.
- 6.4 If at any time, in the opinion of the Project Manager or City, proper progress is not being maintained; such changes shall be made 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 The operation of any tool, equipment, vehicle, instrument, or other noise-producing device is prohibited to start before or continue after the hours of 7 AM and 10 PM, Monday through Friday (except Fridays which shall be until Midnight) and 8 AM and midnight on Weekends (except Sunday which shall be 10 PM). Violation of this requirement is Prima Facie Violation of City Municipal Code 11-202.
- 6.7 No work shall be undertaken on Saturdays, Sundays and Holidays (Christmas, New Years, Martin Luther King's Birthday, President's Day, Memorial Day, Independence Day, Labor Day and Thanksgiving) without the express written approval of the City Project Manager. If it is necessary to perform proper care, maintenance, or protection of work already completed or of equipment used, or in the case of an emergency verbal permission may be obtained through the Project Manager.
- 6.8 Night work may be established by the Contractor, as a regular procedure, with the written permission of the City; such permission, however, may be revoked at any time by the City if the Contractor fails to maintain adequate equipment for the proper prosecution and control of all operations performed as part of the Work.
- 6.9 The Contractor shall provide 24 hours notice prior to commencing any work to the City Project Manager. The Contractor shall communicate immediately any changes in the work schedule to the City Project Manager.

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

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 Project Manager, an average or usual number of inclement days when work cannot proceed are to be anticipated during the construction period and are not to be considered as warranting extension of time.
- 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 workday.
- 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:
- 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:
 - The weather experienced at the Work site during the Contract period is more severe than the adverse weather anticipated for the Work location during any given month.
 - The unusually severe weather actually caused a delay to the completion of the Work. The delay must be beyond the control and without fault or negligence by the Contractor.
- 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 affected by actual adverse weather (even if adverse weather occurred in the previous month), and shall be calculated chronologically from the first to the last day of each month, and be recorded as full workdays.
- 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 workday 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 workdays shall be given. If the number of actual adverse weather delays in a given month is less than the number of days anticipated as indicated above, the difference shall be multiplied by 7/5 to convert any workday increases to calendar days. The resulting number of qualifying extra days will be accumulated and subtracted from any future month's days lost due to unusually severe weather.
- 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 because of unusually favorable weather.
- 8.13 In converting workdays to calendar days, fractions 0.5 and greater shall be rounded up to the next whole number. Fractions less than 0.5 shall be dropped.
- 8.14 The Contractor shall summarize and report all actual adverse weather delay days for each month to the Project Manager by the tenth (10th) day of the following month. A narrative indicating the impact of adverse weather conditions on the scheduled critical activities shall be included.
- 8.15 Any claim for extension of time due to unusually severe weather shall be submitted to the Project Manager within 7 days of the last day of the commencement of the event giving rise to the delay occurred. Resolution of any claim shall follow the procedures 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 City.
- 9.4 The Contractor shall promptly pay each Subcontractor out of the amount paid to the Contractor because of such Subcontractor's Work the amount to which such Subcontractor is entitled. In the event the City becomes informed that the Contractor has not paid a Subcontractor as herein provided, the City shall have the right, but not the duty, to issue future checks in payment to the Contractor of amounts otherwise due hereunder naming the Contractor and such Subcontractor as joint payees. Such joint check procedure, if employed by the City, shall be deemed payment to the Contractor but shall create no rights in favor of any person or entity beyond the right of the named payees to payment of the check and shall not be deemed to commit the City to repeat the procedure in the future.
- 9.5 The Project Manager will, upon receipt of a written Application for Payment from the Contractor, review the amount of work performed during the preceding period and the value thereof at the unit prices contracted. From the amounts so ascertained, there shall be deducted ten percent (10%) to be retained until after final completion of the entire work to the satisfaction of the City. The Project Manager will submit an estimate each month to the City for payment to the Contractor, except that no amount less than \$500.00 will be submitted unless the total amount of the Contract remaining unpaid is less than \$500.00.
- 9.6 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.
- 9.7 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.
- 9.8 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.
- 9.9 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.
- 9.10 Neither the observation by the City or any of the City's officials, employees, or agents, nor any order by the City for payment of money, nor any payment for, or acceptance of, the whole or any part of the work by the City or Project Manager, nor any extension of time, nor any possession taken by the City or its employees, shall operate as a waiver of any provision of this Contract, or of any power herein reserved to the City, or any right to damages herein provided, nor shall any waiver of any breach in this Contract be held to be a waiver of any other or subsequent breach.

10. COMPLETION AND FINAL PAYMENT

- 10.1 Work completion shall be defined as all elements of the Work or work segment, being complete including all subsidiary items and "punch-list" items.
- 10.2 When all of the Work is finally complete and the Contractor is ready for a final inspection, it shall notify the City and the Project Manager thereof in writing. Thereupon, the Project Manager will make final inspection of the Work and, if the Work is complete in accordance with this Contract, the Project Manager will promptly issue a final Certificate for Payment certifying to the City that the Work is complete and the Contractor is entitled to the remainder of the unpaid Contract Price, less any amount withheld pursuant to this Contract. If the Project Manager is unable to issue its final Certificate for Payment and is required to repeat its final inspection of the Work, the Contractor shall bear the cost of such repeat final inspection(s), which cost may be deducted by the City from the Contractor's full payment.
- 10.3 The Contractor shall not be entitled to any payment unless and until it submits to the Project Manager its affidavit that all payrolls, invoices for materials and equipment, and other liabilities connected with the Work for which the City, or the City's property might be responsible, have been fully paid or otherwise satisfied; releases and waivers of lien from all Subcontractors and Suppliers of the Contractor and of any and all other parties required by the City; and consent of Surety, if any, to final payment. If any third party fails or refuses to provide a release of claim or waiver of lien as required by the City, the Contractor shall furnish a bond satisfactory to the City to discharge any such lien or indemnify the City from liability.
- 10.4 The City shall make final payment of all sums due the Contractor within thirty days of the later of the Project Manager's execution of a final Certificate for Payment.
- 10.5 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.

11. CLAIMS BY THE CONTRACTOR

- 11.1 All Contractor claims shall be initiated by written notice and claim to the Project Manager. Such written notice and claim must be furnished within seven calendar days after occurrence of the event, or the first appearance of the condition, giving rise to the claim.
- 11.2 The Contractor shall diligently proceed with performance of this Contract whether or not there be such a claim pending and the City shall continue to make payments to the Contractor in accordance with this Contract. The resolution of any claim shall be reflected by a Change Order executed by the City, the Project Manager and the Contractor.
- 11.3 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.
- 11.4 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.
- 11.5 The City reserves the right to increase or decrease quantities, and alter the details of construction including grade and alignment as the Project Manager may consider necessary or desirable, by approved Change Order. Such modifications shall not invalidate the Contract nor release the surety. Unless such alterations and increases or decreases change the total cost of the Work, based on the originally estimated quantities and the unit prices bid, by more than 25 percent, or change the total cost of any major item, based on the originally estimated quantities and the unit price bid, by more than 25 percent, the Contractor shall perform the work altered, increased or decreased, at a negotiated price or prices. (A major item shall mean any bid item, the total cost of which exceeds 12-1/2 percent of the total Contract amount based on the proposed quantity and the contract unit price).
- 11.6 When the alterations cause an increase or decrease in excess of the 25 percent indicated above, either the Contractor or the Project Manager may request an adjustment of the unit price to be paid for the item or items.
- 11.7 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.

- 11.8 In connection with any claim by the Contractor against the City for compensation in excess of the Contract Price, any liability of the City for the Contractor's costs shall be strictly limited to direct costs incurred by the Contractor and shall not include standby costs, indirect costs or consequential damages of the Contractor. The City shall not be liable to the Contractor for claims of third parties.
- 11.9 If the Contractor is delayed in progressing any task which at the time of the delay is then critical or which during the delay becomes critical, as the sole result of any act or neglect to act by the City or someone acting in the City's behalf, or by changes ordered in the Work, unusual delay in transportation, unusually adverse weather conditions not reasonably anticipated, fire or any causes beyond the Contractor's control, then the date for achieving Final Acceptance of the Work shall be extended upon the written notice and claim of the Contractor to the City, for such reasonable time as the City may determine. Any notice and claim for an extension of time by the Contractor shall be made not more than seven calendar days after the occurrence of the event or the first appearance of the condition-giving rise to the claim and shall set forth in detail the Contractor's basis for requiring additional time in which to complete the Work. In the event the delay to the Contractor is a continuing one, only one notice and claim for additional time shall be necessary. If the Contractor fails to make such claim as required in this subparagraph, any claim for an extension of time shall be waived.
- 11.10 The Contractor shall delay or suspend the progress of the work or any part thereof, whenever so required by written order of the City, and for such periods of time as required; provided, that in the event of such delay or delays or of such suspension or suspensions of the progress of the work, or any part thereof, the time for completion of work so suspended or of work so delayed by such suspension or suspensions shall be extended for a period equivalent to the time lost by reason of such suspension or suspensions; but such order of the City or Project Manager shall not otherwise modify or invalidate in any way, any of the provisions of this Contract. In the event that the work shall be stopped by written order of the City, any expense, which, in the sole opinion and judgment of the City, is caused by the City, shall be paid by the City to the Contractor.
- 11.11 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.
- 11.12 In addition to the Project Manual particular to Mobilization found elsewhere in this document, additional mobilization shall not be compensable for work outside of the designated areas for work deemed essential by the City. A quantity of work equal to as much as 10% of the total Contract may be required to be performed beyond the boundaries of the designated work areas

12. CHANGES IN THE WORK

- 12.1 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.
- 12.2 The Project Manager shall have authority to order minor changes in the Work not involving a change in the Contract Price or in Contract Time and consistent with the intent of the Contract. Such changes shall be effected by verbal direction and then recorded on a Field Order and shall be binding upon the Contractor. The Contractor shall carry out such Field Orders promptly.
- 12.3 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.
- 12.4 If no mutual agreement occurs between the City and the Contractor relative to a change in the Work, the Contractor shall proceed with the work that is the subject of the Change Order, and the change in the Contract Price, if any, shall then be determined by the Project Manager on the basis of the reasonable expenditures or savings of those performing, deleting or revising the Work attributable to the change, including, in the case of an increase or decrease in the Contract Price, a reasonable allowance for direct job site overhead and profit. In such case, the Contractor shall present, in such form and with such content to the City, as the Project Manager requires, an itemized accounting of such expenditures or savings, plus appropriate supporting data for inclusion in a Change Order. Reasonable expenditures or savings shall be limited to the following: reasonable costs of materials, supplies or equipment, including delivery costs, reasonable costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and worker's compensation insurance, reasonable rental costs of machinery and equipment exclusive of hand tools, whether rented from the Contractor or others, permit fees, and sales, use or other taxes related to the Work, and reasonable cost of direct supervision and job site field office overhead directly attributable to the change. In no event shall any standby time or any expenditure or savings associated with the Contractor's home office or other non-job site overhead expense be included in any change in the Contract Price. Further, in no event shall the Contractor's overhead expense exceed ten (10%) percent of the reasonable expenditures. Pending final determination of reasonable expenditures or savings to the City, payments on account shall be made to the Contractor on the Project Manager's Certificate for Payment.
- 12.5 If unit prices are provided in the Contract, and if the quantities contemplated are so changed in a proposed Change Order that the application of such unit prices to the quantities of Work proposed would cause substantial inequity to the City or to the Contractor, the applicable unit prices shall be equitably adjusted.
- 12.6 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.

13. INSURANCE AND HOLD HARMLESS.

- 13.1 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.
- 13.2 To the fullest extent permitted by law, the Contractor shall indemnify, defend, and hold harmless the City, the Project Manager, 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.
- 13.3 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.
- 13.4 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.
- 13.5 The Contractor shall give reasonable notice to the City 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 City or owners relative to the removal and replacement or protection of such property or utilities.
- 13.6 The Contractor shall satisfactorily shore, support, and protect 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 because 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.
- 13.7 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.

- 13.8 The City and the Project Manager 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.
- 13.9 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.
- 13.10 Satisfactory certificates of insurance shall be filled with the City prior to the Contractor 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, at the City option, may be the basis for the City exercising its right to terminate the Contract.
- 13.11 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.

14. INDEMNITY

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

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

- 14.2 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/her employees, agents, Subcontractors and suppliers.
- 14.3 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.
- 14.4 Nothing in this section shall be deemed to impose liability on the Contractor to indemnify the City or County for Loss when the negligence or other actionable fault the City is the sole cause of Loss.

14.5 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.

15. SUCCESSORS AND ASSIGNS

15.1 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.

15.2 The Contractor shall not assign or sublet the work, or any part thereof, without the previous written consent of the City, nor shall it assign, by power of attorney or otherwise, any of the money payable under this Contract unless by and with the like written consent of the City. In case the Contractor assigns all, or any part of any moneys due or to become due under this Contract, the instrument of assignment shall contain a clause substantially to the effect that it is agreed that the right of the assignee in and to any moneys due or to become due to the Contractor shall be subject to all prior liens of all persons, firms and corporations for services rendered or materials supplied for the performance of the Work called for in this Contract.

15.3 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.

15.4 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.

15.5 The Contractor shall not subcontract, sell, transfer, assign or otherwise dispose of the Contract or any portion thereof without previous written consent from the City. In case such consent is given, the Contractor, shall be permitted to subcontract a portion thereof, but shall perform with his/her own organization work amounting to not less than fifty five (55%) of the total Contract Price. No subcontracts, or other transfer of Contract, shall release the Contractor of its liability under the Contract and bonds applicable thereto.

15.6 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.

- 15.7 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.
- 15.8 The City shall, prior to the City's approval of the Contract bid, notify the successful bidder, in writing, if the City, after due investigation, has reasonable objection to any Subcontractor on such list, and the Contractor shall substitute a Subcontractor acceptable to the City at no additional cost to the City or shall be allowed to withdraw his/her Bid, and the City shall either re-bid the Work or accept the next best lowest and responsible bidder. The failure of the City to make objection to a Subcontractor shall constitute an acceptance of such Subcontractor but shall not constitute a waiver of any right of the City to reject defective work, material or equipment not in conformance with the requirements of the Project Manual.

16. NON-DISCRIMINATION LAWS

- 16.1 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.
- 16.2 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);
- 16.3 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;
- 16.4 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
- 16.5 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.
- 16.6 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.

17. RELATIONS WITH OTHER CONTRACTORS:

- 17.1 The Contractor shall cooperate with all other contractors who may be performing work on behalf of the City, and workers who may be employed by the City, or any other entity on any work in the vicinity of the Work to be done under this Contract, and the Contractor shall so conduct his/her operations as to interfere to the least possible extent with the work of such contractors or workers. The Contractor shall be responsible for any injury or damage, that may be sustained by other contractors, workers, their work or employees of the City, because of any fault or negligence on the Contractor's part, and shall, at his/her own expense, repair or pay for such injury or damage. If the work of the Contractor is delayed because of any acts or omissions of any other Contractor or Contractors, the Contractor shall have no claim against the City on that account other than for an extension of time.
- 17.2 When two or more Contracts are being executed at one time in such manner that work on one Contract may interfere with that on another, the City shall decide which Contractor shall progress at which time.
- 17.3 Other projects the Contractor may have to coordinate shall be listed in the Special Conditions.
- 17.4 When the territory of one Contract is the necessary or convenient means of access for the transportation or movement of workers, materials, or appliances required for the execution of another Contract, such privileges of access or any other responsible privilege may be granted by the City to the Contractor so desiring, to the extent such may be reasonably necessary.
- 17.5 Upon execution of the Contract, the Contractor shall furnish the City, in writing, the names of persons or entities proposed by the Contractor to act as a Subcontractor on the Work. The City shall promptly reply to the Contractor, in writing, stating any objections the City may have to such proposed Subcontractor. The Contractor shall not enter into a Subcontract with a proposed Subcontractor with reference to whom the City has made timely objection. The Contractor shall not be required to Subcontract with any party to whom the Contractor has objection.

18. RIGHT OF CITY TO TERMINATE

- 18.1 If the Contractor persistently or repeatedly refuses or fails to prosecute the Work in a timely manner, or supply enough properly skilled workers, supervisory personnel or proper equipment or materials, or if it fails to make prompt payment to Subcontractors or for materials or labor, or persistently disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or if this Contract is assigned by Contractor without authorization or if Contractor is adjudged as bankrupt, or if a general assignment of assets be made for the benefit of creditors; or if a receiver is appointed, or otherwise is guilty of a substantial violation of a provision of this Contract, then the City may by written notice to the Contractor, without prejudice to any right or remedy, terminate the employment of the Contractor and take possession of the site and of all materials, equipment, tools, construction equipment and machinery thereon owned by the Contractor and may finish the Work by whatever methods it may deem expedient. In such case, the Contractor and its surety shall be liable to the City for all excess cost sustained by the City because of such prosecution and completion including any additional legal, Project Manager or bid-letting costs therefore. In such case, the Contractor shall not be entitled to receive further

payment. In the event the Contractor is found in a court of law to have been wrongfully terminated for cause, then such termination shall be deemed a termination for convenience and the Contractor shall be compensated as provided herein.

- 18.2 The City, within its sole discretion, may elect to terminate the Contract with the Contractor for convenience upon three (3) days written Notice to Contractor. In the event of such termination, Contractor shall cease immediately all operations and shall be compensated for all work performed as of the date of termination in accordance with the terms of payment in this contract. Contractor shall not be entitled to any anticipatory profits 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 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 near the Work, is hereby designated as the places to which all notices, letters, and other communications to the Contractor may be mailed or delivered. The delivering at either of the above named addresses, or depositing in any mailbox regularly maintained by the Post Office, of any notice, letter or other communication so addressed to the Contractor, and the date of said service shall be the date of such delivery or mailing. Such addresses may be changed at any time by an instrument in writing, executed by the Contractor, presented, and delivered to the Project Manager and to the City. Nothing herein contained shall be deemed to preclude or render inoperative the service of any notice, letter, or communication upon the Contractor personally.
- 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 City or of any other agency, which has contributed funds in connection with the Contract or to which the City is obligated to make such inspections available. In addition, this requirement shall be included in all subcontracts entered into in connection with this Contract.
- 19.7 Titles, subheadings used herein, and other Contract Documents are provided only as a matter of convenience and shall have no legal bearing on the interpretation of any provision of the Contract Documents.
- 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, Project Manager or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval or acquiescence in a breach hereunder, except as may be specifically agreed in writing.
- 19.14 Contractor specifically acknowledges and confirms that: 1.) he/she 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/she has furnished copies of all Contract Documents to his/her insurance carrier(s) and his/her surety(ies); and 3.) his/her 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/her, hers or their successors and assigns, or its, his/her, 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 five (5) 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, Kansas, 66208 _____

(date of execution)

By _____
(signed)

(typed name)

(typed title)

(typed company name)

(typed address)

(typed city, state, zip)

(typed telephone number)

(date of execution)

SEAL

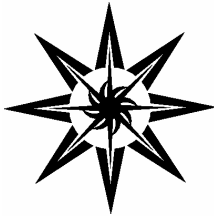
ATTEST:

APPROVED BY:

City Clerk, Joyce Hagen-Mundy

City Attorney, Catherine 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.)



PUBLIC WORKS DEPARTMENT

Council Committee Meeting Date: December 17, 2012

Council Meeting Date: December 17, 2012

***COU2012-60: CONSIDER PROJECT CONC2012: 2012 CONCRETE REPAIR PROGRAM CONSTRUCTION CHANGE ORDER #1 (FINAL)**

RECOMMENDATION

Move to approve construction change order #1(Final) with White and Son's Construction for Project CONC2012: 2012 Concrete Repair Program for \$ \$63,005.17.

BACKGROUND

This Final Change Order reflects the final field measured quantities for all bid items. These items include repairs to curb and gutter, sidewalks, driveways, and ADA ramp reconstruction.

Additional work was completed using funds listed below-

1. Additional ADA ramps were constructed and therefore the additional funds for these repairs will come from the ADA Project: ADARESV funding for 2012 in the amount of \$13,005.17
2. Additional concrete repairs were completed utilizing \$50,000.00 in unallocated funds from the Sidewalk and Curb Section of the CIP.

The final contract amount with White and Son's Construction for the project will be \$758,005.17.

FUNDING SOURCE

Funds for this work will come from two different sources as listed below.

Project ADARESV: ADA Compliance- \$13,005.17

Sidewalk and Curb Section of the CIP: Unallocated- \$50,000.00

RELATED TO VILLAGE VISION

TR1c. Ensure that infrastructure improvements meet the needs of all transportation users.

ATTACHMENTS

1. Construction Change Order #1 (FINAL) with White and Son's Construction.

PREPARED BY

Keith Bredehoeft, Project Manager

December 10, 2012



CITY OF PRAIRIE VILLAGE
PUBLIC WORKS DEPARTMENT
CONSTRUCTION CHANGE ORDER NO. 1

City's Project: CONC2012- 2012 Concrete Repair Program

Date Requested: December 17, 2012

Contract Date: June 1, 2010

Consultant's Name: N/A

Contractor's Name: White and Son's Construction

REQUIRED CHANGES TO PRESENT CONTRACT

Contract Quantity	Previous Amount	Unit	Item Description	Adj. Quant.	Unit Price	Adjusted Amount
0	\$0.00	LS	Finalizing Quantities for the 2010 Concrete Repair Program	LS	\$63,005.17	\$63,005.17

TOTAL \$0.00

TOTAL \$63,005.17
NET Increase \$63,005.17

EXPLANATION OF CHANGE - This change order is to cover the following items:

Finalizing quantities for the 2012 Concrete Repair Program- Funding- Project ADARESV: ADA Compliance- \$13,005.17 and Sidewalk and Curb Section of the CIP: Unallocated- \$50,000.00

The Consultant does **not** anticipate a related Engineering Change Order.

	Contract Value	Contract Days
Original Contract	\$695,000.00	
Current Contract including previous Change Orders	\$695,000.00	
NET This Change Order	\$63,005.17	
New Contract Price	\$758,005.17	

Contractor

Date

Keith Bredehoeft, Project Manager
City of Prairie Village, KS

Date

Ronald L. Shaffer, Mayor
City of Prairie Village, KS

Date



ADMINISTRATION

Committee Meeting Date: December 17, 2012
Council Meeting Date: December 17, 2012

***COU2012-56:** Consider Resolution No. 2012-03 Providing for the Reallocation of the Proceeds of the Series 2011-A Bond Issue

RECOMMENDATION

Staff recommends passage of Resolution No. 2012-03.

SUGGESTED MOTION

Recommend the City Council adopt Resolution No. 2012-03 that provides for the reallocation of the Series 2011-A Bond to various street projects.

BACKGROUND

The City allocated \$500,000 of the Series 2011-A Bond issue to energy projects. The final cost was \$438,239. The difference of \$61,761 is due to the additional grant funds of \$70,000 that the City received from the State Department of Energy (DOE).

We do not have other scheduled uses for these funds in public building projects. Therefore, we are asking the Governing Body authorize the reallocation of the \$70,000 from public building projects to the street projects already identified for the bond purposes.

FINANCIAL IMPACT

No financial impact on the General Fund.

ATTACHMENTS

- Resolution No. 2012-03
-

PREPARED BY:

Lisa Santa Maria
Finance Director

Date: December 13, 2012

RESOLUTION NO. 2012-03

A RESOLUTION PROVIDING FOR THE REALLOCATION OF PROJECT COSTS TO BE FINANCED WITH THE PROCEEDS OF THE CITY OF PRAIRIE VILLAGE, KANSAS' GENERAL OBLIGATION REFUNDING AND IMPROVEMENT BONDS, SERIES 2011-A.

WHEREAS, on October 3, 2011, the City of Prairie Village, Kansas (the "City"), adopted Ordinance No. 2243 and approved Resolution No. 2011-16 authorizing the issuance of the City's General Obligation Refunding and Improvement Bonds, Series 2011-A in the original principal amount of \$4,555,000 (the "Bonds"); and

WHEREAS, Ordinance No. 2243 provided that the proceeds of the Bonds would finance the cost of certain Improvements, as shown below:

<u>Project Description</u>	<u>Resolution/Ordinance Number</u>	<u>Authority</u>	<u>Allocable Portion of Principal Amount</u>
Various public building projects	Res. No. 2011-01	K.S.A. 12-1736 <i>et seq.</i>	\$ 500,000
Various street projects	Res. No. 2011-15 and Res. No. 2009-22	K.S.A. 12-685 <i>et seq.</i>	4,100,000
Total:			\$4,600,000

; and

WHEREAS, the Bonds were issued on October 19, 2011; and

WHEREAS, there are moneys remaining in the Improvement Fund after the completion of the public building projects and the City hereby finds it necessary and desirable to authorize the reallocation of the proceeds of the Bonds to pay certain costs of the Improvements constituting the street projects; and

WHEREAS, the proposed reallocation will not cause proceeds of the bonds allocated to the street projects to exceed the Financing Costs of such Improvements; and

WHEREAS, the proposed reallocation will not adversely affect the tax-exempt status of the Bonds under State or federal law; and

WHEREAS, in such instances, the Issuer is permitted pursuant to Section 504(b) of Resolution No. 2011-16 to reallocate the proceeds of the Bonds to the street projects.

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

Section 1. The Governing Body hereby authorizes reallocation of the proceeds of the Bonds to certain of the Improvements as follows:

<u>Project Description</u>	<u>Resolution/Ordinance Number</u>	<u>Initial Allocation of 2011-A Bonds</u>	<u>New Allocation of 2011-A Bonds</u>	<u>Change in Amount Financed</u>
Various public building projects	Res. No. 2011-01	\$ 500,000	\$ 430,000	\$ (70,000)
Various street projects	Res. No. 2011-15 and Res. No. 2009-22	<u>4,100,000</u>	<u>4,170,000</u>	70,000
Total:		\$4,600,000	\$4,600,000	

Section 2. The officers and officials of the City, including the Mayor, Clerk and City Administrator, are hereby authorized and directed to execute all documents and take such actions as they may deem necessary or advisable in order to carry out and perform the purposes of this Resolution and to make ministerial alterations, changes or additions in the foregoing agreements, statements, instruments and other documents herein approved, authorized and confirmed which they may approve, and the execution or taking of such action shall be conclusive evidence of such necessity or advisability.

Section 3. This Resolution shall take effect and be in full force immediately after its adoption by the governing body.

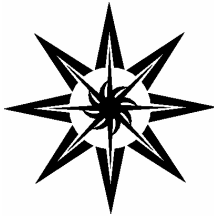
ADOPTED by the governing body of the City this 17 day of December, 2012.

Mayor

(SEAL)

ATTEST:

City Clerk



PLANNING COMMISSION

City Council Meeting Date: December 17, 2012

PC2012-09 Consider Proposed Revisions to Zoning Regulations adding Chapter 19.25 entitled "Overlay Zoning Districts"
Applicant: City of Prairie Village (Ordinance No. 2226)

RECOMMENDATION:

Planning Commission recommends approval of the proposed text amendment.

MOTION:

I move that the City Council approve Ordinance No. 2226 establishing Neighborhood Conservation Overlay Districts, Chapter 19.25 and authorize the Mayor to sign the effectuating ordinance.

BACKGROUND:

The City of Prairie Village has been looking at ways to assist homes associations with potential issues that arise with the construction of additions and new homes within existing residential areas. The City has already implemented a process for notifying homes associations of projects which will significantly alter the exterior of the structure (porches, etc.) or add additional square footage.

Council members Michael Kelly, Laura Wassmer and Dale Warman have been also working with the City's Homes Association Committee to develop other methods to assist homes associations with these issues. An outgrowth of this work has been the idea of a conservation overlay district which would address design issues within a specific neighborhood.

In 2010, the City Council directed staff to work with the Countryside East Homes Association in the development of a neighborhood conservation overlay district and the creation of development/design standards. It was decided the Countryside East Homes Association would be the initial model for the development of this tool.

DISCUSSION:

The Planning Commission held a public hearing for the proposed text amendment on December 4, 2012 (excerpts from the December 4th meeting are attached).

The text amendment sets forth the criteria for the establishment of neighborhood conservation overlay districts, use of development/design standards and the appeal process.

The process allows for the Planning Commission, Governing Body, or at least 51% percent of the property owners within the proposed area to initiate the establishment of a district. There would be a formal hearing process before the Planning Commission which would make a recommendation to the Governing Body. The Governing Body would then have the final authority for the approval of each district. The area must be at least 25 years or older, minimum of 5 acres, and have "built environmental characteristics that create an identifiable setting, character or association."

Projects subject to review would be reviewed at the City staff level for compliance with the approved development/design standards. If staff determines the project is not in compliance with the standards, the applicant could appeal the decision. The current draft language has a two-stage appeal process.

Staff, in consultation with the several homes associations, felt that it was important to have some input from the property owners within the overlay district during the appeal process. Therefore, the first appeal would consist of one member from the Planning Commission (appointed by the Chair) and two members from the participating neighborhood association (appointed by the homes association which is covered under the overlay district).

To comply with legal requirements, there must be an appeal body which has final authority to review the decision of the first appeal body. The current draft establishes this body as the Board of Zoning Appeals.

ATTACHMENTS:

Excerpts from the December 4, 2012 Planning Commission Meeting Minutes
Ordinance No. 2226 Establishing the Neighborhood Conservation Overlay
District Chapter 19.25

PREPARED BY

Dennis J. Enslinger
Assistant City Administrator
Date: December 13, 2012

ORDINANCE 2266

AN ORDINANCE ADDING A CHAPTER 19.25 ENTITLED "OVERLAY ZONING DISTRICTS"

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

Section I. Planning Commission Recommendation.

After having received a recommendation from the Planning Commission and proper notice having been published and hearing held on December 4, 2012, as provided by law and under the authority of and subject to the provisions of the Zoning Regulations of the City of Prairie Village, Kansas, the Zoning Ordinance is amended as set forth in Section II.

Section II. Adding Chapter 19.25

Chapter 19.25 of the Prairie Village Municipal Code, entitled "Overlay Zoning Districts" is hereby added to read as follows:

19.25 OVERLAY ZONING DISTRICTS

19.25.005 Overlay Districts Overlay Districts are tools for dealing with special situations or accomplishing special zoning goals. As the name implies, Overlay Districts are "overlaid" on Base District classifications to alter the Base Zoning District regulations. Overlay Districts are shown on the Official Zoning District Map as suffixes to the applicable Base Zoning District classification. For example, an R-1a -zoned Parcel that is included in the Neighborhood Conservation Overlay Districts would be shown on the map as R-1a-NC.

19.25.010 Districts Established The following Overlay Zoning Districts are included in this Zoning Code:

District Name	Map Symbol
Neighborhood Conservation Overlay	NC

19.25.015 Purpose

The NC, Neighborhood Conservation Overlay District, is intended to:

- (1) encourage development that conforms to the size, orientation and setting of existing buildings in a neighborhood or area;
- (2) reduce the need for zoning variances for development that conforms to the size, orientation and setting of existing buildings in a neighborhood or area;
- (3) provide building setbacks, lot dimensions and related physical characteristics; and
- (4) foster development that is compatible with the scale and physical character of original buildings in a neighborhood or area through the use of Development/Design Standards and guidelines.

19.25.020 Selection Criteria

A NC District shall be a geographically defined area that has a significant concentration, linkage or continuity of sites that are unified by physical development, architecture or historical development patterns. To be eligible for NC zoning, the area shall comply with the following criteria:

- (1) the general pattern of development, including streets, lots and buildings, shall have been established at least 25 years prior to the Effective Date;
- (2) the area shall possess built environmental characteristics that create an identifiable setting, character and association;
- (3) the designated area shall be a contiguous area of at least five (5) acres in size. Areas of less than five (5) acres may be designated as an NC Overlay District only when they abut an existing five (5) acre or greater NC Overlay District.

19.25.025 Establishment of District

NC Zoning Districts are established in accordance with the Zoning Map Amendment procedures of Section 19.52, except as modified by the following provisions:

- (1) an application to establish a NC District may be initiated by the Planning Commission or the Governing Body;
- (2) applications may also be initiated by petition when signed either by the Owner of at least 51% of the area within the proposed NC District or by at least 51% of total number of Landowners within the proposed District;
- (3) the Planning Commission shall hold public hearings and submit written recommendations to the Governing Body, regarding each application to establish a NC District;

- (4) the Planning Commission is responsible for reviewing NC zoning applications for compliance with the selection criteria of Section 19.25.010 and for recommending development/design standards and guidelines for the District;
- (5) the Planning Commission is responsible for reviewing NC applications for its planning and zoning implications; and
- (6) the Governing Body is responsible for making a final decision to approve or deny the Overlay District Zoning.

19.25.030 Procedure

Upon receipt of an application for NC zoning or upon initiation of a NC zoning application by the Governing Body or Planning Commission, the following procedures apply:

- (1) unless otherwise expressly stated, the zoning map amendment procedures of Chapter 19-52 apply;
- (2) public hearings on NC zoning applications shall be held by the Planning Commission prior to consideration by the Governing Body; and
- (3) the Planning Commission shall make a recommendation that NC District zoning be approved, approved with conditions or denied. The Planning Commission's recommendation shall be submitted to the Governing Body. The item shall be placed on the Governing Body agenda after receipt of the Planning Commission's recommendation. The recommendation shall be accompanied by a report containing the following information:
 - (i) an explanation of how the area meets or does not meet the selection criteria contained in Section 19.25.010;
 - (ii) in the case of an area found to meet the criteria in Section 19.25.010:
 - a. a description of the general pattern of development, including Streets, Lots and Buildings in the area; and
 - b. Development/Design Standards to guide development within the District;
 - (iii) a map showing the recommended boundaries of the NC District; and
 - (iv) a record of the proceedings before the Planning Commission;

19.25.035 Allowed Uses

NC District Classifications do not affect the use of land, buildings or structures. The use regulations of the Base Zoning District control.

19.25.040 Development/Design Standards

In establishing a NC District, the Planning Commission are authorized to propose, and the Governing Body is authorized to adopt, by ordinance, District-Specific Development and Design Standards (referred to herein as “Development/Design Standards”) to guide development and redevelopment within NC Districts:

- (1) when Development/Design Standards have been adopted, all exterior modifications requiring a city permit or approval within the designated NC District shall comply with those standards;
- (2) when there are conflicts between the Development/Design Standards of the Base Zoning District and adopted NC District Development/Design standards, the UC Development/Design Standards will govern;
- (3) the Development/Design Standards will be administered by City staff in accordance with adopted administrative policy.

19.25.045 Appeals

- (1) notwithstanding the procedure set forth in Section 19.54, a person aggrieved by a decision of the City staff, determining whether the Development/Design Standards have been met, may file a written appeal with the Neighborhood Conservation Overlay District Appeals Committee. The appeal shall be filed within ten (10) working days after the decision has been rendered.
 - (i) after the appeal before the Neighborhood Conservation Overlay District Appeals Committee has been filed, the one representative from the Planning Commission (appointed by the Chair) along with two representatives from the affect NC Overlay District area (appointed by the HOA Board or the Mayor in the absence of an active Homes Association) shall hold a public meeting to make a determination if the proposed modification meets the NC Development/Design Standards. The two representatives shall be appointed by the Homes Association Board in which the NC Overlay District is located. In the absence of a Homes Association Board, the Mayor shall appoint the two representatives from a list of property owners within the NC Overlay District.
- (2) a person aggrieved by a decision of the Planning Commission, determining whether the Development/Design Standards have been met, may file a written appeal with the Board of Zoning Appeals. The appeal shall be filed within ten (10) working days after the decision has been rendered.
- (3) the Board of Zoning Appeals is the final decision-making authority in determining whether a proposed project meets the adopted Development/Design Standards.

- (4) the Board of Zoning Appeals has no authority to grant interpretations, exceptions or variances from the adopted Development/Design Standards.
- (5) within thirty days after the Board of Zoning Appeal’s final decision, in passing upon an appeal pursuant to this Section, any person aggrieved by the decision may file an action in District Court to determine the reasonableness of the decision.

19.25.050 NC Districts Established

As NC Districts are established by Ordinance, this section will be updated by reference to such NC Districts in the following table:

Neighborhood Conservation District Name	General Boundaries	Ordinance No.

19.25.055 NC District Development/Design Standards Established

As NC District Development/Design Standards and Administrative Policies are established by Ordinance, this section will be updated by reference to such standards and policies in the following table:

Neighborhood Conservation District Name	Design Standards and Administrative Policies	Ordinance No.

19.25.060 RESERVED FOR INCORPORATION BY REFERENCE OF “DESIGN GUIDELINES ADOPTED

Section III

This ordinance shall take effect and be in force effective upon publication.

PASSED AND APPROVED THIS 17th day of December, 2012

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

ATTEST:
/s/ Joyce Hagen Mundy
 Joyce Hagen Mundy
 City Clerk

APPROVED AS TO FORM:
/s/ Catherine P. Logan
 Catherine P. Logan
 City Attorney

PLANNING COMMISSION MINUTES
December 4, 2012
Excerpt

PUBLIC HEARINGS

**PC2012-09 Proposed revisions to Zoning Regulations adding Chapter 19.25 entitled
“Overlay Zoning Districts”**

The City of Prairie Village has been looking at ways to assist homes associations with the issues involved with the construction of additions and new homes within existing residential areas. The City’s Homes Association Committee discussed several ways to assist homes associations with these issues. An outgrowth of this work has been the idea of a conservation overlay district which would address design issues within a specific neighborhood.

In 2010, the City Council directed staff to work with the Countryside East Homes Association in the development of a neighborhood conservation overlay district and the development of development/design standards. It was decided the Countryside East Homes association would be the initial model for the development of this tool.

Dennis Enslinger presented the proposed enabling language for the Neighborhood Conservation Overlay District which sets forth the criteria for the establishment of neighborhood conservation overlay districts, the use of development/design standards and the appeal process.

The process allows for the Planning Commission, Governing Body, or at least 51% percent of the property owners within the proposed area to initiate the establishment of a district. There would be a formal hearing process before the Planning Commission who would make a recommendation to the Governing Body. The Governing Body would then have the final authority for the approval of each district. The area must be at least 25 years or older, minimum of 5 acres, and have “built environmental characteristics that create an identifiable setting, character or association.”

Projects subject to review would be reviewed at the City staff level for compliance with the approved development/design standards. If staff determines the project is not in compliance with the standards, the applicant could appeal the decision. The current draft language has a two-stage appeal process.

Staff, in consultation with the several homes associations, felt that it was important to have some input from the property owners within the overlay district during the in the appeal process. Therefore, the first appeal would consist of one member from the Planning Commission (appointed by the Chair) and two members from the participating neighborhood association (appointed by the homes association which is covered under the overlay district).

To comply with legal requirements, there must be a final appeal body which has final authority to review the decision of the first appeal body. The current draft establishes this body as the Board of Zoning Appeals.

The proposed new language would read as follows:

19.25 OVERLAY ZONING DISTRICTS

19.25.005 Overlay Districts **Overlay Districts** are tools for dealing with special situations or accomplishing special zoning goals. As the name implies, **Overlay Districts** are "overlaid" on **Base District** classifications to alter the **Base Zoning District** regulations. **Overlay Districts** are shown on the **Official Zoning District Map** as suffixes to the applicable **Base Zoning District** classification. For example, an R-1a -zoned **Parcel** that is included in the Neighborhood Conservation **Overlay Districts** would be shown on the map as R-1a-NC.

19.25.010 Districts Established The following **Overlay Zoning Districts** are included in this Zoning Code:

District Name	Map Symbol
Neighborhood Conservation Overlay	NC

19.25.015 Purpose

The NC, Neighborhood Conservation **Overlay District**, is intended to:

- (1)** encourage development that conforms to the size, orientation and setting of existing buildings in a neighborhood or area;
- (2)** reduce the need for zoning variances for development that conforms to the size, orientation and setting of existing buildings in a neighborhood or area;
- (3)** provide building setbacks, lot dimensions and related physical characteristics; and
- (4)** foster development that is compatible with the scale and physical character of original buildings in a neighborhood or area through the use of Development/Design Standards and guidelines.

19.25.020 Selection Criteria

A NC District shall be a geographically defined area that has a significant concentration, linkage or continuity of sites that are unified by physical development, architecture or historical development patterns. To be eligible for NC zoning, the area shall comply with the following criteria:

- (1)** the general pattern of development, including streets, lots and buildings, shall have been established at least 25 years prior to the **Effective Date**;

- (2) the area shall possess built environmental characteristics that create an identifiable setting, character and association;
- (3) the designated area shall be a contiguous area of at least five (5) acres in size. Areas of less than five (5) acres may be designated as an NC [Overlay District](#) only when they abut an existing five (5) acre or greater NC [Overlay District](#).

19.25.025 Establishment of District

NC [Zoning Districts](#) are established in accordance with the Zoning Map Amendment procedures of Section 19.52, except as modified by the following provisions:

- (1) an application to establish a NC District may be initiated by the Planning Commission or the Governing Body;
- (2) applications may also be initiated by petition when signed either by the Owner of at least 51% of the area within the proposed NC District or by at least 51% of total number of Landowners within the proposed District;
- (3) the Planning Commission shall hold public hearings and submit written recommendations to the Governing Body, regarding each application to establish a NC District;
- (4) the Planning Commission is responsible for reviewing NC zoning applications for compliance with the selection criteria of Section 19.25.010 and for recommending development/design standards and guidelines for the District;
- (5) the Planning Commission is responsible for reviewing NC applications for its planning and zoning implications; and
- (6) the Governing Body is responsible for making a final decision to approve or deny the [Overlay District](#) Zoning.

19.25.030 Procedure

Upon receipt of an application for NC zoning or upon initiation of a NC zoning application by the Governing Body or Planning Commission, the following procedures apply:

- (1) unless otherwise expressly stated, the zoning map amendment procedures of Chapter 19-52 apply;
- (2) public hearings on NC zoning applications shall be held by the Planning Commission prior to consideration by the Governing Body; and
- (3) the Planning Commission shall make a recommendation that NC District zoning be approved, approved with conditions or denied. The Planning Commission's

recommendation shall be submitted to the Governing Body. The item shall be placed on the Governing Body agenda after receipt of the [Planning Commission's](#) recommendation. The recommendation shall be accompanied by a report containing the following information:

- (i) an explanation of how the area meets or does not meet the selection criteria contained in Section 19.25.010;
- (ii) in the case of an area found to meet the criteria in Section 19.25.010:
 - a. a description of the general pattern of development, including Streets, Lots and Buildings in the area; and
 - b. Development/Design Standards to guide development within the District;
- (iii) a map showing the recommended boundaries of the NC District; and
- (iv) a record of the proceedings before the Planning Commission;

19.25.035 Allowed Uses

NC District Classifications do not affect the use of land, buildings or structures. The use regulations of the [Base Zoning District](#) control.

19.25.040 Development/Design Standards

In establishing a NC District, the Planning Commission are authorized to propose, and the Governing Body is authorized to adopt, by ordinance, District-Specific Development and Design Standards (referred to herein as "Development/Design Standards") to guide development and redevelopment within NC Districts:

- (1) when Development/Design Standards have been adopted, all exterior modifications requiring a city permit or approval within the designated NC District shall comply with those standards;
- (2) when there are conflicts between the Development/Design Standards of the [Base Zoning District](#) and adopted NC District Development/Design standards, the UC Development/Design Standards will govern;
- (3) the Development/Design Standards will be administered by City staff in accordance with adopted administrative policy.

19.25.045 Appeals

- (1) notwithstanding the procedure set forth in Section 19.54, a person aggrieved by a decision of the City staff, determining whether the Development/Design Standards have been met, may file a written appeal with the Neighborhood

Conservation Overlay District Appeals Committee. The appeal shall be filed within ten (10) working days after the decision has been rendered.

- (i) after the appeal before the Neighborhood Conservation Overlay District Appeals Committee has been filed, the one representative from the Planning Commission (appointed by the Chair) along with two representatives from the affect NC Overlay District area (appointed by the HOA Board or the Mayor in the absence of an active Homes Association) shall hold a public meeting to make a determination if the proposed modification meets the NC Development/Design Standards. The two representatives shall be appointed by the Homes Association Board in which the NC Overlay District is located. In the absence of a Homes Association Board, the Mayor shall appoint the two representatives from a list of property owners within the NC Overlay District.
- (2) a person aggrieved by a decision of the Planning Commission, determining whether the Development/Design Standards have been met, may file a written appeal with the Board of Zoning Appeals. The appeal shall be filed within ten (10) working days after the decision has been rendered.
- (3) the Board of Zoning Appeals is the final decision-making authority in determining whether a proposed project meets the adopted Development/Design Standards.
- (4) the Board of Zoning Appeals has no authority to grant interpretations, exceptions or variances from the adopted Development/Design Standards.
- (5) within thirty days after the Board of Zoning Appeal's final decision, in passing upon an appeal pursuant to this Section, any person aggrieved by the decision may file an action in District Court to determine the reasonableness of the decision.

19.25.050 NC Districts Established

The following NC Districts are established:

Neighborhood Conservation District Name	Boundaries
Countryside East Neighborhood	See Ordinance No.

19.25.055 NC District Development/Design Standards Established

The following NC District Development/Design Standards and Administrative Policies are established:

Neighborhood Conservation District Name	Design Standards and Administrative Policies
Countryside East Neighborhood	Design Guidelines Countryside East Homes Association 2012

19.25.060 INCORPORATION BY REFERENCE OF “DESIGN GUIDELINES COUNTRYSIDE EAST HOMES ASSOCIATION 2012 EDITION”

The “Design Guidelines Countryside East Homes Association 2012 Edition” including a boundary map prepared compiled, published and promulgated by the City of Prairie Village, Kansas is hereby adopted and incorporated by reference as if fully set forth herein, and shall be known as the “Design Guidelines Countryside East Homes Association 2012 Edition”. At least one copy of said text amendments and boundary map shall be marked or stamped as “Official Copy as Adopted by Ordinance No. ???? and to which shall be attached a copy of this ordinance, and filed with the City Clerk, to be open to inspection and available to the public at all reasonable business hours.

Nancy Wallerstein asked for clarification on the definition of a Neighborhood Conservation Overlay District. Mr. Enslinger responded there is not a specific definition. An area must meet the selection criteria of an area of at least five acres, possess an identifiable setting, character and association and have been established for at least 25 years. Also 51% of the landowners directly impacted must support the proposed district. He noted it could be an entire homes association as in the case of Countryside East or part of a homes’ association.

Nancy Vennard confirmed the proposed language does not establish a neighborhood conservation overlay, but sets in place the language for an application to be made for the establishment of one and does not relate to a particular project or area.

Ken Vaughn asked who would work with the neighborhoods wanting to establish a district. Mr. Enslinger replied it would be someone from the City’s Planning staff, probably himself or Mr. Williamson.

Chairman Ken Vaughn opened the public hearing for comments asking individuals wishing to address the Commission to come to the podium and give their name and address prior to making comment.

Dan Bloom, 54008 West 64th Terrace, spoke on behalf of the Town & Country Homes Association who will be submitting for the first neighborhood Conservation Overlay District in support of the proposed revision to the code. He noted they took their final plan before their association at its last meeting and have 100% support for the district. Mr. Bloom reviewed the process followed beginning with the discussion of the concept at the Homes Association Committee three years ago. He feels this option gives homes association with a way to address outdated or unclear deed restrictions. He noted that

many times homes association boards do have members with the expertise and experience to address these issues and expressed appreciation for the support of Mr. Enslinger in the development of their district.

In their situation, they are not recreating deed restrictions, but providing a backup for the enforcement of deed restrictions while providing flexible guidelines while maintaining consistency throughout the neighborhood in the review and approval of proposed improvements while keeping in place the character of their neighborhood.

Dennis Enslinger noted an e-mail communication received from Loring Leifer in opposition to the proposed zoning regulations.

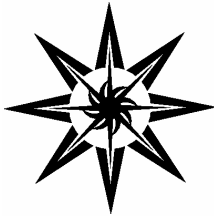
With no further comments the public hearing was closed at 7:32 p.m.

Nancy Vennard asked if there would be any fees other than the permit assessed. Mr. Enslinger stated that staff does not foresee any additional fees, but that will be a Council decision. Mrs. Vennard noted that during the development stage additional city staff time will be required. Mr. Enslinger agreed but noted the review process will not require extra time and can be handled by staff in conjunction with the building permit review.

Bob Lindeblad moved the Planning Commission recommend the Governing Body adopt the proposed change to the zoning code by adding Section 19.25 entitled "Overlay Zoning Districts". The motion was seconded by Nancy Wallerstein and passed unanimously.

Bob Lindeblad expressed his appreciation to the Board of Countryside East for their past three years of work to get the City to this point and commended them for their well thought-out guidelines and process.

Dennis Enslinger announced that this will go forward to the City Council on Monday, December 17th.



PLANNING COMMISSION

City Council Meeting Date: December 17, 2012

Consider Initiation of the Countryside East Neighborhood Overlay District and Direct the Planning Commission to Set the Public Hearing for Consideration

RECOMMENDATION:

Staff recommends that the City Council Initiate the Countryside East Neighborhood Overlay District and direct the Planning Commission to set a public hearing.

MOTION:

I move that the Governing Body initiate the Countryside East Neighborhood Overlay District pursuant to Chapter 19.25 of the Prairie Village Municipal Code and direct the Planning Commission to set a public hearing for its consideration.

BACKGROUND:

The City of Prairie Village has been looking at ways to assist homes associations with potential issues that arise with the construction of additions and new homes within existing residential areas. The City has already implemented a process for notifying homes associations of projects which will significantly alter the exterior of the structure (porches, etc.) or add additional square footage.

Council members Michael Kelly, Laura Wassmer and Dale Warman have been also working with the City's Homes Association Committee to develop other methods to assist homes associations with these issues. An outgrowth of this work has been the idea of a conservation overlay district which would address design issues within a specific neighborhood.

In 2010, the City Council directed staff to work with the Countryside East Homes Association in the development of a neighborhood conservation overlay district and the creation of development/design standards. It was decided the Countryside East Homes Association would be the initial model for the development of this tool.

DISCUSSION:

Under Chapter 19.25 Neighborhood Conservation Overlay District the Planning Commission, Governing Body, or at least 51% percent of the property owners within the proposed area can initiate the establishment of a district.

After initiation of a proposed Neighborhood Conservation Overlay District, there would be a formal hearing process before the Planning Commission who would make a recommendation to the Governing Body. The Governing Body would then have the final authority to approve the district. The area must be at least 25 years or older, minimum of 5 acres, and have “built environmental characteristics that create an identifiable setting, character or association.”

The proposed Countryside East Neighborhood Conservation Overlay District meets the minimum criteria for establishment. In addition, the Countryside East neighborhood has developed design standards/design guidelines related to the establishment of the district. The proposed guidelines are attached.

ATTACHMENTS:

Proposed Countryside East Neighborhood Conservation Overlay District Design Guidelines

PREPARED BY

Dennis J. Enslinger
Assistant City Administrator
Date: December 13, 2012



**DESIGN GUIDELINES
COUNTRYSIDE EAST HOMES ASSOCIATION
2012**

Table of Contents

INTRODUCTION FROM THE COUNTRYSIDE EAST HOMES ASSOCIATION..... 1

PURPOSE OF THE DESIGN GUIDELINES..... 2

REVIEW PROCEDURE FUNDAMENTALS..... 3 - 4

DESIGN GUIDELINES..... 5 - 10

APPENDIX A: BOUNDARY MAP AND LEGAL DESCRIPTION..... 11 - 19

APPENDIX B: PROPERTY ADDRESSES..... 20 - 22

**APPENDIX C: CROSS REFERENCE BETWEEN THE CSE HOA COVENANTS AND THE
OVERLAY DISTRICT GUIDELINES..... 23 - 24**

Public Hearing Draft

INTRODUCTION FROM THE COUNTRYSIDE EAST HOMES ASSOCIATION

The Countryside East Homes Association believes that the interests of current and future residents are served by the neighborhood's partnership with the City of Prairie Village to create and apply an Overlay District that will provide guidelines for future growth.

It is the goal of the CEHA board and the neighborhood to allow and encourage investment into our residential homes so they meet the needs of families for years to come. Encouraging that investment requires a flexible approach to regulating new construction and remodeling that allows expansion of the homes to satisfy space preferences, while not dictating a particular architectural style, but maintains the character of the neighborhood and protects the investment of current residents. To this end, CEHA believes that the Overlay Criteria provide clear guidance to homeowners regarding permissible home expansion and account for professional review of plans so that the criteria are evenly enforced. The appeals process allows a reasonable appeal from administrative decisions while including neighborhood input.

The Overlay District, as it addresses the major question of scale for new construction, has several advantages over review by the board through the deeded restrictions: The review of plans will be professionally and expertly administered by a constant and consistent presence of city staff; the guidelines themselves prevent construction that overwhelms the neighborhood and is inconsistent with its 60-year character; the amendment process allows greater flexibility in adapting to future development; the overlay criteria express the spirit and intent of the deeded restrictions in clear, modern language and illustration.

Specifically, the deeded restrictions primary clause limiting construction to 1.5 story was in jeopardy by recent court actions. The overlay guidelines provide a clear, enforceable alternative that maintains the spirit of the restriction.

The neighborhood's residents have enthusiastically supported this direction at each juncture.

PURPOSE OF THE DESIGN GUIDELINES

The purpose of the *Countryside East Homes Association Design Guidelines* is to provide guidance and information for property owners who propose to undertake renovation, rehabilitation, maintenance, new construction, or demolition projects within the boundaries of the Neighborhood Conservation Overlay District (see map, page 11).

In sum, the Countryside East Homes Association Design Guidelines were developed to satisfy three main purposes:

1. To ensure that development within the boundaries of the Countryside East Homes Association, including new construction, as well as, certain exterior alterations to existing buildings, takes place in such a way as to maintain and enhance Countryside East Neighborhood's unique character and scale.
2. To provide City staff, Neighborhood Overlay District Appeals Committee and the Board of Zoning Appeals with criteria upon which to base decisions when issuing Certificates of Appropriateness.
3. To provide design guidance to property owners, architects, or developers who plan to build, demolish, or make exterior changes to buildings within the Countryside East Homes Association area.

REVIEW PROCEDURE FUNDAMENTALS

A property owner whose property lies within the Countryside East Neighborhood Overlay District must submit building plans for new home construction or exterior modification, when requiring a building permit, to the city codes department for review to determine compliance with Overlay District guidelines.

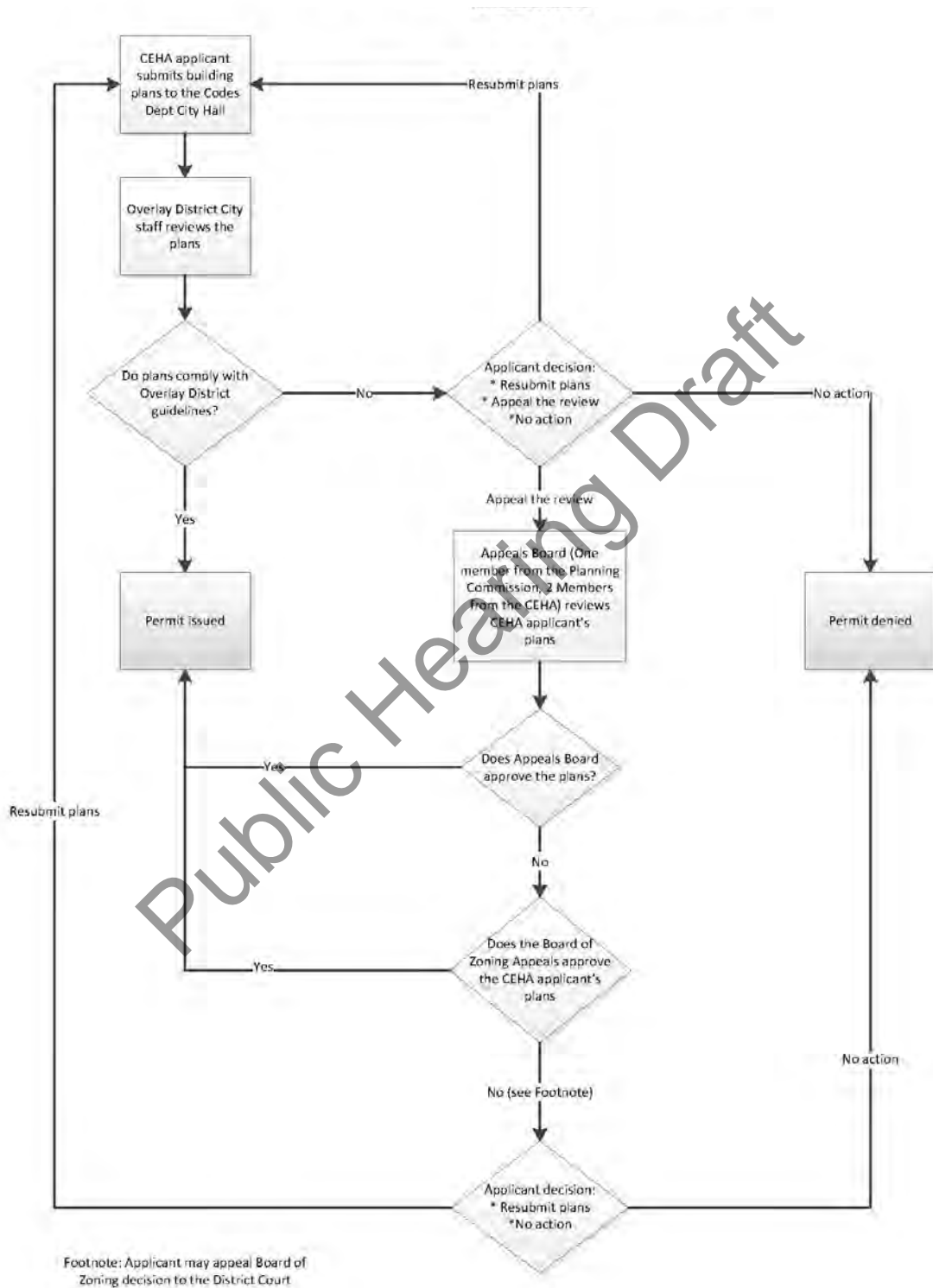
The city's Overlay District staff will review the plans to verify compliance with the Countryside East Overlay District criteria. Should the plans conform to the guidelines and other city requirements, the relevant permit will be issued, and work may begin.

In the event the proposed plans do not conform to the Countryside East Neighborhood Overlay District Guidelines, city staff will provide detailed feedback to the applicant and work constructively with them to modify plans to meet the established design guidelines

In the cases where, despite these efforts, plans are still not in compliance with the Overlay District's criteria, the applicant may appeal the city staff's determination that the proposed construction does not meet the established design guidelines. Appeals will be heard by an Overlay District appeals board, which shall consist of one member of the city's Planning Commission (appointed by the Chair) plus two members appointed by the board of directors of the Countryside East Homes Association. The appeals board may find that the proposed construction meets the established guidelines and grant the permit; determine that the proposed construction does not meet the established guidelines or request further modifications to the plans.

If the Overlay appeals board determines that the proposed construction does not meet the established guidelines, the applicant may file a further appeal to the city's Board of Zoning Appeals. If the Board of Zoning Appeals determines that the proposed construction does not meet the established guidelines the applicant may seek relief in the district court.

CEHA / OVERLAY DISTRICT BUILDING APPLICATION PROCESS FLOWCHART



DESIGN GUIDELINES

1. A maximum 5-foot knee wall height on upper story will be allowed on front of home. (fig 1.2 & 5.1)
2. Minimum 66% of original eave line must be maintained on front of home. (fig 1.1 & 1.2)
3. Minimum 10% of new home or renovated portion of front of home must contain windows.* (fig 2.3)
** The intent is for any new construction or renovated areas to contain an aesthetically appropriate amount of windows. It is not to force homeowners to alter the front of their home not changed by the renovation.*
4. Gabled roofs facing the street must match existing roof slopes on front of home, excluding dormers. (fig 2.3)
5. For a 3-car garage on home front, at least 1 bay must be in a different plane. (fig 3.1)
6. For a split-level home, an addition above existing upper level is not allowed. (fig 4.1)
7. In the case of a new home, predominate eave line on the front of the home must be within 2' of the highest neighboring eave line. (fig 2.2)
8. The plots in Countryside East shall be used for private dwellings only and each dwelling shall be designed only for occupancy by a single family.
9. No garage or outbuilding shall be used as a residence or living quarters.
10. No building structure shall be commenced or erected until acceptable plans are submitted for Overlay District approval with the City of Prairie Village.
11. No outbuilding shall exceed the dwelling in height or number of stories. The size of an outbuilding is limited to 50 percent of the width of the lot measured along the rear line. Any outbuilding, except a greenhouse, shall correspond in style and architecture to the dwelling and shall be of the same exterior materials.

12. No dwelling or any part thereof shall be erected nearer to the adjoining street than the building limit line shown on the recorded plat. Stoops, porches, balconies and terraces that are not enclosed, may extend no more than 6 feet beyond the limit line. Architectural appurtenances may extend no more than 4 feet beyond the limit line.

13. No part of any dwelling shall be erected nearer to the side property line than 12 ½ percent of the width of the property at the front property line.

14. No dwelling shall exceed 1½ stories. A house – new construction or remodel - that meets the restrictions numbered 1 through 7 above shall be deemed to meet the 1½ story restriction.

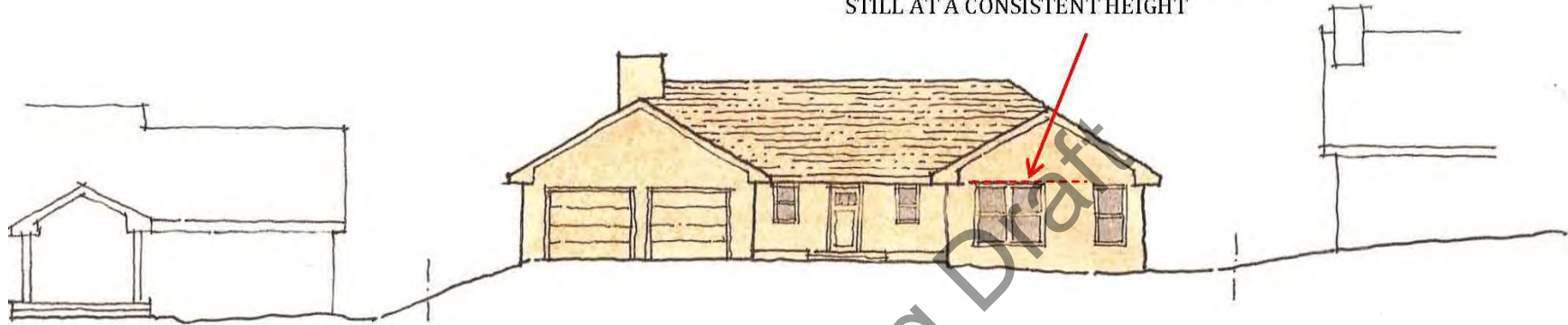
15. Houses must have a ground floor minimum square footage (excluding garages and porches) based on the frontage length of the property as follows:

<i>Frontage of:</i>	<i>1 story</i>	<i>1.5 story</i>
70-80 feet	900 sq ft	700 sq ft
80-90 feet	1000 sq ft	750 sq ft
90-100 feet	1100 sq ft	750 sq ft
100 feet or over	1200 sq ft	800 sq ft

Good neighbor considerations:

The mass and scale of the addition or new home should be respectful of neighboring eave and ridge lines and should not “tower” over the neighboring homes. Examples of both good neighbor designs and plans that do not fit well with the neighboring homes can be seen in figures 2.3, 3.1 and 4.1.

EAVE LINE - THOUGH BROKEN BY GABLE - IS STILL AT A CONSISTENT HEIGHT



Existing Ranch with a 2 Car Garage on 85' Lot

Figure 1.1



Existing Ranch with a 1 Car Garage on 85' Lot

Figure 2.1

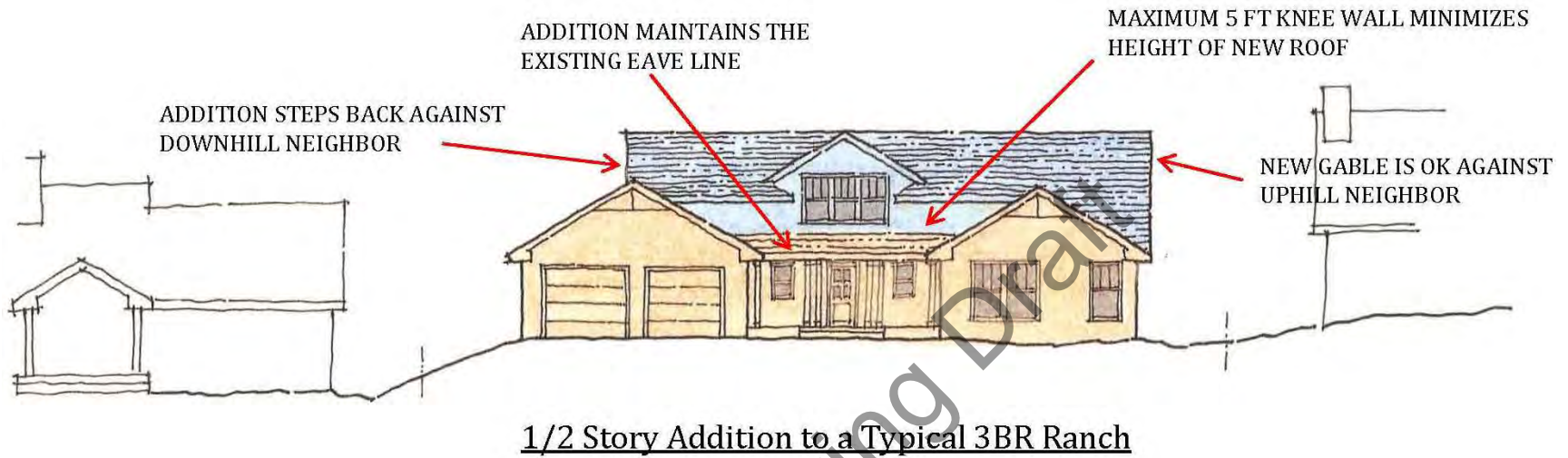


Figure 1.2

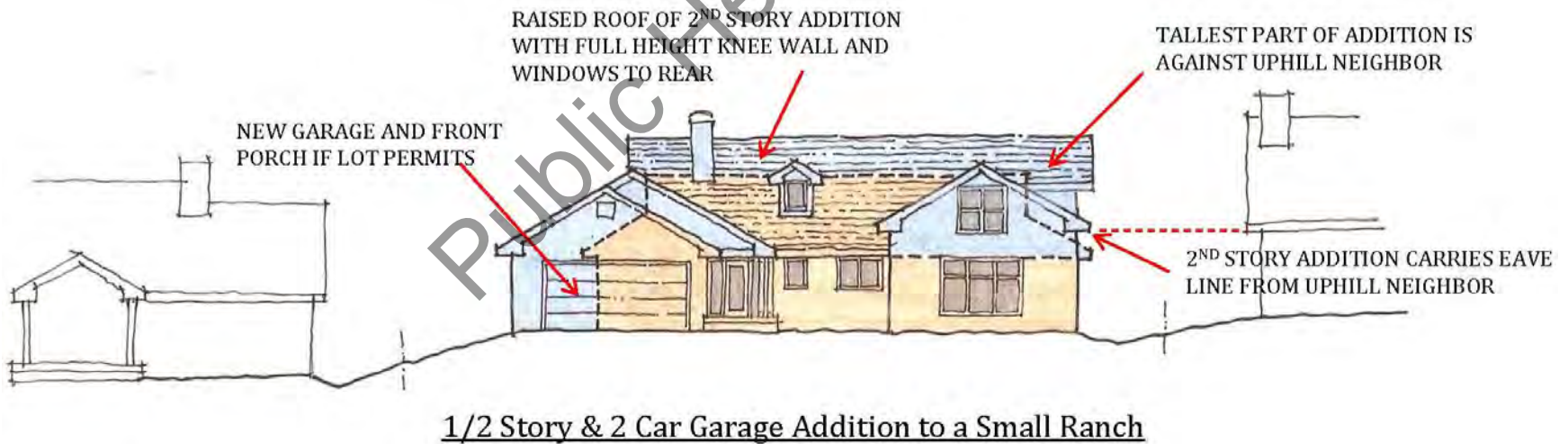
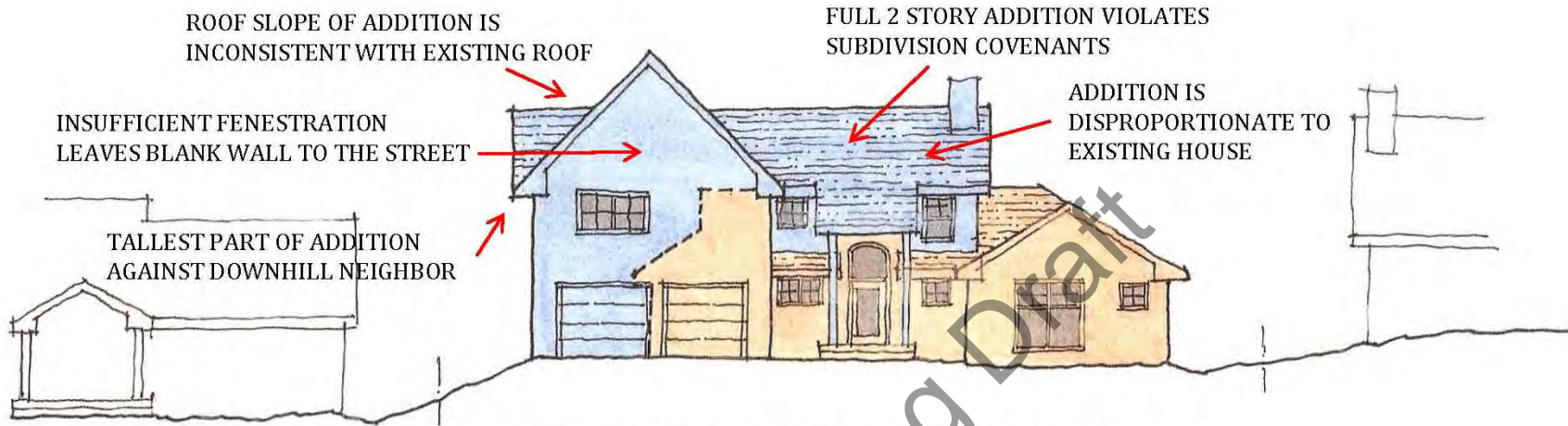
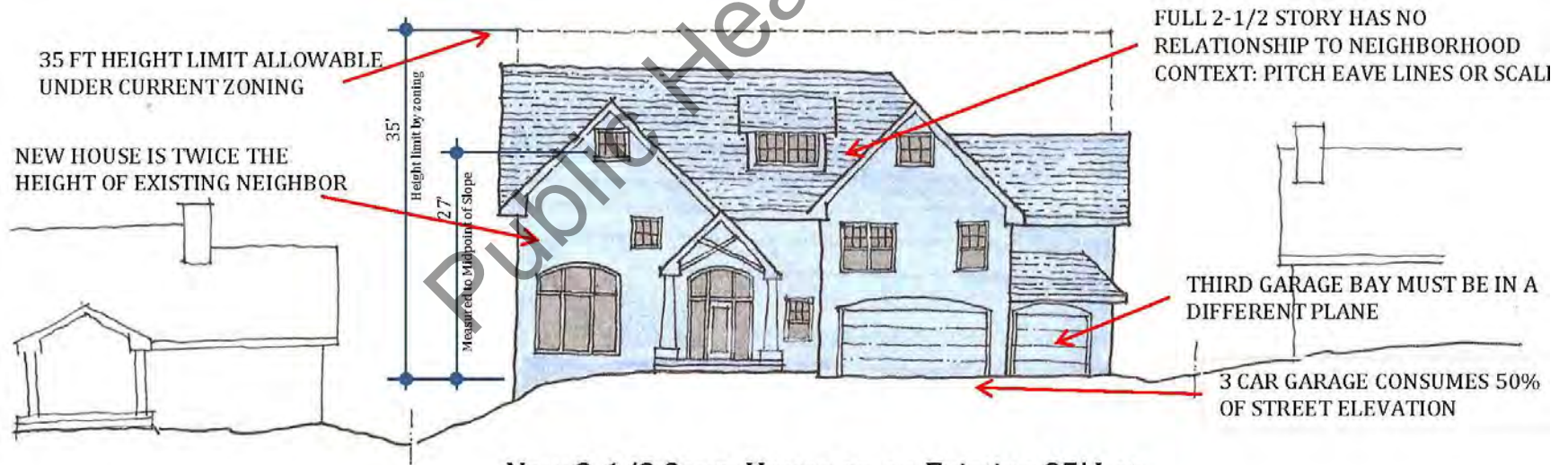


Figure 2.2



Full 2nd Story Addition to a Small Ranch

Figure 2.3



New 2-1/2 Story House on an Existing 85' Lot

Figure 3.1

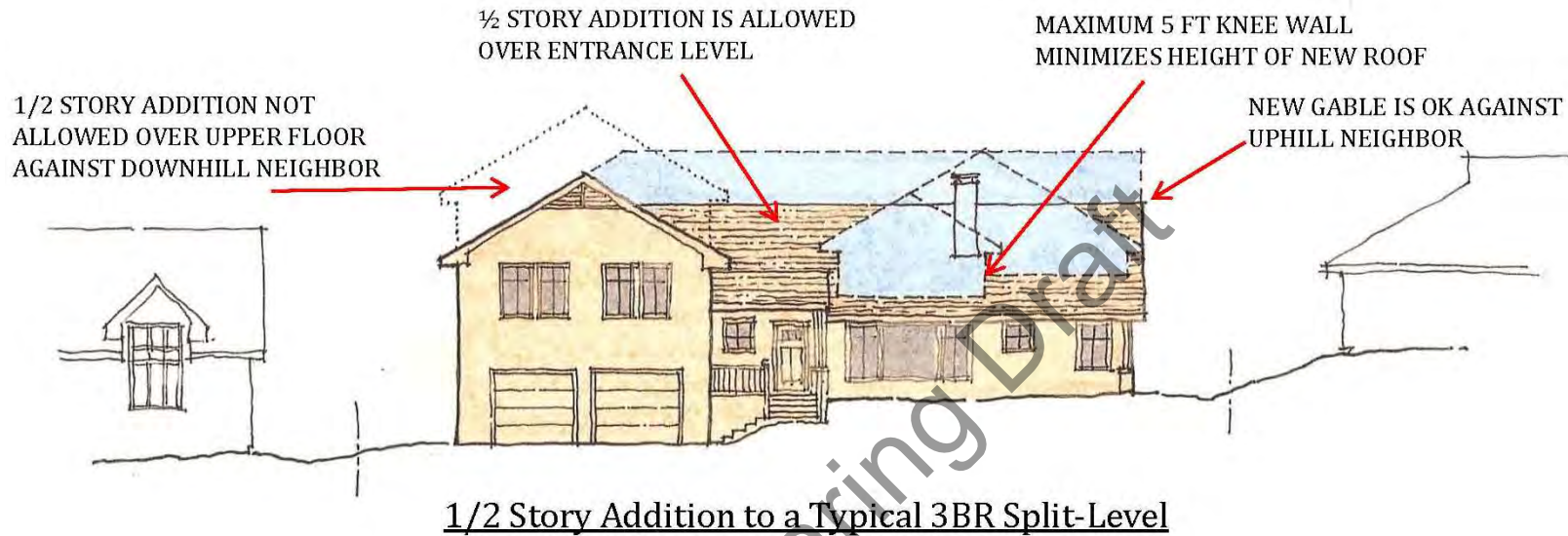
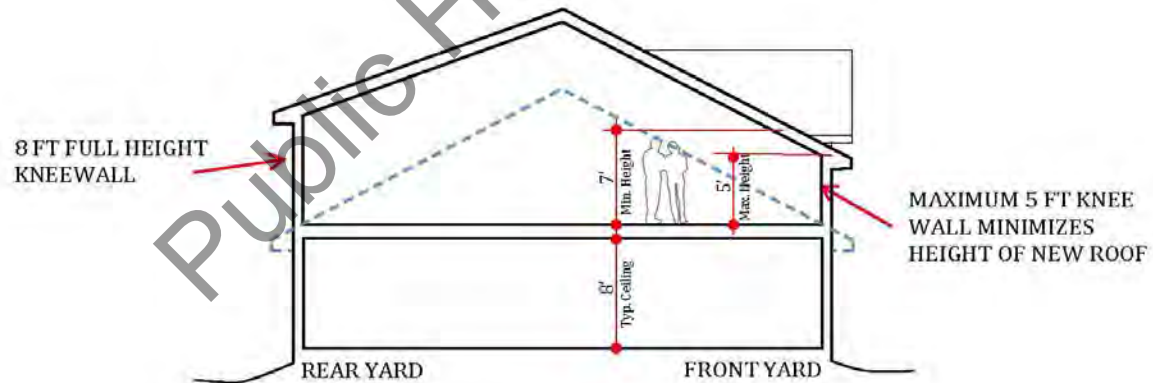


Figure 4.1



Section Through Allowable 1/2 Story Attic Addition

Figure 5.1

(Currently being developed)



West Hill LOT 1 PVC-0438 0001
West Hill LOT 9 PVC-0438 0009
West Hill LOT 20 PVC-0438 0020
West Hill LT 24 EX ELY 3' & EXWLY TRI TR 10.30' ON S PVC-0438 0024
West Hill LOT 2 PVC-0438 0002
West Hill LOT 10 PVC-0438 0010
West Hill LOT 21 & TRACT 10 FT X 130.9 FT SE 1/4 NW 1/4 16-12-25 ADJ LOT 21 ON E PVC-0438 0021
West Hill LOT 19 PVC-0438 0019
West Hill LOT 11 PVC-0438 0011
West Hill LOT 3 PVC-0438 0003
West Hill LOT 8 PVC-0438 0008
West Hill LOT 18 PVC-0438 0018
West Hill LOT 23 & TRI TRACT LOT 24 BEG NW COR S 135.46 FT E 10.3 FT & N TO BEG PVC-0438 0023
West Hill LOT 12 PVC-0438 0012
West Hill LOT 17 PVC-0438 0017
West Hill LOT 4 PVC-0438 0004
West Hill LOT 13 PVC-0438 0013
West Hill LOT 7 PVC-0438 0007
West Hill NLY 5' LT 15 & ALL LT 16 PVC 438 15A
West Hill LOT 22 PVC-0438 0022
West Hill LOT 5 PVC-0438 0005
West Hill LOT 14 PVC-0438 0014
West Hill LOT 15 EX NLY 5 FT PVC-0438 0015
West Hill LOT 6 PVC-0438 0006
COUNTRYSIDE-EAST LT 1 BLK 7 PVC 422C 13
COUNTRYSIDE-EAST LT 17 BLK 6 PVC 422C 12A
COUNTRYSIDE-EAST LT 14 BLK 5 PVC 422 2
COUNTRYSIDE-EAST LT 12 BLK 4 PVC 423 64
COUNTRYSIDE-EAST LT 11 BLK 3 PVC 423 44
COUNTRYSIDE-EAST LT 10 BLK 2 PVC 423 25
COUNTRYSIDE-EAST LT 9 BLK 1 PVC 423 9
COUNTRYSIDE-EAST LT 26 BLK 7 PVC 422B 13
COUNTRYSIDE-EAST LT 12 BLK 6 PVC 422C 12
COUNTRYSIDE-EAST LT 12 BLK 5 PVC 422C 11
COUNTRYSIDE-EAST LT 11 BLK 4 PVC 423 63
COUNTRYSIDE-EAST LT 10 BLK 3 PVC 423 43
COUNTRYSIDE-EAST LT 9 BLK 2 PVC 423 24
COUNTRYSIDE-EAST LT 8 BLK 1 PVC 423 8
COUNTRYSIDE-EAST LT 12 BLK 3 PVC 423 45
COUNTRYSIDE-EAST LT 18 BLK 6 PVC 422C 13
COUNTRYSIDE-EAST LT 15 BLK 5 PVC 422 3

COUNTRYSIDE-EAST LT 13 BLK 4 PVC 423 65
COUNTRYSIDE-EAST LT 11 BLK 2 PVC 423 26
COUNTRYSIDE-EAST LT 11 BLK 5 PVC 422C 10
COUNTRYSIDE-EAST LT 10 BLK 4 PVC 423 62
COUNTRYSIDE-EAST LT 9 BLK 3 PVC 423 42
COUNTRYSIDE-EAST LT 8 BLK 2 PVC 423 23
COUNTRYSIDE-EAST LT 7 BLK 1 PVC 423 7
COUNTRYSIDE-EAST LT 2 BLK 7 PVC 422C 14
COUNTRYSIDE-EAST LT 10 BLK 1 PVC 423 10
COUNTRYSIDE-EAST LT 25 BLK 7 PVC 422B 12
COUNTRYSIDE-EAST ELY 5 FT LT 10 & ALL LT 11 BLK 6 PVC 422C 10
COUNTRYSIDE-EAST LT 10 BLK 5 PVC 422C 9
COUNTRYSIDE-EAST LT 9 BLK 4 PVC 423 61
COUNTRYSIDE-EAST LT 8 BLK 3 PVC 423 41
COUNTRYSIDE-EAST LT 19 BLK 6 PVC 422C 14
COUNTRYSIDE-EAST LT 16 BLK 5 PVC 422 4
COUNTRYSIDE-EAST LT 14 BLK 4 PVC 423 66
COUNTRYSIDE-EAST LT 13 BLK 3 PVC 423 46
COUNTRYSIDE-EAST LT 12 BLK 2 PVC 423 27
COUNTRYSIDE-EAST LT 7 BLK 2 PVC 423 22
COUNTRYSIDE-EAST LT 6 BLK 1 PVC 423 6
COUNTRYSIDE-EAST LT 24 BLK 7 PVC 422B 11
COUNTRYSIDE-EAST LT 3 BLK 7 PVC 422C 15
COUNTRYSIDE-EAST LT 13 BLK 2 PVC 423 28
COUNTRYSIDE-EAST LT 11 BLK 1 PVC 423 11
COUNTRYSIDE-EAST ELY 5 FT LT 9 BLK 6 LT 10 EX ELY 5 FT BLK 6 PVC 422C 9 1
COUNTRYSIDE-EAST LT 9 BLK 5 PVC 422C 8
COUNTRYSIDE-EAST LT 7 BLK 3 PVC 423 40
COUNTRYSIDE-EAST LT 20 & ELY 10' LT 21 BLK 6 PVC 422C 15
COUNTRYSIDE-EAST LT 17 BLK 5 PVC 422 5
COUNTRYSIDE-EAST LT 15 BLK 4 PVC 423 67
COUNTRYSIDE-EAST LT 14 BLK 3 PVC 423 47
COUNTRYSIDE-EAST LT 8 BLK 4 PVC 423 60
COUNTRYSIDE-EAST LT 6 BLK 2 PVC 423 21
COUNTRYSIDE-EAST LT 5 BLK 1 PVC 423 5
COUNTRYSIDE-EAST LT 4 BLK 7 PVC 422C 16
COUNTRYSIDE-EAST ALL LT 21 EX ELY 10 FT BLK 6 PVC 422C 16
COUNTRYSIDE-EAST LT 18 BLK 5 PVC 422 6
COUNTRYSIDE-EAST LT 16 BLK 4 PVC 423 68
COUNTRYSIDE-EAST LT 15 BLK 3 PVC 423 48
COUNTRYSIDE-EAST LT 14 BLK 2 PVC 423 29
COUNTRYSIDE-EAST LT 12 BLK 1 PVC 423 12

COUNTRYSIDE-EAST LT 23 BLK 7 PVC 422B 10
COUNTRYSIDE-EAST LT 9 BLK 6 EX ELY 5 FT PVC 422C 9
COUNTRYSIDE-EAST LT 8 BLK 5 PVC 422C 7
COUNTRYSIDE-EAST LT 7 BLK 4 PVC 423 59
COUNTRYSIDE-EAST LT 6 BLK 3 PVC 423 39
COUNTRYSIDE-EAST LT 5 BLK 2 PVC 423 20
COUNTRYSIDE-EAST LT 4 BLK 1 PVC 423 4
COUNTRYSIDE-EAST LT 5 BLK 3 PVC 423 38
COUNTRYSIDE-EAST LT 4 BLK 2 PVC 423 19
COUNTRYSIDE-EAST LT 5 EX W 5 FT BLK 7 PVC 422C 17
COUNTRYSIDE-EAST LT 16 BLK 3 PVC 423 49
COUNTRYSIDE-EAST LT 15 BLK 2 PVC 423 30
COUNTRYSIDE-EAST LT 13 BLK 1 PVC 423 13
COUNTRYSIDE-EAST LT 8 BLK 6 PVC 422C 8
COUNTRYSIDE-EAST LT 7 EX W 10 FT BLK 5 PVC 422C 6 1
COUNTRYSIDE-EAST LT 6 BLK 4 PVC 423 58
COUNTRYSIDE-EAST LT 3 BLK 1 PVC 423 3
COUNTRYSIDE-EAST LT 22 BLK 6 PVC 422C 17
COUNTRYSIDE-EAST LT 19 BLK 5 PVC 422 7
COUNTRYSIDE-EAST LT 17 BLK 4 PVC 423 69
COUNTRYSIDE-EAST ELY 5' LT 21 & ALL LT 22 BLK 7 PVC 422B8 1
COUNTRYSIDE-EAST LT 14 BLK 1 PVC 423 14
COUNTRYSIDE-EAST LT 4 BLK 3 PVC 423 37
COUNTRYSIDE-EAST LT 3 BLK 2 PVC 423 18
COUNTRYSIDE-EAST W 5 FT LT 5 & ALL LT 6 BLK 7 PVC 422C 18
COUNTRYSIDE-EAST LT 17 BLK 3 PVC 423 50
COUNTRYSIDE-EAST LT 16 BLK 2 PVC 423 31
COUNTRYSIDE-EAST LT 21 BLK 7 EX ELY 5 FT PVC 422B 8
COUNTRYSIDE-EAST ELY 3.17 FT LT 6 & ALL LT 7 BLK 6 PVC 422C 7
COUNTRYSIDE-EAST LT 5 BLK 4 PVC 423 57
COUNTRYSIDE-EAST LT 2 BLK 1 PVC 423 2
COUNTRYSIDE-EAST LT 23 BLK 6 PVC 422C 18
COUNTRYSIDE-EAST ALL LT 20 & E 10 FT LT 21 BLK 5 PVC 422 8
COUNTRYSIDE-EAST LT 18 BLK 4 PVC 423 70
COUNTRYSIDE-EAST ALL LT 6 & W 10 FT LT 7 BLK 5 PVC 422C 5
COUNTRYSIDE-EAST LT 3 & E 5' LT 2 BLK 3 PVC 423 35A
COUNTRYSIDE-EAST LT 2 BLK 2 PVC 423 17
COUNTRYSIDE-EAST LT 2 BLK 8 PVC 422B 15
COUNTRYSIDE-EAST LT 7 EX WLY 2.33 FT BLK 7 PVC 422C 19
COUNTRYSIDE-EAST LT 18 BLK 3 PVC 423 51
COUNTRYSIDE-EAST LT 17 BLK 2 PVC 423 32
COUNTRYSIDE-EAST LT 15 BLK 8 PVC 422B 28

COUNTRYSIDE-EAST LT 20 BLK 7 PVC 422B 7
COUNTRYSIDE-EAST ELY 8 FT LT 5 & LT 6 EX ELY 3.17 FT BLK 6 PVC 422C 6
COUNTRYSIDE-EAST LT 4 BLK 4 PVC 423 56
COUNTRYSIDE-EAST LT 5 BLK 5 PVC 422C 4
COUNTRYSIDE-EAST LT 3 BLK 8 PVC 422B 16
COUNTRYSIDE-EAST WLY 2.33 FT LT 7 & LT 8 EX WLY 5 FT BLK 7 PVC 422C 20
COUNTRYSIDE-EAST LT 24 BLK 6 PVC 422C 19
COUNTRYSIDE-EAST LT 19 BLK 4 PVC 423 71
COUNTRYSIDE-EAST LT 14 BLK 8 PVC 422B 27
COUNTRYSIDE-EAST LT 19 BLK 7 PVC 422B 6
COUNTRYSIDE-EAST LT 5 EX E 8 FT BLK 6 PVC 422C 5
COUNTRYSIDE-EAST LT 3 BLK 4 PVC 423 55
COUNTRYSIDE-EAST LT 2 BLK 3 EX E 5 FT PVC 423 35
COUNTRYSIDE-EAST LT 21 EX E 10 FT BLK 5 PVC 422 9 1
COUNTRYSIDE-EAST LT 22 BLK 5 PVC 422 10
COUNTRYSIDE-EAST LT 20 BLK 4 PVC 423 72
COUNTRYSIDE-EAST LT 13 BLK 8 PVC 422B 26
COUNTRYSIDE-EAST LT 18 BLK 7 PVC 422B 5
COUNTRYSIDE-EAST LT 4 BLK 5 PVC 422C 3
COUNTRYSIDE-EAST ALL OF LT 4 & ELY 5 FT OF LT 5 BLK 8 PVC 422B 17
COUNTRYSIDE-EAST W 5 FT LT 8 ALL LT 9 & E 5 FT LT 10 BLK 7 PVC 422C 21
COUNTRYSIDE-EAST LT 25 BLK 6 PVC 422C 20
COUNTRYSIDE-EAST LT 8 BLK 10 PVC 423 85
COUNTRYSIDE-EAST LT 4 BLK 9 PVC 423 77
COUNTRYSIDE-EAST LT 1 BLK 9 PVC 423 74
COUNTRYSIDE-EAST LT 4 BLK 6 PVC 422C 4
COUNTRYSIDE-EAST LT 2 BLK 4 PVC 423 54
COUNTRYSIDE-EAST LT 5 BLK 10 PVC 423 82
COUNTRYSIDE-EAST LT 7 BLK 11 PVC 423 97
COUNTRYSIDE-EAST LT 9 BLK 10 PVC 423 86
COUNTRYSIDE-EAST LT 12 BLK 8 PVC 422B 25
COUNTRYSIDE-EAST LT 17 BLK 7 EX WLY 5 FT PVC 422B 4
COUNTRYSIDE-EAST LT 3 BLK 5 PVC 422C 2
COUNTRYSIDE-EAST LT 5 BLK 8 EX ELY 5 FT PVC 422B 18
COUNTRYSIDE-EAST LT 10 EX E 5 FT BLK 7 PVC 422C 22
COUNTRYSIDE-EAST LT 26 BLK 6 PVC 422C 21
COUNTRYSIDE-EAST LT 23 BLK 5 PVC 422 11
COUNTRYSIDE-EAST LT 3 BLK 6 PVC 422C 3
COUNTRYSIDE-EAST LT 2 BLK 5 PVC 422C 1
COUNTRYSIDE-EAST ALL LT 6 & ELY 5 FT LT 7 BLK 8 PVC 422B 19 BOTA 2350-9
COUNTRYSIDE-EAST LT 11 BLK 7 PVC 422C 23
COUNTRYSIDE-EAST LT 27 EX W 5 FT BLK 6 PVC 422C 22

COUNTRYSIDE-EAST ALL OF LT 8 & E 14 FT OF LT 9 BLK 11 PVC 423 98
COUNTRYSIDE-EAST LT 11 BLK 8 PVC 422B 24
COUNTRYSIDE-EAST LT 16 & WLY 5 FT LT 17 BLK 7 PVC 422B 3
COUNTRYSIDE-EAST LT 2 BLK 6 PVC 422C 2
COUNTRYSIDE-EAST ELY 9' LT 3 & ALL LT 4 BLK 11 PVC 423 93A
COUNTRYSIDE-EAST LT 4 BLK 10 PVC 423 81
COUNTRYSIDE-EAST LT 10 BLK 10 PVC 423 87
COUNTRYSIDE-EAST LT 3 BLK 10 PVC 423 80
COUNTRYSIDE-EAST LT 7 EX ELY 5 FT BLK 8 PVC 422B 20
COUNTRYSIDE-EAST ALL LT 12 & ELY 5 FT LT 13 BLK 7 PVC 422C 24
COUNTRYSIDE-EAST LT 4 & E 10 FT LT 5 BLK 12 PVC 423 105
COUNTRYSIDE-EAST LT 9 EX E 14 FT & E 24 FT LT 10 BLK 11 PVC 423 99
COUNTRYSIDE-EAST LT 10 EX WLY 5 FT BLK 8 PVC 422B 23
COUNTRYSIDE-EAST LT 15 BLK 7 PVC 422B 2
COUNTRYSIDE-EAST ELY 10' LT 2 & LT 3 EX ELY 9' BLK 11 PVC 423 93
COUNTRYSIDE-EAST LT 11 BLK 10 PVC 423 88
COUNTRYSIDE-EAST LT 1 & 25 FT VAC ST ON W & W 10 FT LT 2 BLK 12 PVC 423 102
COUNTRYSIDE-EAST LT 2 BLK 10 PVC 423 79
COUNTRYSIDE-EAST LT 5 BLK 12 EX E 10 FT & E 27 FT LT 6 PVC 423 106
COUNTRYSIDE-EAST W 46 FT LT 10 & E 36.5 FT LT 11 BLK 11 PVC 423 100A
COUNTRYSIDE-EAST ELY 11.27' LT 1 & LT 2 EX E 10' BLK 11 PVC 423 91A
COUNTRYSIDE-EAST LT 12 BLK 10 PVC 423 89
COUNTRYSIDE-EAST LT 1 BLK 10 & 25 FT VAC FOR ST ON W PVC 423 78
COUNTRYSIDE-EAST LT 6 EX ELY 27 FT & WLY 25 FT VAC ST BLK 12 PVC 423 107A
COUNTRYSIDE-EAST LT 11 EX E 36.5 FT BLK 11 & VAC FONTICELLO LANE ON W & E 3 FT LT 24 OF WEST HILL PVC 423 101
COUNTRYSIDE-EAST LT 13 BLK 10 & 25 FT VAC FOR ST ON W PVC 432 90
COUNTRYSIDE-EAST LT 1 BLK 11 & E 15 FT VAC FONTICELLO LN ADJ LT 1 EX ELY 11.27 FT PVC 423 91
COUNTRYSIDE-EAST LT 10 BLK 14 PVC 422 20
COUNTRYSIDE-EAST LT 16 BLK 13 PVC 422 16
COUNTRYSIDE-EAST LT 15 & TRI TR IN SE COR LT 14 5' AT BASE BLK 13 PVC 422 15
COUNTRYSIDE-EAST LT 11 BLK 14 PVC 422 21
COUNTRYSIDE-EAST LT 7 BLK 14 PVC 422E 5
COUNTRYSIDE-EAST LT 14 BLK 13 EX BG SE CR LT 14 W 5' NLY TO NE CR LT 14 S TO POB PVC 422 14
COUNTRYSIDE-EAST LT 2 BLK 15 PVC 422E 8
COUNTRYSIDE-EAST LT 2 BLK 17 PVC-
COUNTRYSIDE-EAST LT 12 BLK 14 PVC-
COUNTRYSIDE-EAST LT 15 BLK 15 PVC-
COUNTRYSIDE-EAST LT 3 BLK 15 PVC 422E 9
COUNTRYSIDE-EAST LT 12 BLK 17 PVC-
COUNTRYSIDE-EAST LT 6 BLK 14 PVC 422E 4
COUNTRYSIDE-EAST LT 13 BLK 13 PVC-

COUNTRYSIDE-EAST LT 3 EX W 7' BLK 17 PVC-
COUNTRYSIDE-EAST LT 11 BLK 17 PVC-
COUNTRYSIDE-EAST LT 14 BLK 15 PVC-
COUNTRYSIDE-EAST W 7' LT 3 & LT 4 EX W 7' BLK 17 PVC-
COUNTRYSIDE-EAST LT 4 BLK 15 PVC 422E 10
COUNTRYSIDE-EAST LT 13 BLK 15 PVC-
COUNTRYSIDE-EAST LT 5 BLK 14 PVC 422E 3
COUNTRYSIDE-EAST LT 13 EX WLY 4.66 FT BLK 14 PVC-
COUNTRYSIDE-EAST LT 12 BLK 13 PVC-
COUNTRYSIDE-EAST LT 10 BLK 17 PVC-
COUNTRYSIDE-EAST WLY 4.66 FT LT 13 & LT 14 BLK 14 PVC-
COUNTRYSIDE-EAST LT 5 BLK 15 PVC 422E 11
COUNTRYSIDE-EAST ELY 5 FT LT 10 & ALL LT 11 BLK 13 PVC-
COUNTRYSIDE-EAST W 7' LT 4 BLK 17 & ALL LT 5 BLK 17 PVC
COUNTRYSIDE-EAST LT 15 BLK 14 PVC-
COUNTRYSIDE-EAST LT 9 BLK 17 PVC-
COUNTRYSIDE-EAST LT 12 BLK 15 PVC-
COUNTRYSIDE-EAST ELY 4 FT LT 2 & ALL LT 3 EX ELY 3 FT BLK 14 PVC 422E 1
COUNTRYSIDE-EAST LT 10 BLK 13 EX ELY 5 FT PVC-
COUNTRYSIDE-EAST LT 6 BLK 15 PVC 422E 12
COUNTRYSIDE-EAST LT 2 BLK 14 EX ELY 4 FT PVC-
COUNTRYSIDE-EAST LT 16 BLK 14 & ELY TRI TR 3 FT ON N TO PT ON S OF LT 17 PVC-
COUNTRYSIDE-EAST LT 1 BLK 14 PVC-
COUNTRYSIDE-EAST LT 11 BLK 15 PVC-
COUNTRYSIDE-EAST LT 9 BLK 13 PVC-
COUNTRYSIDE-EAST LT 17 BLK 14 EX ELY TRI TR 3 FT ON N TO PT ON S PVC-
COUNTRYSIDE-EAST LT 21 BLK 14 PVC-
COUNTRYSIDE-EAST LT 8 BLK 13 PVC-
COUNTRYSIDE-EAST LT 18 BLK 14 PVC-
COUNTRYSIDE-EAST LT 20 BLK 14 PVC-
COUNTRYSIDE-EAST LT 7 BLK 13 PVC-
COUNTRYSIDE-EAST LT 6 BLK 16 PVC 422E 16
COUNTRYSIDE-EAST LT 5 BLK 16 PVC-
COUNTRYSIDE-EAST 5207 ELY 3 FT LT 3 & ALL LT 4 BLK 14 PVC 422E 2
COUNTRYSIDE-EAST LT 19 BLK 14 PVC-
COUNTRYSIDE-EAST LT 6 BLK 13 PVC-
COUNTRYSIDE-EAST LT 4 BLK 16 PVC-
COUNTRYSIDE-EAST LT 5 EX WLY 5 FT BLK 13 PVC-
COUNTRYSIDE-EAST LT 3 BLK 16 PVC-
COUNTRYSIDE-EAST LT 4 & WLY 5 FT LT 5 BLK 13 PVC-
COUNTRYSIDE-EAST LT 2 BLK 16 PVC-
COUNTRYSIDE-EAST LT 3 BLK 13 PVC-

COUNTRYSIDE-EAST LT 1 BLK 16 EX NWLY TRI TR 50 FT ON N & 75 FT ON W PVC-
COUNTRYSIDE-EAST LT 14 BLK 16 PVC-
COUNTRYSIDE-EAST LT 13 BLK 17 PVC-
COUNTRYSIDE-EAST LT 8 BLK 17 PVC-
COUNTRYSIDE-EAST LT 9 & WLY 5 FT LT 10 BLK 8 PVC 422B 22
COUNTRYSIDE-EAST LT 13 BLK 16 PVC-
COUNTRYSIDE-EAST LT 7 BLK 17 PVC-
COUNTRYSIDE-EAST LT 1 BLK 17 PVC-
COUNTRYSIDE-EAST LT 8 BLK 8 PVC 422B 21
COUNTRYSIDE-EAST LT 12 BLK 16 PVC-
COUNTRYSIDE-EAST LT 6 BLK 17 PVC-
COUNTRYSIDE-EAST LT 11 BLK 16 PVC-
COUNTRYSIDE-EAST LT 16 BLK 15 PVC-
COUNTRYSIDE-EAST LT 14 BLK 7 PVC 422B 1
COUNTRYSIDE-EAST LT 10 BLK 16 PVC-
COUNTRYSIDE-EAST LT 10 BLK 15 PVC-
COUNTRYSIDE-EAST LT 9 BLK 16 PVC 422E 19
COUNTRYSIDE-EAST NLY TR LT 8 46.32 FT ON W & 44.09 FT ON E & ALL LT 9 BLK 15 PVC 422E 15
COUNTRYSIDE-EAST LT 8 BLK 16 PVC 422E 18
COUNTRYSIDE-EAST LT 13 EX ELY 5 FT BLK 7 PVC 422C 25
COUNTRYSIDE-EAST LT 7 BLK 16 PVC 422E 17
COUNTRYSIDE-EAST LT 1 BLK 15 PVC 422E 7
COUNTRYSIDE-EAST LT 7 & LT 8 LESS NLY TR 46.32' ON W & 44.09' ON E BLK 15 PVC 4223 13
COUNTRYSIDE-EAST LT 8 BLK 14 PVC 422E 6
COUNTRYSIDE-EAST LT 1 BLK 6 PVC 422C 1
COUNTRYSIDE-EAST W 5 FT OF LT 27 ALL OF LT 28 BLK 6 PVC 422C 23
COUNTRYSIDE-EAST LT 9 BLK 14 PVC 422 19
COUNTRYSIDE-EAST LT 1 BLK 5 PVC 422 1
COUNTRYSIDE-EAST LT 17 BLK 13 PVC 422 17
COUNTRYSIDE-EAST LT 18 BLK 13 PVC 422 18
COUNTRYSIDE-EAST LT 24 BLK 5 PVC 422 12
COUNTRYSIDE-EAST LT 2 BLK 12 EX W 10 FT PVC 423 103
COUNTRYSIDE-EAST LT 1 BLK 4 PVC 423 53
COUNTRYSIDE-EAST LT 3 BLK 12 PVC 423 104
COUNTRYSIDE-EAST LT 21 BLK 4 PVC 423 73
COUNTRYSIDE-EAST LT 5 BLK 11 PVC 423 95
COUNTRYSIDE-EAST LT 1 BLK 3 PVC 423 34
COUNTRYSIDE-EAST LT 6 BLK 11 PVC 423 96
COUNTRYSIDE-EAST LT 19 BLK 3 PVC 423 52
COUNTRYSIDE-EAST LT 6 BLK 10 PVC 423 83
COUNTRYSIDE-EAST LT 1 BLK 2 PVC 423 16
COUNTRYSIDE-EAST LT 7 BLK 10 PVC 423 84

COUNTRYSIDE-EAST LT 18 BLK 2 PVC 423 33
COUNTRYSIDE-EAST LT 2 BLK 9 PVC 423 75
COUNTRYSIDE-EAST LT 1 BLK 1 PVC 423 1
COUNTRYSIDE-EAST LT 3 BLK 9 PVC 423 76
COUNTRYSIDE-EAST LT 15 BLK 1 PVC 423 15

Public Hearing Draft

4819 W	63RD ST	4921 W	64TH TER	5001 W	66TH ST
4901 W	63RD ST	5000 W	64TH TER	5005 W	66TH ST
4907 W	63RD ST	5100 W	64TH TER	5006 W	66TH ST
4915 W	63RD ST	5101 W	64TH TER	5011 W	66TH ST
5001 W	63RD ST	5107 W	64TH TER	5012 W	66TH ST
5007 W	63RD ST	5108 W	64TH TER	5017 W	66TH ST
5119 W	63RD ST	5111 W	64TH TER	5018 W	66TH ST
5131 W	63RD ST	5116 W	64TH TER	5100 W	66TH ST
5205 W	63RD ST	5119 W	64TH TER	5101 W	66TH ST
5213 W	63RD ST	5202 W	64TH TER	5105 W	66TH ST
4701 W	63RD TER	5203 W	64TH TER	5108 W	66TH ST
4709 W	63RD TER	5206 W	64TH TER	5111 W	66TH ST
4715 W	63RD TER	5211 W	64TH TER	5115 W	66TH ST
4801 W	63RD TER	5212 W	64TH TER	5119 W	66TH ST
4809 W	63RD TER	5215 W	64TH TER	5120 W	66TH ST
4815 W	63RD TER	5218 W	64TH TER	4700 W	66TH TER
4818 W	63RD TER	5301 W	64TH TER	4701 W	66TH TER
4819 W	63RD TER	5304 W	64TH TER	4706 W	66TH TER
4900 W	63RD TER	5305 W	64TH TER	4707 W	66TH TER
4901 W	63RD TER	5308 W	64TH TER	4712 W	66TH TER
4907 W	63RD TER	5311 W	64TH TER	4713 W	66TH TER
4908 W	63RD TER	5315 W	64TH TER	4716 W	66TH TER
4915 W	63RD TER	5401 W	64TH TER	4719 W	66TH TER
4916 W	63RD TER	5407 W	64TH TER	4800 W	66TH TER
5000 W	63RD TER	5408 W	64TH TER	4801 W	66TH TER
5001 W	63RD TER	5411 W	64TH TER	4806 W	66TH TER
5006 W	63RD TER	5414 W	64TH TER	4807 W	66TH TER
5007 W	63RD TER	4700 W	65TH ST	4812 W	66TH TER
5114 W	63RD TER	4701 W	65TH ST	4815 W	66TH TER
5117 W	63RD TER	4706 W	65TH ST	4818 W	66TH TER
5128 W	63RD TER	4707 W	65TH ST	4908 W	66TH TER
5131 W	63RD TER	4711 W	65TH ST	4909 W	66TH TER
5200 W	63RD TER	4712 W	65TH ST	4914 W	66TH TER
5201 W	63RD TER	4718 W	65TH ST	5002 W	66TH TER
5212 W	63RD TER	4719 W	65TH ST	5008 W	66TH TER
5215 W	63RD TER	4800 W	65TH ST	5014 W	66TH TER
5227 W	63RD TER	4801 W	65TH ST	5018 W	66TH TER
4700 W	64TH ST	4807 W	65TH ST	5100 W	66TH TER
4701 W	64TH ST	4808 W	65TH ST	5101 W	66TH TER
4708 W	64TH ST	4815 W	65TH ST	5107 W	66TH TER
4709 W	64TH ST	4816 W	65TH ST	5108 W	66TH TER

4716 W	64TH ST	4819 W	65TH ST	5115 W	66TH TER
4717 W	64TH ST	4901 W	65TH ST	5116 W	66TH TER
4800 W	64TH ST	4902 W	65TH ST	5119 W	66TH TER
4801 W	64TH ST	4904 W	65TH ST	5122 W	66TH TER
4806 W	64TH ST	4911 W	65TH ST	4700 W	67TH ST
4807 W	64TH ST	4916 W	65TH ST	4708 W	67TH ST
4812 W	64TH ST	5011 W	65TH ST	4716 W	67TH ST
4815 W	64TH ST	4700 W	65TH TER	4800 W	67TH ST
4818 W	64TH ST	4701 W	65TH TER	4806 W	67TH ST
4819 W	64TH ST	4706 W	65TH TER	4810 W	67TH ST
4900 W	64TH ST	4707 W	65TH TER	4908 W	67TH ST
4901 W	64TH ST	4711 W	65TH TER	5100 W	67TH ST
4908 W	64TH ST	4712 W	65TH TER	6300	ASH ST
4911 W	64TH ST	4717 W	65TH TER	6301	ASH ST
4916 W	64TH ST	4718 W	65TH TER	6308	ASH ST
4919 W	64TH ST	4800 W	65TH TER	6311	ASH ST
5000 W	64TH ST	4801 W	65TH TER	6316	ASH ST
5001 W	64TH ST	4805 W	65TH TER	6319	ASH ST
5006 W	64TH ST	4808 W	65TH TER	6324	ASH ST
5111 W	64TH ST	4811 W	65TH TER	6332	ASH ST
5112 W	64TH ST	4816 W	65TH TER	6335	ASH ST
5118 W	64TH ST	4817 W	65TH TER	6340	ASH ST
5119 W	64TH ST	4900 W	65TH TER	6341	ASH ST
5200 W	64TH ST	4901 W	65TH TER	6342	ASH ST
5201 W	64TH ST	4906 W	65TH TER	6344	ASH ST
5207 W	64TH ST	5001 W	65TH TER	6345	ASH ST
5208 W	64TH ST	5006 W	65TH TER	6300	HODGES DR
5215 W	64TH ST	5007 W	65TH TER	6301	HODGES DR
5216 W	64TH ST	5012 W	65TH TER	6312	HODGES DR
5217 W	64TH ST	5013 W	65TH TER	6315	HODGES DR
5219 W	64TH ST	5018 W	65TH TER	6328	HODGES DR
5305 W	64TH ST	5019 W	65TH TER	6331	HODGES DR
5309 W	64TH ST	5100 W	65TH TER	6343	HODGES DR
5312 W	64TH ST	5101 W	65TH TER	6344	HODGES DR
5314 W	64TH ST	5104 W	65TH TER	6400	HODGES DR
5315 W	64TH ST	5108 W	65TH TER	6401	HODGES DR
5320 W	64TH ST	5112 W	65TH TER	6415	HODGES DR
5404 W	64TH ST	5116 W	65TH TER	6420	HODGES DR
4700 W	64TH TER	5117 W	65TH TER	6433	HODGES DR
4701 W	64TH TER	4700 W	66TH ST	6434	HODGES DR
4706 W	64TH TER	4701 W	66TH ST	6436	HODGES DR
4707 W	64TH TER	4704 W	66TH ST	6437	HODGES DR

4711 W	64TH TER	4707 W	66TH ST	6500	HODGES DR
4712 W	64TH TER	4712 W	66TH ST	6501	HODGES DR
4717 W	64TH TER	4713 W	66TH ST	6508	HODGES DR
4718 W	64TH TER	4718 W	66TH ST	6511	HODGES DR
4800 W	64TH TER	4719 W	66TH ST	6514	HODGES DR
4801 W	64TH TER	4800 W	66TH ST	6517	HODGES DR
4807 W	64TH TER	4801 W	66TH ST	6522	HODGES DR
4808 W	64TH TER	4805 W	66TH ST	6525	HODGES DR
4816 W	64TH TER	4806 W	66TH ST	6600	HODGES DR
4817 W	64TH TER	4811 W	66TH ST	6601	HODGES DR
4821 W	64TH TER	4812 W	66TH ST	6608	HODGES DR
4900 W	64TH TER	4817 W	66TH ST	6609	HODGES DR
4907 W	64TH TER	4818 W	66TH ST	6614	HODGES DR
4908 W	64TH TER	4911 W	66TH ST	6615	HODGES DR
4915 W	64TH TER	4912 W	66TH ST	6618	HODGES DR
4916 W	64TH TER	5000 W	66TH ST	6619	HODGES DR

Public Hearing Draft

APPENDIX C: CROSS REFERENCE BETWEEN THE CSE HOA COVENANTS AND THE OVERLAY DISTRICT GUIDELINES

Cross reference between the CSE HOA Covenants and the Overlay District Guidelines

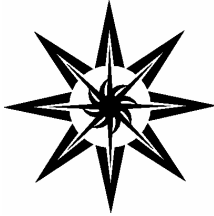
Summary Wording from CEHA booklet	Deeded Restriction Covered	Authority: Overlay or CEHA
1. The plots shall be used for private dwelling purposes only. Each dwelling shall be designed for occupancy by a single family only.	V	Overlay
2. No garage or outbuilding shall be used as a residence or living quarters.	V	Overlay
3. No building, fence, wall, hedge or structure shall be commenced, erected or maintained until acceptable professional plans and specifications are submitted to the CEHA and approved in writing by the board. In passing upon such plans, the CEHA may take into consideration the suitability of the proposed construction the materials of which it is to be built, the harmony thereof with the surroundings and the outlook from adjacent or neighboring property.	VI	Overlay for approval of plans for buildings and structures CEHA board for fences, walls and hedges
4. Every outbuilding, except a greenhouse, shall correspond in style and architecture to the dwelling and shall be of the same exterior materials. No outbuilding shall exceed the dwelling in height or number of stories.	VIII	Overlay
5. No dwelling or any part thereof shall be erected nearer to the adjoining street than the building limit line shown on the recorded plat.*	IX also includes outbuildings by amendment	Overlay
6. No part of any dwelling shall be erected nearer to the side property line than 12½ percent of the width of the plot at the front property line.*	X	Overlay
7. No outbuilding shall be erected on any plot nearer to the adjoining street than the outbuilding limit line shown on the recorded plat.*	XI	Overlay
8. Except with the written permission of the CEHA, no dwelling exceeding 1½ stories will be permitted. Certain lots are restricted to one-story dwellings.**	XIII	Overlay
9. No permanent building or structure shall be erected within easement areas. Fences, walls or hedges may be erected within the easements but are subject to the right of access by utility	XIV	Overlay for permanent structures CEHA for fences, walls and hedges

**APPENDIX C: CROSS REFERENCE BETWEEN THE CSE HOA COVENANTS AND THE
OVERLAY DISTRICT GUIDELINES**

companies at any time.		
Summary Wording from CEHA booklet	Deeded Restriction Covered	Included in Overlay Wording
10. Only those signs used to advertise the property for sale may be posted for a prolonged period of time. Signs should not exceed 1½ feet by 2 feet.	XV	CEHA
11. No radio or television antenna shall be more than 3 feet higher than the roof line. No radio or television towers shall be constructed. Any antenna shall not be visible from a point in the center of the street directly opposite the center of the dwelling.	XV	CEHA
12. No fence, wall, hedge, pergola or detached structure for ornamental purpose shall be erected nearer a front or side street than the building line limit.	XV	CEHA
13. No cows, horses, pigs, poultry, goats or rabbits shall be maintained on any plot and no owner may maintain more than 2 dogs or 2 cats or other household pets on any plot at one time.	XV	CEHA
14. No trash, ashes or other refuse may be thrown or dumped on any plot in the addition. All trash and garbage containers shall be hidden from view.	XV	CEHA

* The deeded restrictions allow minor modifications under certain circumstances.

** A detailed listing is available in the Deeded Restrictions that are on file with the Countryside East Homes Association.



ADMINISTRATION/PUBLIC WORKS

City Council Meeting Date: December 17, 2012

Old Business: Report on Use of Outside Consultants in the Development Review Process

BACKGROUND:

At the December 3, 2012 City Council Meeting, the Council requested staff provide an overview of the use of outside consultants in the development review process. More specifically, the Council requested information regarding the review of traffic studies and the use of outside consultants by the Public Works.

DISCUSSION:

The City has always utilized outside consultants to assist in the development review process due to the limited expertise and time constraints of City staff. Prior to 2009, the City used a Planning Consultant to assist in the review of planning and zoning regulations for all applications. In 2009, staff presented the concept of having staff conduct the planning and zoning analysis for projects which involved residential property and Prairie Village residents.

In the development review process, the City will often request additional studies such as a traffic or drainage study. While technically, it is the prerogative of the Planning Commission to request these studies, staff typically will indicate to the applicant past precedent on when these types of studies were required by the Planning Commission to expedite the development review process.

It has been a practice for the Department of Public Works to refer drainage and traffic studies, performed by applicant's consultants, for review by the City's consultants. The general purpose of these reviews is to assure the applicant's studies are adequate, accurate and complete in order to make sure estimates of future impacts can be relied upon by City staff and the Planning Commission.

In many cases, the drainage and traffic studies performed by the applicant's consultants use computerized simulation models to estimate the future impacts of the development project. These models require multiple inputs and assumptions and produce extensive data. Small changes in the inputs and assumptions can have a significant effect on the estimated impacts.

City staff does not work with these models on a regular basis. It is more cost effective and timely for the City to refer the technical studies for outside review rather than climbing the learning curve of the latest version of the models each time one of these reviews is needed. The development projects are usually on a tight schedule and the final City reviews and actions would probably be delayed if City staff attempted to do these reviews without outside assistance.

Frequently the reviews by City consultants find errors or raise issues that need to be reviewed by City staff and the applicant's consultants. In some cases, the applicant's

consultant has to revise their study in order to provide reliable information that can be used to make final staff recommendations and enable the Planning Commission to make well-informed decisions.

Below is a summary of the most recent development projects, with the studies and consulting services used as part of the development review process.

Development Project	Planning Consultant	Traffic Study	Outside Consultant Review-Traffic	Drainage Study	Outside Consultant Review-Drainage
UMB	Yes/Billed to Applicant	Yes	Yes/Not Billed to Applicant due to clerical error	Yes	Yes/Billed to Applicant
CVS	Yes/Billed to Applicant	Yes	Yes/Billed to Applicant	Yes	Yes/Billed to Applicant
Corinth Redevelopment	Yes/Billed to Applicant	Yes	Internal Circulation Traffic Study only-reviewed by staff	Applicant provided new impervious surface numbers	Reviewed by Staff
Indian Hills Middle School	Yes/Billed to Applicant	No	N/A	Yes	Yes/Billed to Applicant
Benton House	Yes/Billed to Applicant	No	N/A	Yes	Yes/Billed to Applicant
Highlawn Montessori	Yes/Billed to Applicant	Yes	Yes/Billed to Applicant	Applicant provided new impervious surface numbers	Reviewed by Staff
PV Shops Redevelopment	Yes/Billed to Applicant	Yes	Internal Circulation Traffic Study only-reviewed by staff	Yes	Yes/Billed to Applicant

Staff believes that the current use of outside consultants in the development review process is appropriate and necessary. Staff is not recommending any changes to the use of outside consultants in the development review process.

PREPARED BY:

Dennis J. Enslinger, Assistant City Administrator
Bruce McNabb, Public Works Director
Date: December 12, 2012

Prairie Village City Council
7700 Mission Road
Prairie Village, Kansas 66208-4230



Monday, November 26, 2012

RE: Highlawn Montessori SUP – PC Engineering Fees of Trans-Systems

Dear City Council Members:

The purpose of this letter is to appeal to Prairie Village City Council for relief from the \$1,903.88 Trans-Systems bill commissioned by the public works director.

In January of 2012, Highlawn Montessori filed a Special Use Permit application to build a second story addition to SOMERSIDE Lot 16, PVC-10470 in order to relocate one existing classroom and to create one additional classroom. During the application process, Highlawn offered to do a traffic study. Highlawn contracted with a reputable firm, George Butler Associates (GBA), and asked them to coordinate with city staff on the scope of the study. The City's planning consultant, Ron Williamson, then coordinated with GBA on the scope and the dates for the study, February 16 and 21, 2012. Highlawn's cost for the traffic study was \$5,273.40, which included a two day count, a detailed report for the City, and the GBA engineer's time to attend the Planning Commission meeting on March 6, 2012.

On March 1, 2012, the city clerk e-mailed the meeting packet information to Highlawn. This information included a Traffic Impact Study Review by Trans-Systems ordered by the public works director. This second traffic study was never discussed with Highlawn nor was Highlawn ever advised why the public works director felt that the GBA traffic study (coordinated with the City's planning consultant) was not sufficient. It is noted that on several occasions I attempted to discuss our project with the public works director, but he always said he was not really involved and that I needed to talk to other city staff.

On March 6, 2012, Ron Williamson e-mailed the final staff report, which had been revised to address the TranSystems traffic study. Upon receipt of same, I went to City Hall to discuss the staff report with the assistant city administrator. During that conversation it was stated that some staff felt the results of the GBA traffic impact study were questionable and that the school had "manipulated" the count. However, the assistant city administrator concurred that there was no basis or evidence for this accusation. I was extremely shocked by this accusation and asked for an explanation. I asked why some city staff felt a professional traffic engineer from GBA would jeopardize his license over a simple 2-day traffic count. The reply was that city staff didn't think the engineer had manipulated the data but that I had. Asking how I could do that, the response was that staff thought I had called Highlawn families and asked them not to attend school during the school days used for the traffic count. Feeling that my reputation had been personally attacked and maligned without cause, I immediately provided 2 months of attendance records to show that the attendance counts were not manipulated. I also provided a complete school roster to city staff, and I asked them to contact all of our families to see if staff's allegation had any basis and if the families even knew a traffic count was taking place. At that time, my Board of Directors had not even been notified of the traffic study. After providing this data, these false allegations were abandoned.

3531 Somerset Drive . Prairie Village, KS 66208 . 913-649-6160

Fax 913-649-0323 www.highlawn.org

Member Association Montessori Internationale

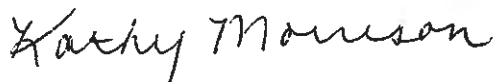
The application costs incurred by Highlawn for the City's planning consultant to review the application and to make recommendations were \$1,336.85 and were paid immediately upon receipt. Highlawn later received a bill from the City for an additional \$1,903.88 for costs incurred by the public works director from Trans-Systems. Highlawn requested a breakdown of services. The bill included 7 hours of labor (\$1,890) for Trans-Systems to review the development application and the GBA traffic impact study, site reconnaissance, observation of traffic during the noontime pick up, and preparation of a letter to City. It is important to note that the noontime traffic is not affected by classrooms in the new addition, although this was the only time observed by Trans-Systems. It is also important to note that no explanation was ever provided as to why GBA was not simply asked to update its report to address any staff concerns.

On August 9th, Highlawn representatives met with city officials and police to discuss final traffic recommendations. Highlawn again brought up concerns about the Trans-Systems bill. During that meeting the city administrator, Quinn Bennion, said he was unaware of the above-discussed matters, and that he would contact the public works director to see if he would waive the fee. The city administrator advised that he understood our concern about paying the bill, but that it was up to the public works director to waive it. He said that if the public works director refused to waive the bill, we should appeal the decision to the City Council. The city administrator subsequently e-mailed that the public works director refused to waive the bill and indicated that Highlawn would need to appeal to City Council in order to find final resolution to this issue. Highlawn was also told that the matter needed to be resolved prior to the issuance of a full occupancy permit.

It is Highlawn's position that the traffic count from GBA was detailed, complete and followed all instructions and directions presented by city staff through the City's planning consultant. City staff could and should have informed GBA about any additional stipulations before the study. City staff also could have contacted GBA about any concerns or any necessary follow-up after the study and before the Planning Commission meeting. There was no reason for staff to commission a new study or to do so without notifying Highlawn. It is Highlawn's position that it has already paid \$5,273.40 for a detailed traffic study that was coordinated with and through city staff, as well as paid \$1,336.85 for additional city consultant time. It is Highlawn's position that the public works director was unhappy with the outcome of the GBA study, personally accused me of manipulating the data without any basis, and then unnecessarily hired another firm which essentially confirmed the GBA study and added no value to the application process. Consequently, Highlawn feels that this additional cost should not be charged to our non-profit school.

Thank you for considering our request.

Sincerely,



Kathy Morrison
Highlawn Montessori School, Director
3531 Somerset Drive
Prairie Village, KS 66208
913-649-6160
kathy@highlawn.org

cc: Dennis Enslinger
Quinn Bennion

3531 Somerset Drive . Prairie Village, KS 66208 . 913-649-6160
Fax 913-649-0323 www.highlawn.org
Member Association Montessori Internationale

MAYOR'S ANNOUNCEMENTS

December 17, 2012

Committee meetings scheduled for the next two weeks include:

Arts Council	12/19/2012	7:00 p.m.
Environmental/Recycle Committee	12/26/2012	7:00 p.m.
Council Committee of the Whole	01/07/2012	6:00 p.m.
City Council	01/07/2012	7:30 p.m.

The Prairie Village Arts Council is pleased to announce an oil painting exhibit by Eileen McCoy in the R. G. Endres Gallery for the months of December and January.

The City offices will be closed December 25th in observance of Christmas and January 1st in observance of the New Year's Holiday. Deffenbaugh observes both holidays so pick-up will be delayed one day.

The City will be offering holiday tree drop sites from December 17 through January 21 at Porter, Franklin and Taliaferro parks. Harmon Park **will not** be a drop off site this year.

INFORMATIONAL ITEMS
December 17, 2012

1. Planning Commission Minutes - November 6, 2012
2. Board of Zoning Appeals Minutes - November 6, 2012
3. JazzFest Committee Minutes - November 8, 2012
4. Council Committee of the Whole Minutes - December 3, 2012
5. Park and Recreation Committee Minutes - November 14, 2012
6. Mark Your Calendars

**AMENDED
PLANNING COMMISSION MINUTES
NOVEMBER 6, 2012**

ROLL CALL

The Planning Commission of the City of Prairie Village met in regular session on Tuesday, November 6, 2012 in the Council Chamber, 7700 Mission Road. Chairman Ken Vaughn called the meeting to order at 7:00 p.m. with the following members present: Randy Kronblad, Dirk Schafer, Nancy Wallerstein, Bob Lindeblad, Gregory Wolf and Nancy Vennard.

The following persons were present in their advisory capacity to the Planning Commission: Ron Williamson, City Planning Consultant; Chris Engel, Assistant to the City Administrator; Jim Brown, Building Official; Keith Bredehoeft, Public Works; Ted Odell, Council Liaison and Joyce Hagen Mundy, City Clerk/Planning Commission Secretary.

APPROVAL OF MINUTES

Nancy Wallerstein moved to approve the minutes of October 2, 2012 as written. The motion was seconded by Randy Kronblad and passed by a vote of 6 to 0 with Ken Vaughn abstaining.

PUBLIC HEARINGS

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

Curtis Petersen, with Polsinelli Shughart representing the applicant, noted previous discussion of this application and addressed the issues raised by the opponents of the Conditional Use Permit. He noted the access for the drive-thru is from the east with the view of the drive-thru virtually blocked by the UMB building. There is no signed lease for the space that will accompany the drive-thru. The property owner has had conversations with Starbucks who are very interested if the drive-thru is approved as well as several other potential tenants. The Conditional Use Permit is general and not for a specific tenant. A drive-thru is an accommodation that is demanded by many users in today's marketplace.

- 1) Vehicular congestion. Regarding congestion from stacking cars on Mission Lane, Mr. Petersen stated the proposed drive-thru has room for the stacking of at least ten vehicles without any overflow. He does not see traffic on Mission Lane as a problem but noted they would be willing to place a "No Left Turn" sign from the drive-thru.
- 2) Environment/Exhaust. Mr. Petersen stated studies reveal there are more emissions released from the cold starting of vehicles than from cars idling in

drive-thru facilities. The proposed drive-thru is no different than drive-thru facilities located in shopping centers throughout the area. This is not a factor.

- 3) Tenant Sentiment. There is a component of residents that simply don't like drive-thru facilities in this shopping center. However, directly to the north is a drive-thru for UMB, to the south is a drive-thru for US Bank. A vast majority of the public are demanding the drive-thru amenity.

Curtis Petersen stated the Commission needs to evaluate the aesthetics and functionality of the proposed drive-thru. The applicant has received the staff report and recommendation and accepts conditions #1 & #2. Regarding condition #3 that the conditional use permit terminates when its use terminates, they request a reasonable time period to market the site with the conditional use permit in place.

Nancy Vennard confirmed the public hearing is only on issues related to the requested Conditional Use Permit for the drive-thru facility.

Chris Engel noted since this project will be constructed with CID funds, the City Council was presented with the proposed plans for comment at their meeting on November 5th. There was mixed support for the drive-thru. Some Council members did not restrict the marketing of this site to quality establishments who desire this feature but expressed concern with the unknown possibility of a fast food tenant. They questioned why a conditional use permit was being requested before a tenant was established. Mr. Petersen responded the Commission is approving the use and functionality of the proposed facility.

Ted Odell raised the question of what if it became a McDonald's. Mr. Williamson responded that the design of the building could not change without reapproval by the Planning Commission so any use would need to fit in the building as approved in the application unless a reapplication occurred.

Ron Williamson stated staff is acceptable to adding a time frame to condition #3.

Chairman Ken Vaughn opened the public hearing to comments regarding the application for a Conditional Use Permit for a drive-thru.

Chuck Dehner, 4201 West 68th Terrace, distributed a photograph of the Starbucks at 135th & Nall reflecting gridlocked cars taken by Joel Crown. He and Mr. Crown, winners of the Prairie Village Community Spirit Award, support the proposed improvements to the Prairie Village Shops with the exception of the drive-thru. They do not feel the drive-thru fits with the lifestyle of this community. Mr. Dehner noted at the initial hearing before the Planning Commission no one spoke in support of the drive-thru. The character of the Village is built by the people who shop the Village - this is not a suburban mall, but a neighborhood shopping center where the placement of a drive-thru does not fit the character and will have a negative impact on both the center and the surrounding community.

Mr. Dehner stated that the applicant has made zero accommodations for the residents. The citizen meeting on this application was held on August 23rd before information was posted on the city's website and without notification of the adjacent homes associations. The applicant has ignored due process and transparency. Signage for the hearings was posted inaccurately and did not meet required posting requirements. At the earlier hearing, a study by the Mid-America Regional Council was presented documenting the negative impact on the environment from idling drive-thru traffic.

Mr. Dehner stated that at the City Council meeting on November 5th in regard to the required trail per the CID agreement with the City, Mr. Petersen told the City Council they could do whatever they wanted and did not have to build a trail. The City proposed alternatives for the trail, but they were not accepted by the applicant although they are readily accepting CID funding.

The Commission needs to consider long-term planning for this area. If no drive-thru was constructed there would be room for 20 to 30 parking spaces and unused space for a trail. Mr. Dehner added he spoke with an executive for Starbucks who stated the Prairie Village Shop is one of the best in the country. Its customers come in visit and buy additional merchandise. It is a very good community location and that they were not considering a drive-thru location.

With no one else wanting to address the Commission, Chairman Ken Vaughn closed the public hearing at 7:30 p.m.

Ron Williamson stated the existing Waid's Restaurant building is proposed to be demolished and replaced with a new 5,908 square foot building that will be designed to be compatible with the rest of Prairie Village Shopping Center. The new building will have two to four tenants and one of those will require a drive-up service. A lease has not been signed as of this date but the anticipated tenant is Starbucks. It has been mentioned that Starbucks has a high volume of transactions a day, but only a portion of those will be served by the drive-thru

The drive-thru lane will be entered from the east side and will be adjacent to the north side of the building. It will be located between the new building and the UMB Bank building. The drive-thru lane will not have direct access to Mission Road and will exit to Mission Lane. It is proposed to be a one lane drive-thru. Since all the traffic will be internal on the site, there should not be any adverse impact on the adjacent public streets. Mission Lane and Prairie View Lane are being vacated with the plat and will be private streets.

In accordance with the Planning Commission's Citizens' Participation policy, the applicant held a neighborhood meeting on August 23, 2012 and 16 persons appeared. The primary comment on the drive-thru was a concern about traffic. The applicant responded that a long stacking drive has been incorporated into the plan and traffic should not be an issue.

Since the neighborhood meeting several area residents have submitted letters or e-mails opposing the drive-thru. The objections are primarily environmental although some do not feel that a drive-thru is compatible with the neighborhood ambience of the existing Center.

Nancy Vennard asked if the Planning Commission had ever approved a Conditional Use Permit for a drive-thru without a specific tenant. Mr. Williamson stated it has not. Mrs. Wallerstein asked why. Mr. Williamson noted the Commission has never received a request without a specific tenant in place; however, this is a new building and the Commission can control the appearance of the building through the site plan process. Specific issues such as setbacks, etc. will be addressed with the site plan approval. Dirk Schafer questioned if action on the conditional use permit should be continued until the site plan has been considered.

Curtis Petersen noted the approval of the conditional use permit is contingent on the approval of the site plan.

Chairman Ken Vaughn led the Commission in their review of the following findings of fact:

- 1. The proposed conditional use complies with all applicable provisions of these regulations, including intensity of use regulations, yard regulations, and use limitations.**

The proposed drive-thru window meets all the yard regulations of the ordinance.

- 2. The proposed conditional use at the specified location will not adversely affect the welfare or convenience of the public.**

The uses to the north, south and west are office and commercial uses. Indian Hills Country Club is on the east side of Mission Road and located in the City of Mission Hills. There are no residences in the immediate area. The proposed drive-thru will not have direct access to Mission Road. Therefore, the proposed drive-thru will not adversely affect the welfare or convenience of the public. It should be pointed out; however, that if the six foot pedestrian walkway is approved for the east side of Mission Lane there could be conflicts between vehicles and pedestrians. It may be a good idea to install a yield to pedestrians sign at the exit of the drive-thru.

- 3. The proposed conditional use will not cause substantial injury to the value of other property in the neighborhood in which it is to be located.**

The property to the south and west is commercial and part of Prairie Village Center. To the east are Mission Road, Brush Creek and Indian Hills Country Club. The UMB Bank is located adjacent to the north and a drive-thru was approved for it in 2010. There are houses to the north but they are far enough away that there will be little, if any, direct visual contact with the drive-thru area.

4. **The location and size of the conditional use, the nature and intensity of the operation involved in or conducted in connection with it, and the location of the site with respect to streets given access to it, are such that the conditional use will not dominate the immediate neighborhood so as to hinder development and use of neighboring property in accordance with the applicable zoning district regulations. In determining whether the conditional use will so dominate the immediate neighborhood, consideration should be given to:**
 - a. **The location, size, nature and height of buildings, structures, walls, and fences on the site; and**
 - b. **The nature and extent of landscaping and screening on the site.**

The proposal is for one drive-thru lane which does not have direct access to a public street. The drive-thru is internal to the shopping center and will have little if any negative impact on the surrounding neighborhood. It will have an impact on the pedestrian walkway and signs may also be needed at the Hen House crosswalk on Mission Lane.

Since this is a new building, it will require Site Plan Approval and the landscape plan will be approved with the Site Plan. This will be addressed in PC 2012-113 Site Plan Approval.

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

The drive-thru lane is approximately 200 feet long, which will allow stacking for at least ten vehicles. There is additional area for stacking in the parking lot if the stacking exceeds ten vehicles. There are no adjoining residential uses that require screening.

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

Utilities and drainage are being addressed for the entire project as a part of the Site Plan Approval which will be considered by the Planning Commission later on this Agenda.

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

The proposed drive-thru will use internal access and there will be no direct access to Mission Road. The driveway access to Mission Road located on the north side of the Waid's building will be closed as a part of the redevelopment of this site. The elimination of the driveway to Mission Road will be a benefit to traffic and will be included in the approval of the Site Plan.

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

The proposed use will not have any significant hazardous or toxic materials, hazardous manufacturing processes, obnoxious odors, or unnecessarily intrusive noises associated with it. It has been pointed out by several residents that the idling traffic in the drive-thru will cause air pollution that will negatively impact the quality of life of the people using the Center.

Bob Lindeblad stated the site plan and the conditional use permit are tied together. The biggest factor is the influence on the neighborhood. He feels there is adequate access to the facility and that this is a good design and will help the center. There will be traffic throughout the shopping center all the time regardless. He is not comfortable with condition #3 as written.

Nancy Wallerstein asked about the load and traffic pattern that were raised by the tenants. Mr. Williamson responded loading would be handled through the service door. Management determines when deliveries are made. He noted that with the vacation of Mission Lane and Prairie Lane these streets will no longer have public traffic.

Nancy Vennard noted if the building is designed so it could be used for some other use she does not have a problem approving the conditional use permit without a tenant. The Commission needs to focus on how the drive-thru works. She noted drive-thru lines can get long noting that both drive thru lanes at CVS were stacked this past weekend. The tenant and its operation will affect the impact of the traffic, with Starbucks probably representing the worst case scenario, but the Commission cannot impose its thoughts on how to run their business.

Randy Kronblad stated he appreciated Mr. Dehner's passion but noted to the north there are 3 drive-thru lanes and 4 drive-thru lanes to the south that service the banks and he would venture that many use the drive-thru services to do their banking. Mr. Dehner responded that bank drive-thru facilities are fundamentally different. However, he did note that there was a bicyclist hit this past weekend by a vehicle from the US Bank drive-thru.

Mr. Dehner stated the applicant did not follow due process in notification. Ron Williamson stated the applicant has submitted documentation of their mailings as required by code. Mr. Dehner stated the homes association was not notified.

Bob Lindeblad moved that finding the factors of fact to be favorable, the Planning Commission approve PC2012-08 granting a Conditional Use Permit for a drive-thru lane at 6920 Mission Road subject to the following conditions:

1. That the applicant install a pedestrian yield sign at the exit of the drive-thru.
2. That the Conditional Use Permit approval is contingent upon approval of the Site Plan. If the Site Plan is not approved by the Planning Commission, the Conditional Use Permit shall be null and void.
3. That the Conditional Use Permit shall terminate when the use has been vacated for a period of 12 months.

The motion was seconded by Randy Kronblad.

Nancy Vennard suggested that condition #3 is a means by which the Commission can review this use if the tenant leaves with knowledge of how it actually functioned and would like to see condition #3 remain as recommended by staff requiring the new tenant to apply for a conditional use permit. Mrs. Vennard moved to amend the motion to read as recommended by staff. Gregory Wolf seconded the amendment.

Curtis Petersen responded that he understands the concept expressed by Mrs. Vennard but noted the high cost in building the drive-thru noting that if it is not working, the tenants will require changes to be made. He does not know how future commissions will react.

Jeff Berg, representing Lane4, gave his assurance that if it doesn't work, it will be changed.

Nancy Vennard stated she is more concerned with the drive-thru being too successful causing traffic and safety problems with a rush of people going through at lunch. This would be a way for the Commission to review the impact of the drive-thru on the center. She noted she understands the expense; but the Commission does not know the average daily use, the frequency of use or the prime time for use and these are important considerations.

The amendment to the motion was voted on and passed by a vote of 4 to 2 with an abstention.

Bob Lindeblad does not feel the conditional use permit should expire the day after a tenant closes. Ron Williamson noted that initial conditional use permits are frequently approved for a limited time and many are issued for a specific use. This does not preclude the applicant from applying for a new permit when a new tenant is established and it would allow the Commission to re-evaluate the findings of fact based on past use as well as projected use.

Gregory Wolf called the question.

The motion to approve PC2012 granting a Conditional Use Permit for a drive-thru lane at 6920 Mission Road subject to the following conditions:

1. That the applicant install a pedestrian yield sign at the exit of the drive-thru.
2. That the Conditional Use Permit approval is contingent upon approval of the Site Plan. If the Site Plan is not approved by the Planning Commission, the Conditional Use Permit shall be null and void.
3. That the Conditional Use Permit shall terminate when the user it serves terminates.

was voted on and passed by a vote of 6 to 1 with Ken Vaughn voting in opposition.

NON-PUBLIC HEARINGS

Chairman Ken Vaughn announced a change in the agenda to allow the Commission to hear two relatively routine applications PC2012-115 and PC2012-117 to be considered before PC2012-113 site plan approval for the Prairie Village Shopping Center.

**PC2012-115 Request for Site Plan Approval - Retaining Wall
2201 West 72nd Street**

Maggie Fisher, attorney on behalf of Corey Scott, 2201 West 72nd Street, addressed the Commission informing them that Mr. Scott obtained a survey of his property to determine the exact location of the property line in relation to the retaining wall. The survey documents that the retaining wall is located on Mr. Scott's property. The most northern section of the wall is approximately three (3) inches from the property line and the section abutting the garage corner is approximately ten (10) inches from the property line. The retaining wall extends 7.3 feet past the north property line.

When Mr. Scott appeared before the Commission last month, he thought that the existing garage structure was located on the adjacent property. Based on the survey information, the garage is located on the applicant's property (approximately 10 inches). He originally thought he would provide a "v-section" retaining wall around the garage. However, he has decided to remove a section of the garage foundation and make a monolithic pour combining the retaining wall and the garage foundation.

Mr. Scott plans to shorten the length of the wall to allow for sufficient room for a drainage pipe to be located behind the wall on the subject property. He showed the Commission a sample of the capstone to be used in the construction of the wall section.

Ron Williamson stated any drainage issues on the west side of the property could be worked out with staff as a condition of approval. Ken Vaughn asked how that would be enforced. Mr. Williamson responded it could be tied to the issuance of the building permit.

Ms. Fisher noted due to health conditions of the adjacent property owner, Mr. Scott has not been able to talk with her nor has he been able to talk with the daughter who now has power of attorney.

Nancy Wallerstein expressed concern with leaving the approval by the adjacent property owner open ended. Mr. Williamson noted a clause could be added requiring the action if a drainage problem was created for the adjacent property by the construction of the retaining wall. Ms Wallerstein recommended Mr. Scott get written documentation from the adjacent property owner to prevent possible issues down the road and that conditions #4 & #6 of the staff recommendations be deleted.

Nancy Wallerstein moved the Planning Commission grant a waiver from Section 19.44.025B of the city's zoning regulations for the construction of a retaining wall at 2201 West 72nd Street subject to the following conditions:

1. The applicant provide a revised site sketch showing the limits of the proposed retaining wall;
2. The applicant be required to remove the portion of the retaining wall currently located in the Rights-of-Way;
3. The applicant provide a detailed drawing of the proposed garage foundation/retaining wall construction for approval by the Chief Building Inspector;
4. The applicant provide a sample of the capstone for staff approval.

The motion was seconded by Bob Lindeblad and passed unanimously. Mr. Lindeblad thanked Mr. Scott for taking the effort to get a survey of his property.

**PC2012-118 Request for approval for 8 foot privacy fence
4711 West 77th Place**

Renee Walker, 4711 West 77th Place, stated she is requesting approval of a waiver from Section 19.44.025 B. 3. limiting a fence height to 6 feet. She wants to construct a fence along the east property line and a small section to the corner of the residence. Ms. Walker stated that because of the slope of her property she receives significant noise from the traffic along Roe as well as her property being highly visible to those travelling on Roe. Photographs were presented of her backyard reflecting the slope and the high visibility.

Ron Williamson stated the fence will be a replacement of the existing chain link fence. The applicant only proposes to replace the east property-line fence and the small section running to the west up to the residence which she would consider making a small section 6 feet as it approaches the residence. She held a neighborhood meeting on October 22nd with the two adjacent property owners in attendance giving their support of the requested waiver.

Ken Vaughn confirmed Ms Walker has received the staff report and finds the staff recommendation acceptable. She responded that she had and her contractor is in agreement with the conditions.

Gregory Wolf moved that given the nature of the adjacent lot, the grade of the existing patio, traffic noise issues and the privacy concerns from the property owner, the Planning Commission approve PC2012-118 granting a waiver for the construction of an 8-foot fence as presented subject to the following condition: that the fence section from the east property line to the house be gradually reduced in height to a maximum height of six (6) feet at the intersection of the residence. The motion was seconded by Randy Kronblad and passed unanimously.

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

Ron Williamson noted the site plan has three components which will be considered separately: Mission Lane Streetscape, the New Retail Building and Hen House Expansion.

MISSION LANE STREETSCAPE

The applicant is requesting approval of all six phases of the Mission Lane Streetscape. The Hen House will have one entrance which will be located where the new expansion meets the existing building. The streetscape plan should include the parking area and Starbucks building in Phase 2 and the U.S. Bank building in Phase 5. There is not a significant amount of work needed in these areas other than landscaping and lighting. This would complete the renovation to Mission Road.

Ron Williamson led the Commission in the following staff review of the criteria for site plan approval:

A. The site is capable of accommodating the building, parking area, and drives for the appropriate open space and landscape.

The site is fully developed and the purpose of the proposed site plan is to improve vehicular access, parking, the pedestrian environment and the building and site aesthetics. Existing parking areas will be utilized but enhanced with dedicated pedestrian ways and landscaping.

The plan proposes to close the north access to the Waid's location which is where the New Retail Building will locate. Staff recommends that the access from Mission Road north of the Mission Lane intersection also be closed. This access is approximately 60 feet from the Mission Lane intersection which is too close to be safe. The parking needs to be reconfigured based on closing this access point.

The parking for the center as a whole is a concern. The applicant has submitted a revised table that identifies the square footage of each leased space in order to determine the total Center square footage for the parking requirement. When the off-street parking ordinance was amended in 2004, it provided a standard of 3.5 spaces per 1,000 sq. ft. for centers that have at least 300,000 sq. ft. of net leasable area. Net leasable floor area does not include storage areas. The intent of the ordinance at that time was to exclude counting the floor area in the basements of many of the uses in Prairie Village Center that were used exclusively for storage. The applicant has interpreted storage to include space on the first floor and has deducted a standard 6% of the floor area for all uses. Staff does not agree with this interpretation, particularly where uses have basement storage and the 6% is also deducted. That appears to be duplication. This provision replaced the requirement for accumulating parking based on individual uses. At this time Highwood had agreed that the Prairie Village Center had 350,000 sq. ft. of net leasable area and that was what the parking requirement was based on. The table needs to show all the basement areas in the Center and which ones are used for storage. Also, based on previous submittals, the basement areas for Euston Hardware, Rimann Liquors,

the Macy's Home Store and Bruce Smith Drugs were included in the leasable area. These four uses amount to 28,146 square feet.

It is critical that an agreement on the square footage of the Center is made at this time because it affects the parking requirement for the entire Center and will have implications on whether expansion can occur. For example, the applicant has calculated the Center's square footage at 322,086 square feet, with a parking requirement of 1,127 spaces. This calculation includes the Hen House Expansion and the New Retail Building. If the 6% (20,558 sq. ft.) and the basement areas of the four identified uses are added (28,146 sq. ft.), the total square feet of the Center is 370,790 square feet and the parking requirement is 1,298 spaces. The applicant indicates the Center will have 1,147 spaces after this area is renovated. This includes the 161 spaces in the lot on the southeast corner of 71st St. and Mission Road. The parking total does not include any spaces that might be lost when parking lots in other areas of the Center are redone.

B. Utilities are available with adequate capacity to serve the proposed development.

Utilities are currently in place serving the Prairie Village Shopping Center and are adequate to serve this proposed improvement. The east-west overhead power line that is south of the proposed New Retail Building needs to be placed underground.

C. The plan provides for adequate management of stormwater runoff.

The proposed Mission Lane plan provides more greenspace by adding plant beds along both sides of the street. A storm water management plan has been submitted to and approved by Public Works and no retention or detention is required.

D. The plan provides for safe and easy ingress, egress and internal traffic circulation.

As previously mentioned in Paragraph "A" above, the access point from Mission Road just north of the Mission Lane intersection needs to be closed. It is too close and creates additional traffic congestion in that area.

The proposed plan changes the entrance to Lot A3 from Mission Lane to 69th Street. The plan shows a walkway that will extend from Hen House south between the parking bays. The walkway is approximately 8 feet wide at 69th Street and tapers to 5 feet wide at the south end.

A question was raised regarding reconfiguring the parking from angle to perpendicular; however, the applicant has not changed the layout.

A trail on either Mission Lane or Mission Road was a major area of discussion at the last Planning Commission Meeting. The City Council discussed this matter at their October 15th Meeting and requested the applicant to consider providing a six foot wide pedestrian walk on the east side of Mission Lane. This may change the streetscape on the east side of Mission Lane.

E. The plan is consistent with good planning and site engineering design principles.

Essentially the renovation plan is consistent with good planning and design principles. Pedestrian circulation is being addressed and more green space and trees are being added. Additional shade trees and islands in the parking areas off Mission Lane would be added improvements in the future.

F. An appropriate degree of compatibility will prevail between the architectural quality of the proposed building and the surrounding neighborhood.

The proposed materials and landscaping are compatible and will enhance the aesthetic quality of the Center. A new material, stone, is being introduced to the center and is proposed to be incorporated into the facades of the New Retail Building and the Hen House Expansion. The applicant has incorporated sculpture features into the Center and this program should be continued as the renovation progresses.

G. The plan represents an overall development pattern that is consistent with the comprehensive plan and other adopted planning policies.

One of the principles of the Village Vision was to focus on redevelopment and reinvestment in the community. These issues have become primary goals for the City and this project represents a step in that direction. This is the opportunity to enhance the aesthetics of Prairie Village Shopping Center so that it appeals to future market demands.

It is the recommendation of the Staff that the Planning Commission approve the site plan for Mission Lane in Prairie Village Shopping Center subject to the following conditions:

1. That the access from Mission Road north of the Mission Lane intersection is closed and the parking reconfigured.
2. That the square footage for the center be determined at this time as 370,790 square feet and be the basis for the parking requirements.
3. That the applicant provide a minimum six foot wide pedestrian walk on the east side of Mission Lane.
4. That Phase 2 be extended to Mission Road and include the Starbucks building which result in a loss of parking spaces.
5. That Phase 5 be extended east to Mission Lane and include the U.S. Bank.
6. That the ADA Parking spaces be relocated from the parking lot to the area next to the U.S. Bank.
7. That the east parking spaces in the U.S. Bank lot be converted to landscape islands and include trees.
8. That the applicant submit the Planting Plan to the Tree Board for review and approval prior to installation and an irrigation system be installed to provide water for all landscape improvements.
9. That the applicant submit a materials palette to Staff with samples of the actual products that will be used.
10. That all plant materials be irrigated.

Curtis Petersen, with Polsinelli Shughart representing the applicant, responded to the staff recommendation stating the applicant accepts conditions #3, #6, #8, #9, & #10.

The applicant does not feel condition #1 requiring the closing of the access from Mission Road north of Mission Lane intersection should be closed as doing so would create a dead end parking situation. It will have a negative impact on traffic flow and safety. Mr. Petersen noted there is no history of accidents at this access point or that it presents a safety hazard for the public. It would be a burden to require this closure. Also this area is outside of the scope of the proposed project.

Curtis Petersen noted the difficulty in accessing actual retail square footage information for each tenant and reviewed the formula and process used by the property owner. They spoke with each tenant to get an accurate number of square feet are used actually used for retail purposes. They took net leasable footage plus basement footage plus patio used to get the gross square footage and determined that 6% of that number represented the square footage used for storage. Mr. Petersen took exception to the staff's desire to include basement space from four establishments in their calculations of retail square footage.

Conditions #4, #5 & #7 all related to landscape islands outside the scope of the project. No changes are being made to the US Bank facility or Starbucks building. The proposed conditions would further reduce parking and narrow the street with additional landscaping. The applicant feels there is a sufficient landscape balance between the parking and proposed landscaping.

Chris Engel informed the Commission that at their November 5th meeting the City Council required that the trail be eight feet wide - not six.

Keith Bredehoeft stated the public works department has serious concerns with the access from Mission Road reflected in Condition #1. Nancy Vennard noted that driveway is bad in all regards.

Bob Lindeblad noted the driveway has been there for 25 years. Creating a dead-end parking area is the worst thing for customer service. If this was a new development, he would support not having that access point. Dirk Schafer agreed with Mr. Lindeblad that it would be different if this was a totally new project.

Ron Williamson noted the four indentified properties including basement space were included in the square foot calculations previously. He added that in order to meet the parking requirements currently the center has to use off-site parking across 71st Street without the proposed expansion. He noted that patios are spaces that require parking whether they are leasable or not. He stressed the need for a fixed square footage count on which to base required parking.

Bob Lindeblad noted the mixed uses of the shopping center allow for shared parking. Most basement space is used for storage. The ordinance is not clear on the issue of what is considered retail space vs. true storage. All basement space needs to be listed with its use and square footage.

Nancy Vennard questioned if the leases charged the same for retail space as for storage space. There needs to be some flexibility. Jeff Berg, with Lane4, responded that if the space is accessible to the public it is charged as leasable space. He added that the public does not go in the basement at Rimann's although their wholesale operation is run out of the basement. Nancy Vennard responded employees require parking spaces and asked about different calculations for different uses.

Dirk Schafer stated it is not the Planning Commission's job to figure out square footage; however, it is an important consideration and suggested that the staff and the applicant tour the basements on site to determine what is being used as retail space. Mr. Petersen stated they were open to a reasonable and flexible means of calculation and noted they had a study done on the uses of the center and parking requirements which found there to be sufficient parking.

Randy Kronblad stated this issue is critical to the approval of the site plan which is increasing density but losing parking. This needs to be resolved. Mr. Schafer agreed and stated there needs to be accurate research, not the massaging of numbers to make it work. Mr. Petersen assured the Commission they were not playing with numbers and that the study conducted included Standees.

Ron Williamson stressed the need to look at the long term and possible changes in use. What is to be the basis for the formula? In 2004, center management stated the center had 350,000 square feet, now with the proposed expansion the applicant is saying the center has 322,086 square feet.

The Commission directed the staff and the applicant to come to an agreement on the measurement of square footage and related parking requirements.

Chris Engel stated the City Council denied a request by the applicant to allow the construction of less than an eight foot trail/sidewalk to be tied into that constructed by UMB. Curtis Petersen reviewed the applicant's proposed sidewalk/trail plan prepared from the direction given by the City Council a month ago that it not be less than six feet in width. He noted that 65% of the proposed trail/sidewalk is greater than six feet in width. He reviewed the proposed plan and stated they felt the public would prefer to have more parking over a wider sidewalk/trail. He also pointed out that an existing gas valve causes the trail to be narrower in one area.

Chris Engel stated the CID agreement requires the construction of a pedestrian trail. Staff recommend and believe that an 8-foot trail can be constructed. Curtis Petersen noted the Council was divided on this issue and it was not a strong

recommendation. There was no measurement provided for the trail in the agreement and noted the plat will have an easement for the trail.

Ted Odell stated the agreement clearly indicated the construction of a trail and based on staff recommendation that an 8-foot trail could be done, the Council denied the request for a reduced width.

Bob Lindeblad stated he felt additional parking spaces are more important than additional width of the trail. Mr. Engel responded that staff is confident that the 8-foot width can be attained without the loss of parking spaces and the City Council agreed. Curtis Petersen noted that would require trimming from the grocery storefront.

Nancy Wallerstein asked if the space in front of Hen House was going to be used for retail sales, was it being included in retail space calculations. She believes the 8-foot width is important because the trail/sidewalk is moving people with shopping carts and children. It is more important to safely move people than to have an additional 2 feet of retail space.

Ken Vaughn stated he felt 6 feet was sufficient, but noted he would like to have 8 feet.

Dirk Schafer agreed everyone wants 8 feet for aesthetics and moving people, but would it be at the sacrifice of parking. Mr. Engel responded staff believes there are options to accommodate the 8-foot width without the loss of parking spaces.

Nancy Vennard stated she doesn't have a problem with the six foot width or with the varied widths.

Randy Kronblad stated he wants to see the eight-foot width noting there is very little sidewalk or designated walking area in the proposed plan - it is primarily a parking lot.

Curtis Petersen stated conditions #4, #5, #7 address areas outside the scope of this project. They are not making any changes on those properties.

Dirk Schafer stated he agreed with Starbucks but not US Bank noting that just a few moments ago Mr. Petersen made the exact opposite statement that it was very important from the bank drive north to see the new building. Ron Williamson added that staff felt there should be consistency from Mission Lane to Mission Road.

Bob Lindeblad noted you lose four parking spaces for islands. Mr. Petersen noted the tenants need all the parking spaces.

Mr. Williamson noted on the Corinth Shopping Center Lane4 looked at the entire center, not just parts of it. Staff does not want a piecemeal approach. The parking lot at US Bank needs to be broken up with landscaping. Curtis Petersen asked

how many spaces. Mr. Williamson noted there are several options, some of which are parking space neutral. The applicant accepted conditions #4, #5 & #7 stating they would work with staff on options that are parking space neutral.

Chairman Ken Vaughn noted the remaining issue is condition #2.

Nancy Wallerstein expressed concerns with the narrowing of Mission Lane, particularly in the middle section making it difficult for larger vehicles and pedestrians.

Nancy Vennard asked the width of 69th Terrace. Bob Lindeblad responded 24 feet. Ron Williamson stated that if there is perpendicular parking the ordinance requires a 24 foot driveway. The architect for the applicant stated Mission Lane is 30 feet measured back of curb to back of curb.

Nancy Vennard moved the Planning Commission approve the site plan for Mission Lane in Prairie Village Shopping Center subject to the following conditions:

1. That staff and the applicant work together to resolve the total square feet of the center as a basis to accurately calculate the required parking spaces.
2. That the applicant provide a minimum 6 foot wide pedestrian walk on the east side of Mission Lane making the walkway wider wherever possible.
3. That Phase 2 be extended to Mission Road and include the existing Starbucks building to include improvements of the existing islands with landscaping & trees.
4. That Phase 5 be extended east to Mission Lane and include the US Bank building to include additional landscaping/trees which remain "parking bay neutral".
5. That the ADA parking spaces be relocated from the parking lot to the area next to the US Bank building.
6. That the east parking spaces at the US Bank building lot be converted to landscape islands to include trees but remain "parking bay neutral" subject to staff approval.
7. That the applicant submit the Planting Plan to the Tree Board for review and approval prior to installation and an irrigation system be installed for all landscape improvements.
8. That the applicant provide a materials palette to Staff with actual samples of the products to be used.
9. That all plant material be irrigated.

The motion was seconded by Dirk Schafer and passed unanimously.

Chairman Ken Vaughn declared a five minute break with the meeting to reconvene at 9:45 p.m.

NEW RETAIL BUILDING

Ron Williamson stated the proposed retail building is 5,908 square feet with two patios that are 480 square feet and 675 square feet for a total of 7,063 square feet. There is an associated Conditional Use Permit for a drive-thru. The proposed

building will be located on the site that was formerly occupied by Waid's; however, the building will be closer to the north property line.

Ron Williamson led the Commission in the following staff review of the criteria for site plan approval:

A. The site is capable of accommodating the building, parking area, and drives for the appropriate open space and landscape.

The parking lot will be reconfigured to suit this building orientation and form which is different from the old Waid's building. The building, parking and drives can be adequately handled.

The east side of the building faces Mission Road and needs additional landscaping. The sod area near the east patio needs some evergreens or shrubbery to soften the appearance and provide better street appeal.

The area between the drive-thru and Mission Road does not have any landscaping. A landscape plan needs to be submitted for that area.

This area is shown as Phase 4 on the Mission Lane Streetscape Plan and all the landscaping and hardscape amenities need to be installed when this building is constructed.

B. Utilities are available with adequate capacity to serve the proposed development.

Utilities are currently in place serving the Prairie Village Shopping Center and are adequate to serve this proposed building. There is an overhead power line running east-west, south of the proposed building that will need to be placed underground.

C. The plan provides for adequate management of stormwater runoff.

A Stormwater Management Plan has been submitted to Public Works. It has been reviewed and approved and no requirements for retention or detention will be made.

D. The plan provides for safe and easy ingress, egress and internal traffic circulation.

As a part of this project the north access from Mission Road will be closed. This will help minimize the traffic congestion on Mission Road. Also, the drive-thru will exit onto Mission Lane which will be a private street.

E. The plan is consistent with good planning and site engineering design principles.

Essentially the renovation plan is consistent with good planning and design principles. Pedestrian circulation is being addressed and more green space and trees are being added.

F. An appropriate degree of compatibility will prevail between the architectural quality of the proposed building and the surrounding neighborhood.

The south elevation is all brick and stone. Stone is a new material being incorporated into the design of the Center. The west, north and east elevations show a lot of stucco. The stucco needs to be replaced with brick and the four sides of the building need to look like the south side. It should be noted that the building currently occupied by Starbucks is all brick. The north facade is a long expanse and will need to be broken up by changing the pattern of the brick or some similar solution. The north elevation also shows gas meters on the wall. The gas meters need to be on the ground and screened. Sign standards need to be prepared for the Center prior to issuing any sign permits.

G. The plan represents an overall development pattern that is consistent with the comprehensive plan and other adopted planning policies.

One of the principles of the Village Vision was to focus on redevelopment and reinvestment in the community. These issues have become primary goals for the City and this project represents a step in that direction. This is the opportunity to enhance the aesthetics of Prairie Village Shopping Center so that it appeals to today's market demands.

It is the recommendation of the Staff that the Planning Commission approve the site plan for the New Retail Building subject to the following conditions:

1. That the applicant revise the landscape plan on the east side of the building, replacing some of the sod area with plants, and submit the landscape plan to Staff for review and approval.
2. That the applicant prepare a landscape plan for the area between the drive-thru and Mission Road and submit it to Staff for review and approval.
3. That the applicant bury the power line running east-west across the site.
4. That the applicant replace the stucco with brick on the east, north and west sides and submit the plans to Staff for review and approval.
5. That the applicant either relocate the gas meters or screen them from view.
6. That the applicant submit the Planting Plan to the Tree Board for review and approval prior to installation and an irrigation system be installed to provide water for all landscape improvements.
7. That the applicant submit a materials palette to Staff with samples of the actual products that will be used.
8. That the applicant submit three copies of the revised plans to Staff.
9. That the site plan is subject to the approval of the Conditional Use Permit for the drive-thru and if the drive-thru is not permitted this site plan will be revised and resubmitted to the Planning Commission for approval.
10. That the applicant prepare sign standards for the Center for approval by the Planning Commission prior to issuing any sign permits.

Curtis Petersen stated regarding conditions #1 & #2 the ownership is ok with additional landscaping but noted that none was shown on the plans because of

concerns that it would create line of sight issues and is willing to do so if it can be accomplished without impacting the line of sight for vehicles.

In response to Condition #4 the applicant presented a new north elevation for review by the Commission that included dormers on the back, with different color stucco adding depth and shrubbery adding dimension. Mr. Petersen noted the building backs up to the bank and is not highly visible. Their desire was to clearly differentiate the front from the back.

Nancy Wallerstein confirmed the drive-thru will drive around the entire building.

Nancy Vennard would like to see the dormers removed. She questioned the location of the menu board as it was not shown on the elevation and noted the proposed location has cars idling next to the patio area. She suggested either moving the menu board or the patio. Ed Alexander with Hollis + Miller, Architects stated that the end user will know where they need to place the menu board. The actual placement will be determined by the tenant selected for the building. Mrs. Vennard noted that idling does cause pollution and should not occur next to an eating area. Mr. Alexander responded his firm has done several Starbucks that have half of their stacking lanes located next to their outdoor eating area. He added it will also be impacted by the orientation of the building and that they do not know how the end user will use the patio area.

Randy Kronblad stated this is a four sided building and he does not see any difference between this and the existing Starbucks building and feels they should be treated the same. All sides of the building are very visible.

Jeff Berg noted that one can have four sided architecture without all sides being the same. He does not feel it is a good use of public funds to have brick on the back of a building. Mr. Williamson replied that staff is not looking for the same, but for the buildings to be compatible with the existing buildings. Mr. Berg felt that compatibility can be achieved by carrying over some of the components. Bob Lindeblad agreed with Mr. Kronblad that this building will be very visible.

Ken Vaughn stated he felt the back side should be the same as the front even though people will be approaching from the south.

Curtis Petersen stated the requested addition of brick would be a substantial change at a substantial cost and something would have to go if required to have brick.

Nancy Vennard provided options for wrapping the brick over from the other elevations. It was felt the view coming down Mission Road should be predominately brick.

Nancy Wallerstein noted the building will be built using CID funds and felt they should do it right and stay with brick.

Dirk Schafer moved the Planning Commission approve the site plan for the New Retail Building subject to the following conditions:

1. That the applicant revise the landscape plan on the east side of the building, replacing some of the sod area with plants, and submit the landscape plan to Staff for review and approval providing this can be done without impacting "vehicle line of sight".
2. That the applicant prepare a landscape plan for the area between the drive-thru and Mission Road and submit it to Staff for review and approval providing this can be done without impacting "vehicle line of sight".
3. That the applicant bury the power line running east-west across the site.
4. That the applicant replace the stucco with brick on the south, east, north and west sides and submit the plans to Staff for review and approval.
5. That the applicant either relocate the gas meters or screen them from view.
6. That the applicant submit the Planting Plan to the Tree Board for review and approval prior to installation and an irrigation system be installed to provide water for all landscape improvements.
7. That the applicant submit a materials palette to Staff with samples of the actual products that will be used.
8. That the applicant submit three copies of the revised plans to Staff.
9. That the site plan is subject to the approval of the Conditional Use Permit for the drive-thru and if the drive-thru is not permitted this site plan will be revised and resubmitted to the Planning Commission for approval.
10. That the applicant prepare sign standards for the Center for approval by the Planning Commission prior to issuing any sign permits.

The motion was seconded by Randy Kronblad and passed by a vote of 7 to 0.

HEN HOUSE EXPANSION

Ron Williamson stated the proposed Hen House Expansion is 14,380 square feet plus 1,290 square feet for the dock area. The dock area has been reduced in size from the original submittal in order to better accommodate access for emergency vehicles.

The site plan indicates there will be a single entrance on the east facade, but the location on the plan and the elevation is not the same. A floor plan for the Hen House interior has not been submitted. Some of the plans show that the wall of the east facade sets back approximately four feet from the wall of the existing building.

Since there will not be an entrance on the corner, the tower should remain as it exists with the canopy. The plan proposed to remove the existing canopy on the corner.

Ron Williamson led the Commission in the following staff review of the criteria for site plan approval:

- A. **The site is capable of accommodating the building, parking area, and drives for the appropriate open space and landscape.**

The site is fully developed and the purpose of the proposed site plan is to improve vehicular access, parking, the pedestrian environment and the building and site aesthetics. Existing parking areas will be utilized but enhanced with dedicated pedestrian ways and landscaping.

The survey of the existing conditions indicates that currently there are 82 parking spaces in the lot north of Hen House. With the expansion this lot, will be reduced to 45 parking spaces.

The proposed expansion will require 55 parking spaces. There may not be adequate parking to accommodate this expansion depending upon the decision of the Planning Commission on the total square feet of the Center.

The applicant has stated there will be no shopping cart corrals and this should be a condition of approval.

B. Utilities are available with adequate capacity to serve the proposed development.

Utilities are currently in place serving the Prairie Village Shopping Center and are adequate to serve this proposed improvement. The east-west overhead power line will be placed underground and the plan needs to show how far west of Mission Lane it will go.

C. The plan provides for adequate management of stormwater runoff.

A Stormwater Management Plan has been submitted to Public Works. It has been reviewed and approved and no requirements for retention or detention will be made.

D. The plan provides for safe and easy ingress, egress and internal traffic circulation.

The internal traffic circulation will remain the same except for the parking lot north of the Hen House. The primary issue is the accommodation of delivery vehicles. The applicant will need to work out a plan with the merchants to schedule the many pick-up and deliveries that occur with all the businesses in the area. The merchants have submitted a detailed list of service and delivery vehicles that use their businesses and are not only concerned about the number of vehicles, but also the size.

E. The plan is consistent with good planning and site engineering design principles.

Essentially the renovation plan is consistent with good planning and design principles. Pedestrian circulation is being addressed and more green space and trees are being added. However, some parking spaces will be lost which may limit the expansion of the Center.

F. An appropriate degree of compatibility will prevail between the architectural quality of the proposed building and the surrounding neighborhood.

The east elevation of the building continues the design character of the existing building. A clerestory has been added above the entrance that does not fit with the rest of the design of the building or Center. It should be removed or replaced with a roof similar to the tower on the corner.

The mansard roof turns the corner on the north elevation and ends abruptly. It needs to be continued along that wall to the point where the wall angles to the southwest. If the mansard feature is not extended, some other design element needs to be added. It appears unfinished.

As previously discussed, the canopy needs to be retained at the corner rather than removed. It provides a cover for pedestrians, as well as providing pedestrian scale for the tower.

The new roof will be faux slate replacing the wood. A detail will need to be developed showing how the two materials will match at the point where they abut.

A floor plan of the store needs to be submitted in order to see how the entrance is designed as well as the canopy.

Sign standards need to be prepared for the Center and submitted to the Planning Commission for approval prior to issuing any sign permits.

G. The plan represents an overall development pattern that is consistent with the comprehensive plan and other adopted planning policies.

One of the principles of the Village Vision was to focus on redevelopment and reinvestment in the community. These issues have become primary goals for the City and this project represents a step in that direction. This is the opportunity to enhance the aesthetics of Prairie Village Shopping Center so that it appeals to future market demands.

It is the recommendation of the Staff that the Planning Commission approve the site plan for the Hen House Expansion subject to the following conditions:

1. That no shopping cart corrals be placed in the parking lots.
2. That the limits of the underground power line be shown on the plans.
3. That the applicant work out a schedule for deliveries with all affected merchants and submit a copy of the agreement to the City.
4. That the applicant submit the floor plan for the entire store to the City.
5. That the applicant resolve the location and detail of the entrance.
6. That the Entry Element (clerestory) be removed and replaced with a more compatible design and be submitted to Staff for review and approval.
7. That the existing canopy on the corner be retained.
8. That the mansard roof or some other element be designed for the north facade and submitted to Staff for review and approval.
9. That a detail be developed for the match between the faux slate and wood roofs where they abut.

10. That the applicant prepare sign standards for the Center and submit them for Planning Commission approval prior to issuing any sign permits.
11. That the applicant submit a materials palette to Staff with samples of the actual products that will be used.
12. That the applicant work with Staff on design changes and details to ensure that the building is compatible with the Center.

Curtis Petersen stated the applicant accepts the staff recommendation with the exception of Conditions #3, #4, #6 & #8.

Mr. Petersen reported that the ownership group has met with the merchants on several occasions regarding delivery schedules. It is not the owners' responsibility to determine delivery schedules for its tenants. The merchants will work out the scheduling of their deliveries. This condition should be removed.

Mr. Petersen stated the floor plan for the store is not relevant to the site plan approval. The Ball family is a recognized and successful entity that knows what they are doing. This condition should be removed.

Curtis Petersen stated they are still working on the entry element (Condition #6) and the north façade (Condition #8).

Ron Williamson noted the mansard roof needs to be carried on to the back. It ends too quickly. The north side of the building will be visible and needs more design along that side.

Mr. Williamson noted that the city does not need the floor plan immediately, but need to see how the entry and exit areas work. Mr. Petersen stated it will be submitted with the building plans.

Dirk Schaefer stated it is not the city's business when deliveries are scheduled. Nancy Wallerstein noted they have promised parking spaces would be available after 11 a.m. and if you don't control the deliveries you cannot count those parking spaces as available.

Nancy Vennard noted that truck deliveries are taking out at least three parking spaces. Nancy Wallerstein asked if they were not full time designated spaces if they could be included in the parking count. Mr. Williamson replied that they could.

Ed Alexander with Hollis Miller noted the merchants are ok with the signed parking restrictions requested by Mrs. Rimann.

The Commission agreed that Conditions #3 & #4 be eliminated.

Regarding Condition #6, Mr. Alexander stated that information will all be shown on the final plans. Nancy Vennard suggested they keep the elevation similar throughout following Standees tower.

Curtis Petersen stated they are looking for consistency throughout. While they work on fine tuning sufficient façade to accommodate the required Hen House signage. Nancy Vennard suggested the use of skylights in the ceiling to get natural lighting.

Regarding Condition #8, Mr. Alexander noted that anything over 8 feet requires scaffolding and has an erection process that would affect tenant deliveries. Mr. Schafer responded that the construction will affect access regardless of whether scaffolding is required.

Ken Vaughn stated he would like to see at least two back panels.

Dirk Schafer moved the Planning Commission approve the site plan for the Hen House Expansion subject to the following conditions:

1. That no shopping cart corrals be placed in the parking lots.
2. That the limits of the underground power line be shown on the plans.
3. That the applicant submit at a later date the floor plan for the entire store to the City staff.
4. That the applicant resolve the location and detail of the entrance.
5. That the Entry Element (clerestory) be removed and replaced with a more compatible design and be submitted to Staff for review and approval.
6. That the existing canopy on the corner be retained.
7. That the mansard roof or some other element be designed for the north facade and submitted to Staff for review and approval.
8. That a detail be developed for the match between the faux slate and wood roofs where they abut.
9. That the applicant prepare sign standards for the Center and submit them for Planning Commission approval prior to issuing any sign permits.
10. That the applicant submit a materials palette to staff with samples of the actual materials that will be used.
11. That the applicant work with staff on design changes and details to ensure that the building is compatible with the Center.

The motion was seconded by Gregory Wolf and passed by a 6 to 1 vote with Nancy Wallerstein voting in opposition.

David Ball with Hen House expressed his appreciation and thanks to the Planning Commission for their leadership and support for with both the Hen House improvements at Corinth Square and those approved for Prairie Village Shops. Dirk Schafer responded the Commission appreciates their reinvestment within Prairie Village.

**PC2012-19 Request for Site Plan Approval - Standees
3939 West 69th Terrace**

Jeff DeGasperi, 6240 West 135th Street, Architect for the project, stated they are requesting site plan approval for the outdoor eating area and new building facades for “Standees” which will be located in the space previously occupied by Einstein Bagel and Macy’s Home Store with a three screen theater and restaurant. The three screens will accommodate 250 people and the restaurant is proposed to seat 200. The area of the proposed complex is approximately 13,900 square feet. The basement level of the Macy’s space will not be used.

Mr. DeGasperi presented revised elevations to the Commission based on the staff report lowering the entrance tower so as not to be in competition with the clock tower. They have revised the entrance area using brick that is more compatible with the existing center with stucco inset panels that will feature signage. The north elevation uses the existing windows from the Einstein building treated with a white frosted film. From the exterior the windows will appear as they were previously. Backlit poster boxes will be used for signage such as “now showing”, “coming soon” etc.

The outdoor eating area located on the mall side is approximately 510 square feet and will accommodate eight four-top tables seating 32 persons. The proposed outdoor dining area will be elevated six (6) inches making it level with the inside dining area. The area would have indirect cove lighting.

Dirk Schafer asked what exterior material would be used. Mr. DeGasperi responded it would be concrete stamped brick similar to the existing center materials.

Nancy Vennard confirmed they would also be keeping the existing Macy windows with the frosted white film. Ken Vaughn asked what affect this would have at night. Mr. DeGasperi replied the only visible light would be from lighting outside. Mrs. Vennard noted “The Tavern” has similar windows and they are very cold. Mr. DeGasperi noted they are aware of that problem and will try to address it.

Ron Williamson noted the only issue staff has is with the elevated patio area. Typically, these outdoor dining areas are seen as temporary and could be easily removed or modified if a new tenant occupies the space. The proposed outdoor dining area will be elevated six (6) inches and would be difficult to remove at a later date. In addition, the raised dining area will require an ADA ramp. All other approved outdoor eating areas are at grade level including “Story” on the other side of the mall. Staff recommends that the exterior dining area be placed at grade which can be accomplished through minimal modifications to the interior floor plan, to accommodate an interior ramp to the elevated dining area.

Gregory Wolf asked why the patio area is being elevated. Mr. DeGasperi stated there are raised platforms inside the building and this keeps the patio area level with the inside dining area. He also noted the raised areas provide a different feel for the customers than simply sitting out on the adjacent sidewalk/street. There are also interior design issues with having the patio at street level.

Ron Williamson noted this is a large facility that will generate a significant parking demand. There is not a lot of parking available on the north side, so it is assumed that the majority of parking will be on the west side. The relocation of Einstein Bagel to another space in the Center will open up more parking spaces. Also, the major parking demand will occur in the evening after the normal retail business hours. The restaurant and theater will be open for lunch and dinner with the general hours being 11:00 a.m. to 11:00 p.m.

The projection system for the theaters is a digital design which reduces the need for the high ceilings required by older theaters. This theater will be one of the first designed for digital projection and will take advantage of the reduced space need.

The Village Center has approximately 322,086 square feet of leasable area according to a recent calculation. The off-street parking requirement for mixed office/commercial centers over 300,000 square feet is 3.5 spaces per 1,000 square feet. Therefore, the required off-street parking is 1,127 spaces. LANE4 Property Group had a site survey prepared when the property was acquired and the survey indicates 1,248 spaces but, after renovation, the Center will have 1,147 spaces. The Center has exceeded the minimum number of required off-street parking spaces by 21. The addition of 510 square feet for the outdoor eating area will increase the total square feet of the Center to 322,596 which will require 1,129 parking spaces.

Alfresco dining and drinking are now very popular and the proposed atmosphere should appeal to customers. The Planning Commission has previously approved outdoor areas for the Blue Moose, Cactus Grill, Story, Johnny's Tavern, BRGR and Noodles & Company. The outdoor area is enclosed with a fence at some of these locations, but it is not required by code unless alcohol is served.

The applicant held a Neighborhood Meeting on October 16, 2012 in accordance with the Planning Commission Citizen Participation Policy.

Ken Vaughn led the Commission in the following review of the site plan criteria:

A. The site is capable of accommodating the building, parking areas and drives with appropriate open space and landscape.

The proposed site plan indicates the outdoor eating location, which is located in the mall area, can accommodate the additional square footage for the outdoor eating area with very little effect on the Center or the ability for pedestrians to circulate to other stores in this area. No new parking areas or drives are required for this use. This area is all hardscape, with planters proposed along the railing of the outdoor eating area.

B. Utilities are available with adequate capacity to serve the proposed development.

Utilities are currently in place serving the Village Center and are adequate to serve this minor expansion for outdoor seating.

C. The plan provides for adequate management of stormwater runoff.

There will be an increase in impervious surface so stormwater is not an issue.

D. The plan provides for safe and easy ingress, egress and internal traffic circulation.

The proposed site will utilize existing driveways and the general circulation of the Center will not be changed. Adequate pedestrian accessibility will be maintained between the outdoor eating area and other uses in the Center.

E. The plan is consistent with good land planning and good site engineering design principles.

The addition of outdoor seating will help create a more vibrant atmosphere for the Center and is consistent with good land planning practices. This is a good infill use of underutilized space in the Center. The plan shows that the outdoor eating area is elevated two steps.

F. An appropriate degree of compatibility will prevail between the architectural quality of the proposed building and the surrounding neighborhood.

The applicant is making changes to the west, north and east facades of the building. The west elevation is proposed to retain the window openings, but initially were replaced with stucco panels. Stucco is not used extensively in the Center and staff asked the applicant to consider other modifications to the window openings. The applicant has proposed to mimic the original window mullion style and plans a frosted film on the back of the glass.

Even with the proposed modifications, the west elevation will be an expansive non-active "storefront." Given the focus of the center, as pedestrian friendly, the applicant should consider modifications to provide a more active storefront.

The east elevation will not change significantly regarding the windows. The entrance tower submitted originally to Staff has been revised removing the upper clerestory windows and replacing with a traditional cornice replicating the styles found throughout the center.

The north elevation appears to retain the existing window openings for the most part; although they will be screened with film. The film will need to be submitted to Staff for review and approval. The exit door has steps; however, the applicant states that it is in accordance with ADA requirements and the low wall at the steps on the north elevation to painted brick to complement the predominant material along the façade and fit in.

The plans indicate poster case locations in several areas. This will need to be considered as a part of the sign package which will be submitted at a later date.

The plans do not show outdoor lighting fixtures. If any changes are proposed in the outdoor lighting, the fixtures will need to be reviewed and approved.

G. The plan represents an overall development pattern that is consistent with the comprehensive plan and other adopted planning policies.

One of the principles of the Village Vision was to focus on redevelopment and reinvestment in the community. These issues have become primary goals for the City and this project represents a step in that direction. This an the opportunity to enhance and intensify the use of the Center that will generate additional revenues for the City.

Randy Kronblad moved the Planning Commission approve PC2012-119 the site plan for the elevations and outdoor seating at Standees (3939 West 69th Terrace) subject to the following conditions:

- 1) That all lighting used to illuminate the outdoor area be installed in such a way as to not create any glare off the site and be in accordance with the outdoor lighting regulations, and the cut sheets for fixtures be submitted to Staff for review and approval.
- 2) That the outdoor area be approved for a maximum of 32 seats.
- 3) That the applicant submit the film sample to Staff for review and approval
- 4) That the applicant submit a materials board.
- 5) That the poster case locations be considered with the signage at a later date.
- 6) That the applicant submit the design of planters to be provided by Lane4 that will be located on the mall side of the railing for Staff review and approval.
- 7) That no sign permits be issued until such time as sign standards have been submitted to and approved by the Planning Commission
- 8) That the applicant work with staff on design changes and details to ensure that the building is compatible with the Center.

The motion was seconded by Dirk Schafer and passed unanimously.

Gregory Wolf asked when they planned to open. Mr. DeGasperi responded May 20, 2013.

OTHER BUSINESS

Ron Williamson announced that the City Council at their meeting November 5th approved a 90 day moratorium on Special Use Permits to allow for the City to consider revisions to its code for a protest petition process to be implemented on Special Use Permits. They will send a formal request to the Commission at their November 19th meeting asking the Commission to authorize a public hearing on the proposed code revisions for their January meeting.

There will be a public hearing at the December meeting on the proposed code revisions regarding the establishment of overlay zoning districts. The meeting will now be held in the Council Chambers as usual instead of Shawnee Mission East as earlier planned.

Jim Brown announced that Benton House will be having an open house for City Council and Planning Commission members the first week in December.

Nancy Vennard confirmed the required notices were sent for PC2012-08. Mr. Williamson replied the City has received the mailing list and certified receipts from the mailing to property owners within 200 feet. He noted the mailing for the informational meeting, which includes the homes association presidents is not required by statute and the City does not require it to be sent by certified mail. He noted the president of the Prairie Village Homes Association is included on their mailing list.

ADJOURNMENT

With no further business to come before the Planning Commission, Chairman Ken Vaughn adjourned the meeting at 11:00 p.m.

Ken Vaughn
Chairman

DRAFT

**BOARD OF ZONING APPEALS
CITY OF PRAIRIE VILLAGE, KANSAS
MINUTES
TUESDAY, NOVEMBER 6, 2012**

ROLL CALL

The meeting of the Board of Zoning Appeals of the City of Prairie Village, Kansas was held on Tuesday, November 6, 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, Nancy Vennard, Nancy Wallerstein and Ken Vaughn. Also present in their advisory capacity to the Board of Zoning Appeals were: Ron Williamson, Planning Consultant, Chris Engel Assistant to the City Administrator; Ted Odell, Council liaison; Jim Brown, Building Official and Joyce Hagen Mundy, Board Secretary.

APPROVAL OF MINUTES

Nancy Vennard moved the minutes of the October 2nd meeting of the Board of Zoning Appeals be approved as written. The motion was seconded by Nancy Wallerstein and passed unanimously.

**BZA201205 Request for a Variance from P.V.M.C. 19.06.030A
to allow a portion of the addition of a garage to extend
16" into the required five foot setback
5105 West 66th 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, October 16, 2012 and all property owners within 200' were mailed notices of the hearing.

Randy Kronblad called upon the applicant to present the application.

John Corker, contractor for the applicant, presented the request for a variance to add a bay to the existing single car garage. The proposed garage will be only 19' in width, but will encroach into the five foot setback by approximately 16" at the northwest corner of the garage. Also present was Gary Mayerle, architect for the project.

They had initially planned the second bay to setback further in order to meet the side yard setback, but it required the removal of a large mature tree in the backyard. Neighbors urged the applicant to retain the tree and develop a different plan. The

homeowner believes the additional garage will increase the safety and convenience of entering and exiting the home.

Nancy Wallerstein confirmed the receipt of an e-mail on October 26th from C. Matthews at 5100 West 66th Street that read as follows: "I have no problem with the addition of a garage to extend 16". The addition would add value to all our surrounding homes!" Chairman Randy Kronblad asked if there was anyone present to address the Board on this application. Being none, the public hearing was closed at 6:35 p.m.

Ron Williamson noted this dwelling was built in 1956; has approximately 2,500 sq. ft. of floor area; is two story and has a single car garage. The five houses to the west and two houses to the east all have two car garages.

The minimum lot area in the R-1A District is 10,000 square feet; however, this lot is only 9,057 square feet and therefore is a nonconforming lot of record. Most of the lots are larger than 10,000 square feet in this area, but there are a few others that are less than 10,000 square feet. Apparently this area was platted prior to the adoption of the minimum lot area of 10,000 square feet.

Chairman Randy Kronblad led the Board in the following review of the findings required for the 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 lot is located on the outside of a curve and is trapezoidal in shape. It is 75 feet wide at the street and 95 feet wide at the rear property line. The house sets back 35 feet from the street which is greater than the 30 foot setback required by the ordinance. Also, when the house was built, it was set back 14 feet from the east property line. Had the building been placed closer to the east property line, adequate area would have been available for the addition to the garage. There is a mature tree in the rear yard that could be saved if the addition is built as proposed.

Bob Lindeblad stated due to the shape of the lot, its size, the location of the tree and the placement of the home on the lot, it appears that the property meets the finding of uniqueness; therefore, he moved the Board find that the variance does arise from a condition unique to this property. The motion was seconded by Nancy Vennard 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 granting of the variance would not adversely affect the property to the east because the garage is on the other side of the house. The house to the west sets off the property line approximately 18 feet at this location so there would still be about 21.5 feet between the dwellings.

Nancy Wallerstein asked if the proposed action is within the regulations of the Homes Association. The Board Secretary stated this area does not have an active homes association.

Nancy Vennard 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 Wallerstein 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 applicant really has only one direction to expand the garage and that is to the west. The proposed expansion will increase the garage width to only 19 feet which is minimal. If a bay were added further back it would need to be wider and would cause the removal of a large tree. This is a neighborhood that has a lot of mature trees and preserving trees is a neighborhood desire. It is more desirable to have a double garage with a very minor encroachment into the setback than to remove a large mature tree.

Nancy Wallerstein asked what if the tree was a Green Ash. Mr. Williamson responded it was not, he believed it was an oak or elm.

Bob Lindeblad stated the removal of a large mature tree would constitute an unnecessary hardship 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 Dirk Schafer and passed by a vote of 6 to 0.

D. Public Interest

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

The proposed variance is a reduction in the side yard of 16 inches for only a corner of a proposed garage that will set back approximately 50 feet from the front property line. The variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare.

Nancy Wallerstein 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 Nancy Vennard and passed by a vote of 6 to 0.

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 side yard setback is to provide adequate open space between dwellings. After the garage expansion is completed, there still will be approximately 21.5 feet between the structures. This is in excess of the 14 foot requirement of the zoning

ordinance. The granting of the variance would not be opposed to the general spirit and intent of these regulations.

Ken Vaughn noted there will be adequate open space between the two dwellings and therefore, moved that the Board find that the variance is not opposed to the general spirit and intent of these regulations. The motion was seconded by Nancy Wallerstein and passed by a vote of 6 to 0.

Nancy Wallerstein moved that the Board having found all five of the conditions to have been met that BZA Application 2012-04 for the requested variance from PVMC 19.06.030A for a side yard variance of 16" be granted subject to the following conditions: 1) That the applicant adequately protect the existing trees during construction and 2) that the variance be approved for only the northwest corner of the garage as shown on the plan. The motion was seconded by Nancy Vennard and passed by a vote of 6 to 0.

OTHER BUSINESS

Review of the 2013 Board Meeting & Submittal Calendar

The Board Secretary presented the proposed 2013 calendar noting the January and September meeting dates have been moved from the first Tuesday of the month to the second Tuesday of the month due to conflicts with holidays and City Council meetings.

Bob Lindeblad moved the Board approve the 2013 meeting and submittal calendar as presented. The motion was seconded by Nancy Vennard and passed by a 6 to 0 vote.

The Board Secretary announced an application has been filed for the Board's December 4th meeting for a side yard variance.

ADJOURNMENT

Chairman Randy Kronblad adjourned the meeting of the Board of Zoning Appeals at 6:40 p.m.

Randy Kronblad
Chairman

JAZZ FEST COMMITTEE
November 8, 2012
7:00 p.m.

Present: Jack Shearer, Gloria Shearer, Peggy Wright, Mary Ann Watkins, Donelea Hespe, Dan Andersen, JD Kinney, Diane Mares, Kate Fields and Joyce Hagen Mundy.

Financial Update

Jack Shearer reviewed briefly the 2012 actual budget and his proposed 2013 budget. He would like to see approximately \$50,000 in revenue with anticipated expenses of \$43,000 providing funding for Heartland Habitat for Humanity. He is hoping to acquire \$15,000 in contributions from major sponsors and would like to have up to three VIP tents purchased. The budget includes potential grants. He asked Joyce to get the in-kind donation total for 2012 noting this information was usually well received in grant applications. Jack also noted donated city staff costs for the event were approximately \$29,000.

Talent & Hours

Jack proposed having 6 groups perform between the hours of 3 p.m. to 11 p.m. The discussed if eleven o'clock was too late. There was no consensus reached on the ending time. The committee also discussed talent options with the possible broadening to include some "Blues". Some potential groups were suggested. Larry Kopnik will once again come up with a potential talent line-up for the committee to review.

BRGR Meeting

Jack reported on his and Joyce's meeting with BRGR. They were generally pleased with the 2012 event and were able to recoup losses from 2011; however, during the next year they will be opening two more restaurants and do not feel they will have the time to provide the level of involvement they had in 2012. They expressed the desire for the event to have a rain-date or second day that would mitigate the potential loss by cancellation. The 5K was discussed but no commitment made. They still desire to be part of the event, but to a lesser extent. Jack noted the excellent press coverage through Ink and the quality of the items prepared by Tara. He felt it was important to continue the relationship with Ink. Committee members expressed their appreciation for the work done by BRGR but many felt their involvement in 2012 was too great and impacted the identity of the "Prairie Village" Jazz Festival and donations.

Vendors

Jack is proposing to have three primary food vendors that would pay a set fee to be vendors. The vendors would retain all the funds received at the event. The vendors would not be allowed to sell drinks or alcohol. Jack noted he has already received verbal commitment from Coke for the donation of their drink products as well as our on-going relationship with Crawfords. It was noted that BRGR did a great job as a vendor with high quality food and service. It was suggested that the committee try to keep a PV connection with its vendors. Noodles & Company was suggested as a possible vendor.

Jack indicated that he will talk with Sal at “New York Dawg Pound”. Jazz in the Woods charges their vendors \$850 for the weekend event.

Fund-raising

Jack reported that he and Diane Mares met with a professional fund-raiser to discuss possible options for the Jazz Festival. The committee discussed the pros and cons of working with a fund-raiser. Kate Fields questioned whether the person would do the actual fund-raising or if they would simply consult - advising the committee what to do and who to contact. The individual they walked with does both. Peggy Wright noted from the website reference this individual appears to work with large philanthropic organizations. Kate Fields stated she has names of several individuals who are professional fundraisers. She noted the committee needed to develop a scope of services. Diane Mares, Kate Fields and Jack Shearer will develop a scope and interview potential individuals before the end of the year.

Another suggestion made was to hire an event coordinator that would handle the details and allow committee members more time to deal with making connections. Currently most of the details have been handled to city staff. Jack will investigate this further.

Possible Friday Event

Dan Andersen presented the possibility of have a pre-festival jazz event on the Friday evening before the festival that would be completely different from Saturday’s festival. The event could feature local student jazz groups with local jazz musicians. 12th Street Jump is interested in being involved in this type of an event. MaryAnn suggested this could be a different format focusing on education that would fit well with grant applications. With 12th Street Jump it would also provide some experience for students interested in broadcasting as well as jazz students. Peggy Wright suggested working with the Eddie Baker School of Music which has produced several good musicians who are also involved with teaching. Another contact suggested was Jim Meire with Johnson County Community College. Jack Shearer noted the importance of maintaining a relationship with area musicians.

Next Meeting

The next committee meeting will be on Tuesday, December 11th at 7 p.m. at Dan Andersen’s home.

Adjournment

The meeting was adjourned at 8:45 p.m.

**COUNCIL COMMITTEE
MONDAY, DECEMBER 3, 2012
6:000 P.M.
Council Chambers**

AGENDA

CHARLES CLARK, ACTING COUNCIL PRESIDENT

AGENDA ITEMS FOR DISCUSSION

COU2012-55 Consider approval of Memorandum of Understanding with Johnson County for implementation of joint notification system with Johnson County, WaterOne and other cities
Quinn Bennion

*COU2012-57 Consider Resolution No. 2012-02 Establishing a Tax-Exempt Financing Compliance Procedure
Lisa Santa Maria

*COU2012-58 Consider Bid Award for Tree Planting Services
Bruce McNabb

EXECUTIVE SESSION

COUNCIL COMMITTEE OF THE WHOLE
December 3, 2012

The Council Committee of the Whole met on Monday, December 3, 2012 at 6:00 p.m. in the Council Chambers. The meeting was called to order by Acting Council President Charles Clark with the following members present: Mayor Ron Shaffer, Ashley Weaver, Dale Warman, Ruth Hopkins, Steve Noll, Michael Kelly, Laura Wassmer, Brooke Morehead, Charles Clark, Ted Odell and David Belz. David Morrison and Andrew Wang arrived late. Staff Members present: Wes Jordan, Chief of Police; 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 and Joyce Hagen Mundy, City Clerk.

COU2012-55 Consider approval of Memorandum of Understanding with Johnson County for the implementation of a joint notification system with Johnson County, WaterOne and other cities

Quinn Bennion stated the City currently utilizes the Code Red system for emergency mass notification. The system is shared with Mission Hills and has been successful in reaching a large group of residents in a short period of time to inform or alert of an emergency. The Police Department, primarily through dispatch, initiates calls as needed.

WaterOne and Johnson County Emergency Management initiated a procurement process to secure a mass notification system for multiple agencies within Johnson County. The cities of Lenexa, Olathe and Overland Park were included in the inaugural group of entities. The RFP identified several functional specifications including vendor hosted system, voluntary subscriptions, strong GIS component and group notifications. The Selection Committee reviewed the nine responses in April 2012 and interviewed three finalists. The group selected EverBridge as the preferred vendor to implement a shared system in Johnson County. The initial five entities proposed implementation of the new system by the end of 2012 with the plan of adding other interested cities later in 2013. The implementation of the system has been delayed a few months to work out customization requirements and training.

With the delay, the steering committee and Johnson County Emergency Management approved Prairie Village and Shawnee to join the initial start-up group. The joint venture has a working name of NotifyJoCo and holds the following advantages to a shared system:

- Shared software, licensing and implementation costs
- Shared training opportunities and costs
- Support of Johnson County IT resources
- Able to communicate with residents across jurisdictional boundaries for emergencies or events that impact multiple cities

- Residents only need to register with one system for notifications from their respective city, County, Sheriff and WaterOne
- Joint marketing and campaign efforts to encourage residents throughout the county to self-register

NotifyJoCo will operate similar to the City's CodeRed system. The system is a strong GIS based with the notification selections to include the whole city, neighborhood associations, trash day area, streets or other smaller areas. The system can use email, cell phone, home phone and/or text. Each resident can sign up for up to five addresses within the County and designate the type and method of communication desired. The NotifyJoCo group is planning for a mass marketing campaign in early 2013 for general public awareness and to encourage self registrations.

Each participating entity can determine the types and frequency of non-emergency notifications available. City staff anticipates possible notifications to include zoning applications, temporary no parking zones, trash day changes, reports on significant fire and police incidents, special events in a particular area, road closures and water breaks. Staff proposes that the non-emergency notifications be sent via email or text with the emergency notifications primarily through phone contacts.

Mr. Bennion stated the new system will not be implemented for several months and could be as late as May 2013; therefore, staff recommends continuing the CodeRed contract through the end of 2013 with staff continuing to use the CodeRed system in Prairie Village and Mission Hills for emergency notifications until a transition to the new system is feasible. The non-emergency communication notices can begin through NotifyJoCo once the city's customized preferences are instituted, training of staff and the internal process is formalized. Staff proposes that the police department will continue the coordination of the emergency communications and city hall staff will coordinate the non-emergency notifications. Mr. Bennion noted further discussions are needed with Mission Hills administration to determine if their participation level extends beyond the public safety emergency notifications.

The Memorandum of Understanding (MOU) provides for contract administration and general coordination of usage of the system by the county on behalf of the participating agencies which are the local government agencies who enter into the MOU and agree to fund an equal part of the system's costs. Each Participating Agency would have a system administrator. The MOU establishes a Steering Committee which has a voting member from each Participating Agency and which can establish general policies for multi-agency use of the system.

The cost for participation in the NotifyJoCo system is \$5,000 for a city with a population below 25,000. Currently, the CodeRed annual subscription is approximately \$10,000 and is split with Mission Hills. The annual amount is included within the 2013 Police Department budget. The cost of the first year of NotifyJoCo will be taken from the IT fund as a budgeted project (notification system). Starting in 2014, the cost of NotifyJoCo will be part of the annual operating budget and it is anticipated to be similar to current

costs. It is anticipated that the annual cost will be less in future years as other entities join.

Ruth Hopkins asked if the County expected all cities to participate. Mr. Bennion responded the county is currently looking only at major cities; however, many smaller cities have expressed an interest. He noted the county already provides dispatch services for many of the smaller cities in the county. The only larger city that has not expressed an interest is Leawood.

Laura Wassmer asked if they had a similar program in place. Katie Logan replied she is a resident of Leawood and has received similar notifications from the city. (It was later discovered that Leawood no longer has a system.)

David Morrison arrived at 6:07 p.m.

Laura Wassmer made the following motion, which was seconded by Brooke Morehead and passed unanimously:

**RECOMMEND THE CITY COUNCIL APPROVE THE MEMORANDUM
OF UNDERSTANDING WITH JOHNSON COUNTY FOR PARTICIPATION
IN THE COUNTY'S JOINT MASS NOTIFICATION SYSTEM
COUNCIL ACTION REQUIRED
CONSENT AGENDA**

**COU2012-57 Consider Resolution No. 2012-02 Establishing a Tax-Exempt
Financing Compliance Procedure**

Lisa Santa Maria noted that in response to recent guidance from the IRS, our bond counsel now requires issuers to adopt and implement a post-issuance compliance policy. This policy addresses the following six areas of on-going compliance identified by the IRS:

- Due diligence review at regular intervals
- Identifying the official or employee responsible for review
- Training of the official or employee
- Retention of adequate records to substantiate compliance
- Procedures reasonably expected to identify noncompliance in a timely manner, and
- Procedures to ensure the issuer will take steps to correct any non-compliance in a timely manner.

Mrs. Santa Maria stated that issuers have historically been required to provide regular monitoring of their tax-exempt bonds, but the new post-issuance compliance policies formalize these responsibilities. This action is not required until the city issues new or refinances existing bonds, but she would like to have the procedure prior to the city's next financial audit.

Dale Warman made the following motion, which was seconded by Steve Noll and passed unanimously:

**MOVE THE CITY COUNCIL ADOPT RESOLUTION NO. 2012-02
ESTABLISHING A TAX-EXEMPT FINANCING COMPLIANCE
PROCEDURE**

**COUNCIL ACTION TAKEN
12/03/2012**

***COU2012-58 Consider Bid Award for Tree Planting Services**

On Friday, November 9, 2012, the City Clerk received bids for a three year contract to provide Tree Planting Services. This contract is to provide tree planting services for City replacement trees. Bids were received from Arbor Masters and Rosehill Gardens.

Bruce McNabb reviewed the proposals which ask for both a price for the planting of the trees and a price for the trees. He noted Rosehill Gardens pricing included the cost of the trees as they grow their own trees. Mr. McNabb reviewed the process followed to analyze the bids to make a comparable comparison. From the analysis it was determined that Rosehill Gardens was the low bid. Public Works staff checked references given receiving positive comments.

Funding is available in the 2013 Grounds Operating Budget.

Ted Odell questioned the receipt of only two bids. Mr. McNabb stated that is customary for this service, unlike tree trimming.

Brooke Morehead confirmed that a variety of trees will be planted and that Green Ash trees will not be planted. Dale Warman noted that one of the steps advised to address the Emerald Ash Bore is the planting of a variety of tree species.

Laura Wassmer made the following motion, which was seconded by Steve Noll and passed unanimously:

**MOVE THE CITY COUNCIL AWARD THE CONTRACT FOR TREE
PLANTING SERVICES TO ROSEHILL GARDENS FOR 2013 AND
RENEWAL IN 2014 AND 2015.**

**COUNCIL ACTION TAKEN
12/31/2012**

Executive Session

Michael Kelly moved pursuant to KSA 75-4319 (b) (1) that the Governing Body, recess into Executive Session for fifteen (15) minutes for the purpose of consulting with the City Attorney on personnel matters of nonelected personnel. Present will be the Mayor, City

Council, City Administrator and City Attorney. The motion was seconded by Andrew Wang and passed unanimously.

Acting Council President Charles Clark reconvened the meeting at 6:30 p.m.

Michael Kelly moved pursuant to KSA 75-4319 (b) (2) that the Governing Body, recess into Executive Session for fifteen (15) minutes for the purpose of consulting with the City Attorney on matters which are privileged in the attorney-client relationship. Present will be the Mayor, City Council, City Administrator; Assistant City Administrator, Chief of Police and City Attorney. The motion was seconded by Andrew Wang and passed unanimously.

Acting Council President Charles Clark reconvened the meeting at 6:45 p.m.

STAFF REPORTS

Public Safety

- Chief Wes Jordan reported the department will be offering “Shop with a Cop” for the second year in conjunction with the Prairie Village Municipal Foundation. They are looking to increase the number of children participating to fourteen.
- During the 2013 budget discussions, the Council approved going with an outside vendor to provide school crossing guard services with the thought of beginning in January. Chief Jordan reported that he did not want to rush into an agreement and has decided to complete the school year under the existing city program. He will bring an agreement for contracted services in the spring to begin with the 2013-2014 school year.

Public Works

- Bruce McNabb reported the CDBG project on Sagamore from 75th to 76th Street has been completed and the City will be filing for reimbursement of cost through the Community Development Block Grant Program.
- The project on Somerset between Roe and Nall is nearing completion and appears to be within budget. He noted the city used CARS funding for this project and was able to add the realignment of intersection at Somerset and Nall to the project.

Administration

- Lisa Santa Maria reported that the 2 auditors will be on site doing preparatory work for the 2012 audit. She has also received confirmation that the City’s 2011 audit has received the GFOA Award of Excellence.
- Dennis Enslinger reported the glass recycling bin has been moved from the Municipal Campus parking lot to Corinth Square. It is now located south of the entrance to the shopping center in the parking lot.
- Chris Engel reported that Wednesday, February 6th is Capital Day in Topeka. More information would be forthcoming, but Council members were encouraged to mark the date on their calendars.

- Mr. Engel reported the Community Center Feasibility study has been received in draft form and will be considered by the committee next week.
- Katie Logan reported she had a telephone conversation with Johnson County District Attorney Steve Howe acknowledging the receipt of the letter from Mayor Shaffer regarding the governing body's actions on the code of ethics complaint against David Morrison. The review which is expected to take a couple of weeks.
- Ms Logan was also advised that a formal complaint had been filed with the District Attorney regarding the executive session held by the Governing Body to consider the code of ethics complaint.
- Quinn Bennion stated he visited with a representative of SureWest earlier in the day and has been advised that they will not be doing any residential build out in the Kansas City metro area in 2013. He will continue to keep in touch with them. Brooke Morehead asked why Ward 4 is not included in the AT&T U-verse service area. Mr. Bennion stated he would talk with Chris Carroll to find out.

Mayors Report

On Saturday, November 10th, Mayor Shaffer was pleased to attend "Some Enchanted Evening" at Johnson Community College recognizing Senator Audrey Langworthy as the 2012 Johnson County Person of the Year. On November 17th he attended the Northeast Johnson County Annual Holiday Dinner, on Tuesday, November 20th he attended the Greater Kansas City Chamber Annual Dinner, on November 29th he participated in the Prairie Village Mayors Holiday Tree Lighting and attended the City of Mission Tree Lighting on Friday, November 30th.

NLC Reports

Council members Ruth Hopkins, Ted Odell and David Morrison reported on the National League of Cities Conference they attended the past week in Boston. All agreed the conference was a valuable experience.

Adjournment

With no further business to come before the Council Committee of the Whole, Acting Council President Charles Clark adjourned the meeting at 7:00 p.m.

Charles Clark
Acting Council President

PARK AND RECREATION COMMITTEE
November 14, 2012
Council Chambers

The Park and Recreation Committee met at 7:00 pm. In attendance: Laura Wassmer, Chair, Ashley Weaver, Vice-Chair, Diane Mares, Peggy Couch, Tim O'Toole, Maggie Swartz, Clarence Munsch, Joe Nolke, Max Rieper and Kevin Letourneau. Staff: Bruce McNabb and Dennis Enslinger. Also present: Thos O'Brien and members of the community garden group.

PUBLIC PARTICIPATION
COMMUNITY GARDEN

Laura discussed whether or not the Committee wanted to hear from the Community Garden group. Laura indicated that without comment by the Tree Board it was unlikely that the Committee could reach a decision. It was noted that the Tree Board will not likely meet until January or February.

Thomas O'Brien indicated the garden had great participation in 2012 and 50% of the plot holders have renewed. The current challenge is how many plots will be available for 2013. As previously reported, there is a large tree to the south the group would like removed because it shades the southern plots and would allow for expansion. If the tree is removed there is room for an additional 20 plots. If the tree is not removed there is room for 6 – 8 additional plots. Daniel Olson, an Eagle Scout, has committed to helping with the expansion. However, he has to have his project done by summer of 2013.

Peggy asked how the current plot holders secured plots for 2013 and in 2012. Thomas noted in 2012 it was first come first serve. Returning gardeners were able to secure a spot in 2013. New plot holders in 2013 will be able to attend four public meetings and then solicitation will begin after the public meetings. Peggy noted that she was pleased with the upkeep of the garden.

There was a question about garden expansion at Cherokee Church. Thomas thought they would be able to expand at this location. However, there is a new pastor so they are still working on this matter.

ADDITIONAL PARKLAND

Dan Bloom indicated the Countryside East Homes Association was very interested in some underutilized land south of Nall Avenue Nazarene Church. He indicated it is one of the few green spaces in the northern part of the City. The neighborhood is interested in the City pursuing either a long-term lease or acquisition of a portion of the area. CSE believes that is a good time for the City to approach the Church at this time. Peggy asked if the homes association was interested in maintaining it as a Homes Association park rather than a city park. Dan indicated CSE does not have the funding for the maintenance and would like to see this as a city park.

Bruce asked if the adjacent property owners are interested in owning the portion of the land on the western side of the creek. Dan indicated they may be interested in that prospect.

Max shared he was interested in this area and asked if there was a cost estimate of maintaining this area. Dennis noted city staff has not done an estimate since it is unclear as to the exact area to be maintained.

CONSENT AGENDA

The minutes from September 12, 2012 were approved.

REPORTS

Public Works Report

PORTER SWINGS

Bruce reported the Porter Park swings were a work in progress and he hopes have them done by spring 2013. The cost is approximately \$5,000-\$10,000 for removal and installation of a new structure, not \$35,000 as previously stated. The cost will be covered by the current budgeted maintenance. Bruce will report back on the various swing setups in the various parks.

SNAPSHOT UPDATE

Bruce referenced the material in the packet as a cost analysis of alternative herbicides and noted Public Works was going to divide the existing parks into two groups - one using SnapShot and one using an alternative material. Laura requested Public Works provide a total cost comparison between types of applications. Bruce reported he did not plan on taking this matter to City Council but would inform them of the new approach regardless of the budget impact. Laura further requested he itemize which parks would receive the alternative material and also report that to the City Council, Parks Committee and Environmental Committee. There was some additional discussion about materials being used in other grassy areas and/or using all organic products in some parks to give a good comparison. Bruce said he would gather that information.

PARK LIGHTING

The two parks under consideration are Harmon and Franklin. Harmon is part of a larger study of electrical needs within the park that includes uses for Villagefest and Jazzfest. This study will be completed by an outside consultant in the spring of 2013. Franklin will be done under our existing electrical contractor since it is simpler.

PARK RECYCLING

Bruce noted that two bags of recycling were collected in the month of October. Laura asked if the contamination was high. Bruce noted that this was not really an issue. Diane asked about recycling at City Hall and PW. It was clarified that it was being done at these two facilities.

Ashley asked Bruce what areas he thought would be better locations for the recycling containers within Franklin Park. There was a discussion about how the current location was not conducive to recycling, noting there was a balance to the location to make sure they were not used for trash containers. Laura wanted to know the cost of relocating the existing facilities. Bruce indicated Public Works would cover the costs. There was a discussion about expanding recycling to other parks. Laura indicated that it was a priority. There was a discussion using cardboard boxes or some other cheaper alternative. Public Works will provide some cost alternatives.

Recreation Report

Dennis presented the 2012 Recreation Report. There was a discussion concerning the true cost of the activities and if fees were set to achieve full cost recovery. Staff was requested to do an analysis of the fees vs. actual costs of recreational offerings for the last few years.

Chairperson's Report

Laura indicated there were still vacancies in two wards.

OLD BUSINESS

COMMUNITY GARDEN

There was debate about the overall health of the tree the group wants removed. The general consensus is to see what Tree Board recommends. There was additional discussion on the topic of whether the garden will be a long-term issue and if community gardens would be a main stay in the community.

PARKS MASTER PLAN - PRIORITIES

Laura indicated the Committee should go through the Parks Master Plan and determine the top priorities. Specifically, she would like to identify priorities by individual improvements, not by entire park upgrades. She noted there is \$330,000 for a parks project in 2015-2016. She would like to earmark these funds for specific project(s).

There was a discussion on what projects are funded. Bruce clarified the tennis courts at Harmon have funding in the 4-year budget. There was discussion about the plan for a Park Infrastructure Reserve Fund.

To better inform the committee as to the specific improvements within each park, Chris will provide hard copies of site maps and costing data from the parks plan. Also requested was major cost maintenance items and a list of the top five things that will break in the near future.

NALL AVENUE CHURCH PARKLAND

After brief discussion, Laura requested staff contact the church, set up a site visit and see what they had in mind for the property. There was some discussion about the parking that would be required and the issues it could create. Laura asked the committee members to visit the site.

Adjournment

The next meeting will be Wednesday, December 12th.

**Council Members
Mark Your Calendars
December 17, 2012**

December 2012 December 25	Eileen McCoy oils exhibit in the R. G. Endres Gallery City offices closed in observance of Christmas
January 2013 January 1 January 7 January 11 January 21 January 22	Eileen McCoy oils exhibit in the R. G. Endres Gallery City offices closed in observance of New Year's Day City Council Meeting Artist reception in the R. G. Endres Gallery 6:30 - 7:30 p.m. City offices closed in observance of Martin Luther King Jr Day City Council Meeting
February 2013 February 4 February 8 February 18 February 19	City Council Meeting Artist reception in the R. G. Endres Gallery 6:30 - 7:30 p.m. City offices closed in observance of Presidents' Day City Council Meeting
March 2013 March 4 March 8 March 18	City Council Meeting Artist reception in the R. G. Endres Gallery 6:30 - 7:30 p.m. City Council Meeting
April 2013 April 1 April 12 April 15	City Council Meeting Artist reception in the R. G. Endres Gallery 6:30 - 7:30 p.m. City Council Meeting
May 2013 May 6 May 10 May 20 May 27	City Council Meeting Artist reception in the R. G. Endres Gallery 6:30 - 7:30 p.m. City Council Meeting City offices closed in observance of Memorial Day
June 2013 June 3 June 14 June 17	City Council Meeting Artist reception in the R. G. Endres Gallery 6:30 - 7:30 p.m. City Council Meeting
July 2013 July 1 July 4 July 4 July 12 July 15	City Council Meeting City offices closed in observance of Independence Day VillageFest Artist reception in the R. G. Endres Gallery 6:30 - 7:30 p.m. City Council Meeting
August 2013 August 5 August 9 August 19	City Council Meeting Artist reception in the R. G. Endres Gallery 6:30 - 7:30 p.m. 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 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