

CITY OF PRAIRIE VILLAGE

February 19, 2013

Council Committee Meeting 6:00 pm

City Council Meeting 7:30 pm



COUNCIL COMMITTEE OF THE WHOLE
Council Chambers
February 19, 2013
6:00 PM

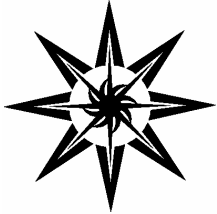
AGENDA

CHARLES CLARK, COUNCIL PRESIDENT

AGENDA ITEMS FOR DISCUSSION

- Presentation of general overview of retirement plans for city employees
Jenny Cascone Mosh and Quinn Bennion
- COU2013-07 Consider allocation of funds for upgrade of school zone beacon system
Sgt. Carney
- COU2013-08 Consider approval of a contract with William White & Sons Construction
Co. for the 2013 Concrete Repair Program
Keith Bredehoeft
- COU2013-09 Consider approval of a contract with Vance Brothers, Inc. for the 2013
Crack Seal/Micro Surfacing Program
Keith Bredehoeft
- Follow-up from Council work session
Quinn Bennion
- Discuss Comprehensive Plan Amendment Process
Dennis Enslinger

***Council Action Requested the same night**



POLICE DEPARTMENT

Council Committee Meeting Date: February 19, 2013

COU 2013-07: Consider allocation of funds for upgrade of school zone beacon system

RECOMMENDATION

Staff recommends the approval of funds to upgrade thirteen (13) Eltec brand school zone beacons from pager-based communications to Ethernet-based communications for \$22,780 (Eltec hardware/software -- \$19,280; installation/testing -- \$3,500). Staff also recommends approval of funds not to exceed \$1,500 to hire a contractor to install the omni-directional antenna.

COUNCIL ACTION REQUESTED ON:

March 4, 2013

SUGGESTED MOTION

I move that \$26,708 be allocated from the Equipment Reserve Fund to pay for an upgrade to the school zone beacon system. [Note - inclusive of 10% contingency]

BACKGROUND

The Police Department researched various options to improve the reliability and capability of the school zone beacon system throughout the City. The current pager-based system must be programmed twice a year because the pager system cannot handle the amount of data transfer needed for a full year schedule for each location, programming takes at least one hour per school (twice a year), there is no confirmation back to programmer of acceptance of data, every beacon in every school zone must be physically checked to verify they are working, and there is no way to remotely trouble-shoot when a beacon is malfunctioning.

Staff decided this goal could be achieved with an upgrade to the current Eltec brand system as opposed to purchasing an entirely new system. The upgrade would entail replacing the time clocks in each beacon cabinet with a new system that uses internet/intranet and RF technology, eliminating the need for the pager system and pager fees. The upgrade would also include an omni-directional antenna to communicate with the beacons and associated software. This purchase was approved as part of the 2013 budget.

FUNDING SOURCE

Equipment Reserve Fund: 22-53-53-8001-000

ATTACHMENTS

1. Mid American Signal, Inc., quote
2. Ka-Comm., Inc., quote

PREPARED BY

Sgt. J. Carney #84
Traffic Unit Supervisor
Date: February 7, 2013



MID AMERICAN SIGNAL, INC.

2429 S MILL STREET KANSAS CITY, KS 66103
PHONE (913) 432-5002 FAX (913) 432-2213
<http://www.midamsignal.com>

QUOTATION

PREPARED FOR: Sgt. James Carney
Prairie Village Police Department
PREPARED BY: Eric Burtis

DATE: 1/29/2013

Per Your Request: Eltec School Zone Time Clock System

QTY	DESCRIPTION	EACH	TOTAL
1	LANG 3000 Gateway w/ Omni 8dBi	\$ 1,147.00	\$ 1,147.00
1	Coax assembly for LANG-LMR400 1/2" Helix LDF4-50A	\$ 385.00	\$ 385.00
13	TC 3000 Time clock w/ Yage 9dBi & coax	\$ 1,070.00	\$ 13,910.00
1	DLPRO software	\$ 3,838.00	\$ 3,838.00
Total:			\$ 19,280.00

Notes:

The above quoted price is for equipment only.
Installation & testing of 13 clocks and LANG by Mid American Signal = \$3,500.
Installation of omni-directional antenna on tower by others.
Cost of coax assembly may vary depending on actual cable length required.

Terms: Net 30 days from date of invoice, or as approved by Mid American Signal Credit Department.

An interest charge, as permitted by law, may be assessed on accounts unpaid after 30 days.

Quotation is valid for 60 days, with delivery 4-6 weeks after receipt of order.

Quotation is based upon quantities shown, any changes can be subject to price adjustment.

Responsibility for liquidated damages lies solely with the purchaser.

The above information is for the use of the person or entity named only. Unauthorized use is prohibited.

The above quotation does not include any installation of the products quoted.



Quotation

The Leader in Critical Communication

1201 W. Old Hwy 56
 Olathe, Kansas 66061
 Phone 913-764-7314 Fax 913-764-7514

DATE 12/20/2012
Quotation # 2012-1220PVPD1
Customer ID PVPD

Quotation valid until: 90 Days
Prepared by: Jim Oehm

Prairie Village Police Dept.
 Attn: Sgt. James Carney
 7710 Mission Road
 Prairie Village, KS 66208
 (913) 385-4622
jcarney@pvkansas.com

Comments or Special Instructions:

Tower Climb and antenna replacement with coax pull and removal

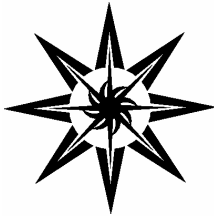
<i>Quantity</i>	<i>Description</i>	<i>Unit Cost</i>	<i>Amount</i>
80	Tower Climb Rate	\$10.00	\$ 800.00
6	Labor Rate	\$48.00	\$ 288.00
1	Parts - Connector & Vapor Wrap	\$ 85.00	\$ 85.00
1	Service Call	\$ 80.00	\$ 80.00
			\$ -
	Customer provided antenna		\$ -
	Ka-Comm provided misc. parts & antenna termination		\$ -
	Coax removal with new coax pull		\$ -
	Customer responsible for equipment termination		\$ -
	Ka-Comm removal of old antenna		\$ -
			\$ -
			\$ -
TOTAL			\$ 1,253.00

If you have any questions concerning this quotation contact:
 Jim Oehm, 1201 W. Old Hwy 56, Olathe, Kansas 66061, 913-764-7314

THANK YOU FOR YOUR BUSINESS!

 Quotation Acceptance

 Jim Oehm



PUBLIC WORKS DEPARTMENT

Council Committee Meeting Date: February 19, 2013

Council Meeting Date: March 4, 2013

COU2013-08: CONSIDER APPROVAL OF A CONTRACT WITH WILLIAM WHITE & SONS CONSTRUCTION CO. FOR THE 2013 CONCRETE REPAIR PROGRAM.

RECOMMENDATION

Move to authorize the Mayor to sign the Construction Contract with William White & Sons Construction Co. for Project CONC2013, 2013 Concrete Repair Program for \$730,000.00.

BACKGROUND

On February 8, 2013, the City Clerk opened bids for Project CONC2013, 2013 Concrete Repair Program. Three bids were received:

William White & Sons	\$710,978.25
O'Donnell & Sons	\$922,925.75
Freeman Concrete	\$1,277,085.00
Engineer's Estimate	\$746,910.00

This program consists of repairs to deteriorated concrete sidewalk, curb and ADA ramps. Location of work includes streets in the City's yearly maintenance Districts. Not all streets in the following areas will require work. They are Districts **23** (71st. to 75th. Mission to Roe), **13** (71st to 75th Roe to Nall), **61** (83rd to 87th Roe to Nall) and **64** (83rd to 89th Reinhardt to Roe). The City will also be repairing deteriorated concrete at Harmon, Santa Fe and Taliaferro Parks along with approximately ten miscellaneous locations.

City staff has reviewed the bids for accuracy and found no errors.

FUNDING SOURCE

Funding is available in the Capital Infrastructure Program Project CONC2013.

ATTACHMENTS

1. Construction Agreement with William White & Sons Construction Co.

PREPARED BY

Keith Bredehoeft, Construction Manager

February 12, 2013

PROJECT CONC2013:

2013 CONCRETE REPAIR PROGRAM

CONSTRUCTION AGREEMENT

BETWEEN

CITY OF PRAIRIE VILLAGE, KS

AND

WM. WHITE & SONS CONSTRUCTION CO.

CONSTRUCTION AGREEMENT
BETWEEN
THE CITY OF PRAIRIE VILLAGE, KANSAS
AND
WM. WHITE & SONS CONSTRUCTION CO. INC.
FOR
PROJECT CONC2013 - 2013 CONCRETE REPAIR PROGRAM

THIS AGREEMENT, is made and entered into this ____ day of _____, 2013, by and between the City of Prairie Village, Kansas, hereinafter termed the "City", and WM. White & Sons Construction Co., Inc. 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 Seven Hundred Thirty Thousand and 00/100 DOLLARS (\$730,000.00) for all Work covered by and included in the Contract; payment thereof to be made in cash or its equivalent and in a manner provided in the Contract Documents.

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 Engineer 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:

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

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

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

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

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

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

CONTRACT or **CONTRACT DOCUMENTS** shall mean the Construction Agreement, the accepted Bid Proposal, Contractor's Performance Bond, Contractor's Maintenance Bond, Statutory Bond, Project Manual and any other documents that have bearing the Work 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 Engineer that orders minor changes in the work, but which does not involve a change in the contract price or contract time.

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

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

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.

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.

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

UNIT PRICE WORK shall mean work quantities to be paid for 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.

- 1.2 Whenever any word or expression defined herein, or pronoun used instead, occurs in these Contract Documents; it shall have and is mutually understood to have the meaning commonly given. Work described in words, which so applied have a well-known technical or trade meaning shall be held to refer to such, recognized standards.
- 1.3 Whenever in these Contract Documents the words "as ordered," "as directed", "as required", "as permitted", "as allowed", or words or phrases of like import are used, it is understood that the order, direction, requirement, permission or allowance of the City Engineer is intended.
- 1.4 Whenever any statement is made in the Contract Documents containing the expression "it is understood and agreed", or an expression of like import, such expression means the mutual understanding and agreement of the parties hereto.
- 1.5 The words "approved", "reasonable", "suitable", "acceptable", "properly", "satisfactorily", or words of like effect in import, unless otherwise particularly specified herein, shall mean approved, reasonable, suitable, acceptable, proper or satisfactory in the judgment of the City Engineer.
- 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 Engineer 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 Engineer 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 Engineer 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 Engineer daily to advise whether and/or where the Contractor and/or the Subcontractor's crews will be working that day, in order that the Engineer's representative is able to monitor properly the Work.

5. ENGINEER

- 5.1 It is mutually agreed by and between the parties to this Contract Agreement that the Engineer 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 Engineer 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 Engineer shall determine, where applicable, questions in relation to said Work and the construction thereof; that Engineer shall, where applicable decide questions which may arise relative to the execution of this Contract on the part of said Contractor; that the Engineer'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 Engineer 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 Engineer 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 Engineer, unless otherwise directed or agreed to by the City in writing, will perform those duties and discharge those responsibilities allocated to the Engineer as set forth in this Contract.

The Engineer shall be the City's representative from the effective date of this Contract until final payment has been made. The Engineer 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 Engineer.
- 5.5 The Engineer shall be the initial interpreter of the requirements of the Project Manual and the judge of the performance by the Contractor. The Engineer 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 Engineer 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 Engineer's recommendation of any payment requested in an Application for Payment will constitute a representation by Engineer to City, based on Engineer's on-site observations of the Work in progress as an experienced and qualified design professional and on Engineer'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 Engineer'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 Engineer 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 Engineer 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 Engineer may refuse to recommend the whole or any part of any payment if, in Engineer's opinion, it would be incorrect to make such representations to City. Engineer 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 Engineer'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 Engineer 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 Engineer) stating the reasons for such action.
- 5.9 The Engineer will have the authority to reject Work, which is defective or does not conform to the requirements of this Contract. If the Engineer deems it necessary or advisable, the Engineer

shall have authority to require additional inspection or testing of the Work for compliance with Contract requirements.

- 5.10 The Engineer 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 Engineer 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 Engineer, upon written request from the Contractor shall conduct observations to determine the date of substantial completion and the date of final acceptance. The Engineer 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 Engineer's decisions in matters relating to aesthetic effect shall be final if consistent with the intent of this Contract.
- 5.14 The Engineer 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 Engineer 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 Engineer, 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 Engineer 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 Engineer, 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 Engineer, 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 Engineer, 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 engineer, 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 Engineer 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 Engineer 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 Engineer 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 Engineer. 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 Engineer.
- 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 Engineer. The Contractor shall communicate immediately any changes in the work schedule to the City Engineer.

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 Engineer 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 Engineer 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 Engineer, 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 Engineer 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 Engineer 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 Engineer 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 Engineer 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 Engineer, 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 Engineer thereof in writing. Thereupon, the Engineer will make final inspection of the Work and, if the Work is complete in accordance with this Contract, the Engineer 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 Engineer 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 Engineer 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 Engineer'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 Engineer. 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 Engineer 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 Engineer 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 Engineer 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 Engineer 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 Engineer 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 Engineer 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 Engineer 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 Engineer'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 Engineer, and their agents and employees from and against all claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from the performance of the Work, provided that any such claim, damage, loss or expense (1) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of property (other than the Work itself) including the loss of use resulting therefrom, and (2) is caused in whole or in part by any intentional or negligent act or omission of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity, which would otherwise exist.
- 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 Engineer 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.
- 17.1 Other projects the Contractor may have to coordinate shall be listed in the Special Conditions.
- 17.2 When the territory of one Contract is the necessary or convenient means of access for the transportation or movement of workers, materials, or appliances required for the execution of another Contract, such privileges of access or any other responsible privilege may be granted by the City to the Contractor so desiring, to the extent such may be reasonably necessary.
- 17.3 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, engineering or bid-letting costs therefore. In such case, the Contractor shall not be entitled to receive further payment. In the event the Contractor is found in a court of law to have been wrongfully terminated for cause, then such termination shall be deemed a termination for convenience and the Contractor shall be compensated as provided herein.
- 18.2 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 Engineer 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, Engineer 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

WM. WHITE & SONS CONSTRUCTION CO.

By: _____
(signed)

By _____
(signed)

Ronald L. Shaffer _____

(typed name)

Mayor _____

(typed title)

City of Prairie Village _____

(typed company name)

7700 Mission Road _____

(typed address)

Prairie Village, Kansas, 66208 _____

(typed city, state, zip)

(typed telephone number)

(date of execution)

(date of execution)

SEAL

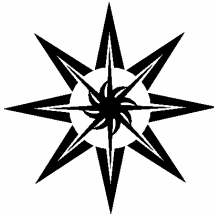
ATTEST:

APPROVED BY:

City Clerk, Joyce Hagen-Mundy

City Attorney, 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: February 19, 2013

Council Meeting Date: March 4, 2013

COU2013-09: CONSIDER APPROVAL OF A CONTRACT WITH VANCE BROTHERS, INC. FOR THE 2013 CRACK SEAL/MICRO SURFACING PROGRAM.

RECOMMENDATION

Move to authorize the Mayor to sign the Construction Contract with Vance Brothers, Inc. for Project P5000, 2013 Crack Seal/Micro Surfacing Program for \$289,000.

BACKGROUND

On February 8, 2013 the City Clerk opened bids for Project P5000, 2013 Crack Seal/Micro Surfacing Program. One bid was received:

Vance Brothers, Inc.	\$279,107.40
Engineer's Estimate	\$292,778.80

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

There is \$289,000.00 budgeted for this project and the contract will be awarded for that amount. Locations of work will be adjusted (increased) to utilize the \$289,000 budget.

City staff has reviewed the bid for accuracy and found no errors.

FUNDING SOURCE

Funding is available in the 2013 Capital Infrastructure Program Project P5000.

ATTACHMENTS

1. Construction Agreement with Vance Brothers, Inc.

PREPARED BY

Keith Bredehoeft, Project Manager

February 12, 2013

PROJECT P5000:

2013 CRACK SEAL/MICRO SURFACING PROGRAM

CONSTRUCTION AGREEMENT

BETWEEN

CITY OF PRAIRIE VILLAGE, KS

AND

VANCE BROTHERS, INC.

City of Prairie Village
Department of Public Works
3535 Somerset Drive
Prairie Village, Kansas
kbredehoeft@pvkansas.com
913-385-4642

CONSTRUCTION AGREEMENT
BETWEEN
THE CITY OF PRAIRIE VILLAGE, KANSAS
AND
VANCE BROTHERS, INC.
FOR
PROJECT P5000 - 2013 CRACK SEAL/MICRO SURFACING PROGRAM

THIS AGREEMENT, is made and entered into this ____ day of _____, 2013, by and between the City of Prairie Village, Kansas, hereinafter termed the “City”, and Vance Brothers, Inc., 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 **Two Hundred Eighty Nine Thousand and 00/100 Dollars (\$289,000.00)** for all Work covered by and included in the Contract; payment thereof to be made in cash or its equivalent and in a manner provided in the Contract Documents.

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 Engineer 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:

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

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

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

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

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

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

CONTRACT or **CONTRACT DOCUMENTS** shall mean the Construction Agreement, the accepted Bid Proposal, Contractor's Performance Bond, Contractor's Maintenance Bond, Statutory Bond, Project Manual and any other documents that have bearing the Work 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 Engineer that orders minor changes in the work, but which does not involve a change in the contract price or contract time.

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

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

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.

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.

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

UNIT PRICE WORK shall mean work quantities to be paid for 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.

- 1.2 Whenever any word or expression defined herein, or pronoun used instead, occurs in these Contract Documents; it shall have and is mutually understood to have the meaning commonly given. Work described in words, which so applied have a well-known technical or trade meaning shall be held to refer to such, recognized standards.
- 1.3 Whenever in these Contract Documents the words "as ordered," "as directed", "as required", "as permitted", "as allowed", or words or phrases of like import are used, it is understood that the order, direction, requirement, permission or allowance of the City Engineer is intended.
- 1.4 Whenever any statement is made in the Contract Documents containing the expression "it is understood and agreed", or an expression of like import, such expression means the mutual understanding and agreement of the parties hereto.
- 1.5 The words "approved", "reasonable", "suitable", "acceptable", "properly", "satisfactorily", or words of like effect in import, unless otherwise particularly specified herein, shall mean approved, reasonable, suitable, acceptable, proper or satisfactory in the judgment of the City Engineer.
- 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 Engineer 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 Engineer 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 Engineer 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 Engineer daily to advise whether and/or where the Contractor and/or the Subcontractor's crews will be working that day, in order that the Engineer's representative is able to monitor properly the Work.

5. ENGINEER

- 5.1 It is mutually agreed by and between the parties to this Contract Agreement that the Engineer 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 Engineer 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 Engineer shall determine, where applicable, questions in relation to said Work and the construction thereof; that Engineer shall, where applicable decide questions which may arise relative to the execution of this Contract on the part of said Contractor; that the Engineer'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 Engineer 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 Engineer 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 Engineer, unless otherwise directed or agreed to by the City in writing, will perform those duties and discharge those responsibilities allocated to the Engineer as set forth in this Contract. The Engineer shall be the City's representative from the effective date of this Contract until final payment has been made. The Engineer 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 Engineer.
- 5.5 The Engineer shall be the initial interpreter of the requirements of the Project Manual and the judge of the performance by the Contractor. The Engineer 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 Engineer 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 Engineer's recommendation of any payment requested in an Application for Payment will constitute a representation by Engineer to City, based on Engineer's on-site observations of the Work in progress as an experienced and qualified design professional and on Engineer'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 Engineer'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 Engineer 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 Engineer 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 Engineer may refuse to recommend the whole or any part of any payment if, in Engineer's opinion, it would be incorrect to make such representations to City. Engineer 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 Engineer'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 Engineer 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 Engineer) stating the reasons for such action.
- 5.9 The Engineer will have the authority to reject Work, which is defective or does not conform to the requirements of this Contract. If the Engineer deems it necessary or advisable, the Engineer shall have authority to require additional inspection or testing of the Work for compliance with Contract requirements.

- 5.10 The Engineer 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 Engineer 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 Engineer, upon written request from the Contractor shall conduct observations to determine the date of substantial completion and the date of final acceptance. The Engineer 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 Engineer's decisions in matters relating to aesthetic effect shall be final if consistent with the intent of this Contract.
- 5.14 The Engineer 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 Engineer 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 Engineer, 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 Engineer 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 Engineer, 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 Engineer, 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 Engineer, 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 engineer, 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 Engineer 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 Engineer 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 Engineer 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 Engineer. 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 Engineer.

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 Engineer. The Contractor shall communicate immediately any changes in the work schedule to the City Engineer.

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 Engineer 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 Engineer 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 Engineer, 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	MA R	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 Engineer 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 Engineer 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 Engineer 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 Engineer 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 Engineer, 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 Engineer thereof in writing. Thereupon, the Engineer will make final inspection of the Work and, if the Work is complete in accordance with this Contract, the Engineer 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 Engineer 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 Engineer 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 Engineer'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 Engineer. 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 Engineer 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 Engineer 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 Engineer 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 Engineer 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 Engineer 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 Engineer 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 Engineer 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 Engineer'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 Engineer, 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 Engineer 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 filed 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 affect that it is agreed that the right of the assignee in and to any moneys due or to become due to the Contractor shall be subject to all prior liens of all persons, firms and corporations for services rendered or materials supplied for the performance of the Work called for in this Contract.
- 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 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.
- 17.4 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, engineering or bid-letting costs therefore. In such case, the Contractor shall not be entitled to receive further payment. In the event the Contractor is found in a court of law to have been wrongfully terminated for cause, then such termination shall be deemed a termination for convenience and the Contractor shall be compensated as provided herein.
- 18.2 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 Engineer 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, Engineer 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

VANCE BROTHERS, INC.

By: _____
(signed)

By _____
(signed)

Ronald L. Shaffer _____

(typed name)

Mayor _____

(typed title)

City of Prairie Village _____

(typed company name)

7700 Mission Road _____

(typed address)

Prairie Village, Kansas, 66208 _____

(typed city, state, zip)

(typed telephone number)

(date of execution)

(date of execution)

SEAL

ATTEST:

APPROVED BY:

City Clerk, Joyce Hagen-Mundy

City Attorney, 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.)

Memorandum

To: Mayor, City Council, & Department Managers
Fr: Quinn Bennion, City Administrator
Da: February 15, 2013
RE: Updated priority list (reflects February work session)

BACKGROUND

City Council and city staff are currently involved with a number of significant initiatives. Several of the projects are identified as part of the Village Vision planning process.

The priorities were originally refined during a Council retreat / worksession in February and April 2010 and further discussed each year at the Council retreat or Council committee. A significant number of the items have been accomplished as a result of efforts by Council and staff during 2010, 2011, and 2012.

The attached summary provides an update of each project's status. The priorities will be reviewed and modified during the Council's retreat in early February 2013.

The projects and initiatives attached are beyond the day to day operations of the City. The items listed are in addition to the daily city operations and department initiatives. These initiatives require Council input and involvement or budget allocation.

The list is split into three sections:

- 1) projects currently being addressed
 - 2) projects that are not currently receiving attention
 - 3) projects that were not pursued
 - 4) projects completed in 2010, 2011 & 2012
-

Prepared By:
Quinn Bennion
City Administrator

Prairie Village – Jan. 2013

	Current projects / initiatives	Status Jan. 2013	Council Action Schedule
1	Community Center Feasibility study – RFP and process	360 Design completed the report in late 2012.	Council - Mar. 4 th
2	75 th St. project (maintenance and/or streetscape)	Design firm selected, \$1.6M grant received, design started in 2012. Committee formed.	
3	Implementation of PVnotify non-emergency communications	Joined with NotifyJoCo in late 2012. Implementation in 2013.	No further CC action
4	Selection of document imaging software and conversion	Vendor selected & installation in 2012. Online search nearly complete.	No further CC action
5	Develop a plan for parks plan funding and more park/green space (Parks Master Plan)	Discussed by Finance, Council and Parks & Rec Committees. Sales tax initiative not pursued in 2012.	PRC – March, April Council – May? Council – June 17 th CIP
6	Explore a more proactive approach to the location of wireless tower facilities in PV and on city property	(moved to inactive list)	
7	Determine and develop economic development strategies and incentives	CID approved in Sept. 2010. Ongoing	
8	Upgrade involvement with the Homes Association Committee	Completed website integration option. Ongoing.	
9	More effective use of social networking to communicate with residents	Ongoing	
10	Reestablish / strengthen the Island Committee & develop plan for island statutory maintenance	Parks and Rec Committee	
11	Multipurpose Room enhancements	Furniture purchase in 2012 budget. Ordered. (moved to completed)	
12	Selection of a Public Works Director	City to use search firm. RFP to be developed and approved by Council.	Committee – April 1 st
13	Develop CID annual report	Staff is developing the 2012 report.	No further CC action
14	Address potential Emerald Ash Borer infestation	Currently in research, Tree Board discussed in January.	Committee – April ? Committee - May 20 th
15	Review of city employee retirement plans	Added at Feb. 2 work session	Committee – Feb. 19 th

16	Rental licensing program to include interior inspections	Added at Feb. 2 work session	Committee – April, May? Committee - May 20 th
17	Pool assessment study	Added at Feb. 2 work session. Included in CIP plan for 2013.	
18	Comprehensive review of committees, role and structure	Added at Feb. 2 work session	
19	Review of necessity of pet licenses / enumeration	Added at Feb. 2 work session	Committee – May ?
20	List of possible budget strategies	Requested after 2013 budget process.	Committee – Mar. 4 th
21	Explore the purchase of the city's street light and/or traffic signal system	Added at Feb. 2 work session	
22	Develop comprehensive plan amendments (Meadowbrook property)	Added at Feb. 2 work session	Committee – Feb. 19 th

Prairie Village - Jan. 2013

Projects and initiatives that are not currently being addressed or with limited resources:

1. Organize Ward meetings
2. Establish or reenergize dormant homes associations where they do not currently exist
3. Develop form based codes and comprehensive plan amendments
4. ~~Develop comprehensive plan amendment for Meadowbrook property (moved up)~~
5. ~~Organize the Tour de Prairie Village bike race / fundraiser (moved down)~~
6. ~~Rental licensing program to include interior inspections (moved up)~~
7. ~~Explore the reestablishment of the Prairie Village Development Council (moved down)~~
8. Research the possibility of initiating a transportation program for seniors and special needs residents
9. ~~Explore the purchase of the city's street light and/or traffic signal system (moved up)~~
10. Program to encourage neighborhood block parties
11. Review and update the City Code book
12. Review and update City policies
13. Proactively pursue plans and funding for alternative modes of travel: trails, bike lanes and transit. **Bike friendly environment.**
14. Proactive approach for regional transit related topics
15. ~~Comprehensive review of committees, role and structure (moved up)~~
16. Consider developing small business program: business incubator. Look into JCCC programs
17. Cultivate an environment that celebrates diversity
18. ~~Review of necessity of pet licenses / remuneration (moved up)~~

Projects and initiatives that were removed from the list and not pursued:

1. Review of workers comp insurance coverage (2011 budget initiative)
Completed Sept. 2010, Insurance Comm. reviewed and does not recommend changes
2. Develop a plan/process for former school site - Mission Valley Middle School
RFP rec'd, vendor selected, process halted in early 2012
3. Multipurpose Room major enhancements (furniture only in 2012)
4. City Hall /PD entry and patio design project - Removed from 2012 budget
5. **Explore a more proactive approach to the location of wireless tower facilities in PV and on city property**
6. **Organize the Tour de Prairie Village bike race / fundraiser**
7. **Explore the reestablishment of the Prairie Village Development Council**

Prairie Village – Jan. 2013

	Completed projects / initiatives	Status Jan. 2013
1c	Springbrook software implementation and training	Completed Dec. 2010
2c	Intergraph software implementation (PD) and training	Completed March 2010
3c	CID discussions with Lane4 for Village and Corinth shops and establishment of a developer agreement	Completed Sept. 2010
4c	Website renovation and launch	Completed Jan. 2011
5c	More effective use of social networking to communicate with residents	Completed Jan. 2011 as part of website upgrade, ongoing
6c	\$9M of accelerated capital projects (5 years of projects in 2 years)	Completed 2010 & 2011
7c	Substantial park improvement – Franklin Park	Completed Spring 2011
8c	JazzFest support	Completed Sept. 2010, 2011, 2012
9c	Implementation of the County’s new radio system (PD & PW)	Completed Oct. 2010
10c	Additional staff involvement in planning services	Completed with review of residential permits, ongoing
11c	Selection process for a Public Works Director	Completed Nov. 2010
12c	Selection process for a Finance Director	Completed March 2011
13c	Nall Ave. project and public outreach (joint project w/ Mission)	Completed Summer 2011
14c	Solid waste contract changes	Completed early 2010
15c	Upcoming wireless communication facility application(s)	Completed June 2010
16c	Substantial park improvement – Weltner Park	Completed 2011
17c	Selection of city’s banking services – RFP process	Completed in Spring 2011
18c	Selection of new phone system & voicemail and conversion	Completed Dec. 2011
19c	Develop a plan/process for former school site - Somerset School	Completed. Special Use Permit approved Fall 2011. Benton House opened in 2012.
20c	Completion of the Smartlights for Smart cities project – LED conversion of 250 residential street lights	Completed 2011
21c	Energy audit of city facilities and upgrades – applied for two Kansas energy grants	Grants rec’d, audit complete, work completed in 2011
22c	Develop a plan/process for former school site – Mission Valley Middle School	RFP rec’d, vendor selected, process halted in early 2012. Not pursued.
23c	Court software selection, implementation and training	RFP rec’d, vendor selected, implemented in 2012. Completed.
24c	E-ticketing software, implementation and training	Vendor selected, implemented in 2012. Completed. Minor adjustments still ongoing.

25c	Create neighborhood design style guidelines and architectural review process	Completed authorizing ordinance and Countryside East initiated.
26c	Upgrade / renovation of the Council Chamber's technology (AV)	Completed in 2012. Minor adjustments ongoing.
27c	Review and update the Employee Personnel handbook	Completed and approved in Nov. 2012
28c	Neighborhood Special Events Committee	Committee formed, Neighborhood Special event permit approved and initiated in 2012.
29c	Review of broader investing policies	Completed in 2012. Approved new policy and started working with consultant for investments. Pursuing State Legislation to broaden investment authority.
30c	Online e-checkbook with city expenditures open to the public	Completed in 2012

**COUNCIL MEETING AGENDA
CITY OF PRAIRIE VILLAGE
Council Chambers
February 19, 2013
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 - February 4, 2013
- 2. Approve the purchase of two (2) 2013 Ford Police Interceptor Sedans, and two (2) Ford Police Interceptor Utility vehicles with the City of Mission Hills paying for one of the Utility vehicles.

By Committee

- 3. Approve a multi-jurisdictional agreement among the City of Fairway, Kansas, the City of Mission, Kansas, the City of Overland Park, Kansas, the City of Roeland Park, Kansas, the City of Prairie Village, Kansas, the City of Westwood, Kansas, and the City of Mission Hills, Kansas for the Rock Creek Watershed Planning & Management Study (Council Committee of the Whole Minutes - February 4, 2013)
- 4. Approve the recreation contracts with Johnson County Parks and Recreation District and Omega Soccer as written. (Parks & Recreation Committee - February 13, 2013)
- 5. Authorize the Mayor to execute the Final Plat for Saint Ann's Catholic Church subject to the conditions required by the Planning Commission (Planning Commission Minutes - February 5, 2013)

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

Council Committee of the Whole

COU2013-05 Consider approval of an amendment to the Employee Handbook

- 1.7 Residency Requirement

VIII. **STAFF REPORTS**

IX. **OLD BUSINESS**

Consider Final Plat for PV Shopping Center - Applicant has requested deferral to March 4th

X. **NEW BUSINESS**

Request from Lane4 regarding staff determination on CID reimbursement request

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

February 19, 2013

**CITY COUNCIL
CITY OF PRAIRIE VILLAGE
February 4, 2013**

The City Council of Prairie Village, Kansas, met in regular session on Monday, February 4, 2013, 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, Brooke Morehead, Charles Clark and Ted Odell.

Also present were: Wes Jordan, Chief of Police; Keith Bredehoeft, Interim Public Works Director; Katie Logan, City Attorney; Quinn Bennion, City Administrator; Dennis Enslinger, Assistant 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, commented on the recent article in the Kansas City Star on the community center feasibility study presented to the City Council and Park & Recreation Committee. He noted the extremely high projected cost of \$44 million for the center while advising the Council that the Mission Community Center cost \$12M, Matt Ross Center in Overland Park cost \$20 - \$25 and the recently approved center for the City of Olathe is projected to cost \$28.5M. If the City moves forward, the cost would be equivalent of \$2000 per resident.

Mr. Schollenberger expressed concern with the impact of the proposed center on the existing YMCA and proposed the City enter into a private/public partnership with the YMCA for improvements and expansion of their facility.

Laura Wassmer clarified the view of the Park & Recreation Committee stated inaccurately in the article. Charles Clark noted the entire study is available on line and will address many of Mr. Schollenberger's questions and concerns and noted the proposed community center would be a joint venture with the Shawnee Mission School District and the Johnson County Park & Recreation District.

Mayor Shaffer stated the issue of how to proceed now that the study has been completed will be discussed by the City Council at a later meeting and that comments can be made at that time.

Mayor Shaffer acknowledged the presence of a Boy Scout from troop 284 present to earn his "Citizenship in the Community" badge.

With no one else to address the Council Public Participation was closed.

CONSENT AGENDA

Charles Clark moved the approval of the Consent Agenda for February 4, 2013 as amended:

1. Approve the Regular Council Meeting Minutes - January 22, 2013
2. Approve Claims Ordinance 2902
3. Approve Interlocal Agreement with Johnson County and the City of Leawood, Kansas for Project SODR0003: Somerset Drive - Reinhardt Lane to Belinder Avenue
4. Approve an increase in the rate charged for off-duty contractual services from \$44.69 to \$46.53 per hour, upon appropriate notification of those entities that contract with the Police Department for such services

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

MAYOR’S REPORT

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

COMMITTEE REPORT

There were no Committee Reports.

STAFF REPORTS

Mayor Shaffer announced that Staff Reports were presented at the earlier Council Committee of the Whole meeting.

OLD BUSINESS

Charles Clark moved the City Council approve a separation and release agreement with former Public Works Director Bruce McNabb. The motion was seconded by Steve Noll and passed unanimously.

Consider Final Plat for Prairie Village Shopping Center

Dennis Enslinger reported the applicant has requested deferral to the February 19, 2013 City Council Meeting. He stated there are three properties involved with proposed plat - PV Partnership, Bloch & Company and John Rooney. Mr. Rooney currently is not agreeing to sign off on the vacation of the easement for Mission Lane, noting concerns with the maintenance of the road if it becomes privately owned. The Mayor and staff met with the parties involved this morning. If the plat is not signed with all parties agreeing to the vacation of the easement, it

will need to be redone and go back to the Planning Commission for approval. Charles Clark noted the portion of land that is owned by Mr. Rooney is a small portion. Laura Wassmer asked what action the City could take if the road were not maintained. Mr. Enslinger responded the CID requirement requires maintenance of the road and if it was not done, payment of CID funds could be withheld. As with other private roadways/parking areas, the City could site the property owners for code violations. Mr. Enslinger stated a decision by the property owners is expected by Friday.

Mr. Enslinger also advised the Council that staff has presented to Lane4 an 8-foot trail plan that would not require any additional easements, however, they are not interested in the plan and will be requesting Council allow them to construct a 6-foot sidewalk.

Charles Clark moved to continue action on this item to February 19th City Council Meeting. The motion was seconded by Steve Noll and passed unanimously.

NEW BUSINESS

There was No New Business to come before the City Council.

ANNOUNCEMENTS

Planning Commission	02/05/2013	7:00 p.m.
Sister City Committee	02/11/2013	7:00 p.m.
Parks & Recreation Committee	02/13/2013	7:00 p.m.
Council Committee of the Whole (Tuesday)	02/19/2013	6:00 p.m.
City Council (Tuesday)	02/19/2013	7:30 p.m.

=====

The Prairie Village Arts Council is pleased to announce an oil painting exhibit by Richard Findley in the R. G. Endres Gallery for the month of February. The reception will be held on Friday, February 8th from 6:30 to 7:30 p.m.

The City offices will be closed on Monday, February 18th in observance of President's Day. Trash services will **not** be delayed this week.

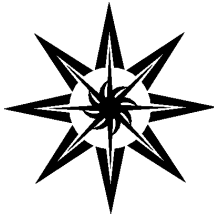
The League of Kansas Municipalities will be hosting City Hall Day on Wednesday, February 6th in Topeka.

The annual large item pick-up has been scheduled. Homes on 75th Street and north of 75th Street will be collected on Saturday, April 13th. Homes south of 75th Street will be collected on Saturday, April 20th.

ADJOURNMENT

With no further business to come before the City Council, the meeting was adjourned at 7:47 p.m.

Joyce Hagen Mundy
City Clerk



POLICE DEPARTMENT

Council Meeting Date: February 19, 2013

CONSENT AGENDA: PURCHASE REQUEST OF POLICE VEHICLES

RECOMMENDATION

Staff recommends the purchase of two (2) 2013 Ford Police Interceptor Sedans, and two (2) Ford Police Interceptor Utility. One Utility will be paid for by the City of Mission Hills.

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

BACKGROUND

On an annual basis, the Police Department replaces older police units due to age, mileage, and/or maintenance problems. The Department is seeking authorization to purchase these units from Shawnee Mission Ford, who was awarded the 2013 MACPP Metro Bid. The approximate build time for these cars from Ford is 120 days.

This purchase was previously approved by the City Council as part of the 2013 Public Safety Budget.

FUNDING SOURCE

01-03-25-8006 - \$79,500

PREPARED BY

Capt. Wes Lovett

Patrol Commander

Date: February 12, 2013

COUNCIL COMMITTEE OF THE WHOLE
February 4, 2013

The Council Committee of the Whole met on Monday, February 4, 2013 at 6:00 p.m. in the Council Chambers. The meeting was called to order by Council President Charles Clark with the following members present: Mayor Ron Shaffer, Ashley Weaver, Dale Warman, Ruth Hopkins, Steve Noll, Michael Kelly, Andrew Wang, Laura Wassmer, Brooke Morehead, Charles Clark and Ted Odell. Staff Members present: Wes Jordan, Chief of Police; Keith Bredehoeft, Interim Public Works Director; Katie Logan, City Attorney; Quinn Bennion, City Administrator; Dennis Enslinger, Assistant City Administrator; Lisa Santa Maria, Finance Director and Joyce Hagen Mundy, City Clerk.

Presentation by Consolidated Fire District #2

Fire Chief Phil Hodgdon presented an update on the future relocation of the fire station at 9011 Roe Avenue. This building is more than 50 years old and no longer meets the needs of the department. Land is currently under contract for purchase on 95th Street just east of the office building and next to the golf course with anticipated closing in May. They anticipate starting the design process this summer with possible construction in the fall. Chief Hodgdon reviewed the process followed in the selection of the site and noted the involvement of the Cities of Overland Park, Leawood and Johnson County Med-Act.

Ruth Hopkins asked what they planned for their existing location. Chief Hodgdon responded it will be sold. Laura Wassmer confirmed the existing zoning at that location was C-1. Mayor Shaffer asked the status of the tower located on the property. Chief responded it is not owned but leased and there is a permanent easement for the tower.

Mayor Shaffer asked if the tower on their administrative office location was at capacity. Chief Hodgdon replied they are currently negotiating with AT&T for additional antenna and Sprint will be doing a field test next week. If the test is favorable, they would take the last spot on the tower.

COU2013-04 Consider approval of a multi-city agreement to begin the Rock Creek Watershed Planning & Management Study

Quinn Bennion introduced Andy McCaskill with Burns & McDonnell to present a proposed watershed planning and management study for the Rock Creek Watershed initiated by the City of Fairway. Also present was Bill Stogsdill, Fairway Public Works Director and Lee Schollenberger with Johnson County Stormwater Department.

Andy McCaskill stated the Rock Creek Watershed covers approximately 5 acres and includes the cities of Mission, Roeland Park, Fairway, Overland Park, Prairie Village, Mission Hills and Westwood. The study's purpose is to create a framework for a coalition of these seven cities to address storm water issues within the watershed. The project consists of developing a watershed management plan that will set forth a new multi-jurisdictional approach to stormwater management in the Rock Creek Watershed.

The scope of services covered by the partnership agreement establishes the structure of the proposed coalition, how the coalition would be governed and funded. At this point in time, the City would be committing to participation in the study process including publicizing the public meetings and staff time.

There is no direct cost to the City at this point. The Johnson County Stormwater Management Program (SMP) will fund 90% of the planning and management study. The Cities of Mission and Fairway will share funding of the other 10%. The planning and management study is the first step in the process and may or may not lead to any future actions.

Mayor Shaffer confirmed the coalition would use existing studies and information gathered by individual cities in their analysis of possible projects and work to be undertaken.

Ted Odell asked what the initiating force behind the proposal was. Mr. McCaskill replied the City of Fairway has approximately 35 properties within the 100 year flood and is looking for potential ways to address flooding issues within a larger area than an individual municipality. Mayor Shaffer asked if all of the participating members would be required to abide by recommendations of the coalition. Mr. McCaskill replied the study is a collaborative effort that would require buy-in to be successful.

Ruth Hopkins asked if the County would be willing to give a higher priority for funding to projects involving multiple cities or larger areas. Mr. Schollenberger replied it may be possible for the committee to approve a higher level of funding for such projects that the current level.

Dale Warman confirmed the city of Mission Woods is outside the Rock Creek watershed. Quinn Bennion stated this is an intriguing concept that could benefit multiple cities, but noted there will be issues with retrofitting solutions into existing stormwater systems and city boundaries.

Brooke Morehead asked how much staff time will be required. Mr. Bennion stated it would require attendance at five meetings over a period of several months, participation in 3 work sessions and possibly a few other meetings.

Ruth Hopkins made the following motion, which was seconded by Dale Warman and passed unanimously:

Move that the Council approve a multi-jurisdictional agreement among the City of Fairway, Kansas, the City of Mission, Kansas, the City of Overland Park, Kansas, the City of Roeland Park, Kansas, the City of Prairie Village, Kansas, the City of Westwood, Kansas, and the City of Mission Hills, Kansas for the Rock Creek Watershed Planning & Management Study

**COUNCIL ACTION REQUIRED
CONSENT AGENDA**

Charles Clark noted there are several different watershed areas in the metropolitan area and this could become a very positive way for cities to address related stormwater issues.

COU2013-05 Consider approval of an amendment to the Employee Handbook Section 1.7 “Residency Requirement”

Quinn Bennion noted this item comes forward from Council Committee of the Whole discussion at the January 22nd meeting where the committee directed staff to prepare the necessary amendments to modify the residency requirements of the Police Chief and Public Works Director positions. This only requires an amendment to the Employee Handbook. Residency requirements for Department Heads are not included in the City Code.

The proposed revision is reflected below with the proposed deletions and additions in bold.

1.7 RESIDENCY REQUIREMENTS

The City Administrator, ~~Chief of Police and Public Works Director~~ must ~~become~~ **be a** residents of Prairie Village, Kansas within two (2) years of being appointed to the position and remain a residents of the City during the rest of their appointment. **The Chief of Police and Public Works Director must be a resident of Johnson County, Kansas within two (2) years of being appointed to the position and remain residents of the County during the rest of their appointment.** No later than two (2) years after their date of hire, other employees (hired after January 1, 2013), are to live and remain living within a 35 mile radius from their place of work. The City Administrator may grant temporary exceptions to the residency requirements for exceptional circumstances, upon the recommendation of the Department Head and approval of the Mayor.

Laura Wassmer noted she would be voting in support of the amendment but that she would support a statement that it is the city’s preference that the individuals in these positions reside within Prairie Village. She sees residency as providing a greater sense of where and what the issues are in the City.

Michael Kelly stated he believes approving the amendment is a mistake. If the city is going to allow residency outside of the City he would prefer it to be within a radius within close proximity of the city than in Johnson County.

Council President Charles Clark called for a vote on the question. A point of order was called noting that no motion had been formally made.

Dale Warman supports the amendment as he feels it is in the best interest of the City.

Ms Wassmer would like to see language added that residency is preferred. Ruth Hopkins questioned what would be meant by “preferred”. Steve Noll stated the employee handbook is not the place to be buffering rules. He feels the search

committee can make it known to candidates that residency is preferred. He feels adding such language to the employee handbook would be awkward at best.

Ted Odell stated he strongly supports requiring city residency for these positions and agrees with Mr. Kelly that if it was opened up, he sees more benefit in a defined closer radius than Johnson County.

Brooke Morehead believes they should be residents of the State of Kansas and as Johnson County residents they are on the tax rolls for most services provided and understand the culture of the area.

Steve Noll made the following motion, which was seconded by Ruth Hopkins and passed by a vote of 7 to 3 with Kelly, Wang and Odell voting in opposition:

**MOVE THE CITY COUNCIL APPROVE AN AMENDMENT TO
THE EMPLOYEE HANDBOOK TO MODIFY THE RESIDENCY
REQUIREMENT OF THE PUBLIC WORKS DIRECTOR AND
CHIEF OF POLICE POSITIONS TO REQUIRE JOHNSON
COUNTY RESIDENCY**

**COUNCIL ACTION REQUIRED
CONSENT AGENDA**

**COU2013-06 Consider approval of an Ordinance amending Chapter 5 entitled
“Business Licenses” of the Prairie Village Municipal Code relating to massage
provisions and minors**

Quinn Bennion stated staff has been asked to consider an amendment to the City’s massage therapy provisions as they relate to minors. Currently the City prohibits massages for persons under eighteen without being accompanied by a parent or legal guardian.

The recommended provisions will allow massage on persons under eighteen if:

- (a) such person is accompanied by a parent or legal guardian; or
- (b) a parent or legal guardian who is not present has authorized such massage therapy in writing; and (i) the licensee performing massage therapy is of the same gender as such person, and (ii) the massage therapy is provided in a massage establishment which is not a private residence.

The following cities allow persons under eighteen to receive massages with written authorization or a parent or legal guardian present: Cities of Mission, Overland Park, Merriam, Lenexa, Leawood, and Olathe.

Laura Wassmer stated her daughter participates in competitive dance practicing several hours daily. She and several of her teammates receive sports massages. During a visit

to Massage Envy in Prairie Village, Ms Wassmer stated her daughter was not allowed to receive services due to their interpretation of the City's code.

Quinn Bennion noted a provision not currently in the code that is being proposed is that these services for a minor be performed by a therapist of the same gender.

Andrew Wang stated he is ok with the proposed change if the parent is on the premises. He does not feel the gender is material.

Laura Wassmer clarified her intent for the language was that the parent would sign the permission on site. She agrees with Mr. Wang that the minor should not merely have to bring in a signed note. She would support dropping the same gender requirement as she feels that is a matter of personal preference. Mr. Wang stated if the parent is not comfortable with the therapist being a different gender, he feels the parent should make that decision, not the city.

Chief Wes Jordan stated the rationale behind the same gender is that over the past the department has received a number of complaints of inappropriate touching during a massage and in all cases they involved opposite genders.

Michael Kelly stated he is uncomfortable moving forward with the proposed changes and before staff time is spent redrafting the ordinance he would like to see if there is a consensus in support of the changes presented. Council President Charles Clark asked for a show of hands by Council members supporting moving forward with the proposed revisions. There was not a consensus to move forward.

Ruth Hopkins stated she needs more information. Quinn Bennion confirmed that discussion at the committee level was the appropriate format for discussion of this issue.

Presentation of initiative to expand City's investment authority

Lisa Santa Maria noted a year ago the City submitted a request to the Pooled Money Investment Board for expanded powers for the investment of funds at the recommendation of the Finance Committee and was denied. The Board severely restricts the investment options of cities having less than \$100M in available reserve, not including bonds. The City wants to pursue efforts to expand the statute to allow more cities to have expanded powers. The effort has the support of the Kansas Government Finance Officers Association and the Kansas League of Municipalities. The means would be through proposed legislation.

Steve Noll questioned who gives this board the authority to restrict city investments. Mayor Shaffer asked who was on the Board. Mrs. Santa Maria replied the Board makeup is prescribed as state statutes..

Quinn Bennion stated staff wants to make sure the Council supports staff moving forward with draft legislation prior to submitting language to our representatives. He noted the process may take more than one year to complete. The Council supported

staff pursuing expanded powers and suggested possible investigation into the actual authority of the PMI Board.

Work Session Follow-up

Charles Clark thanked the Council for their comments and work at the Saturday work session. He asked if there were any other items members felt should be considered. Quinn Bennion stated he would be revising the directive and priority listing based on Council discussion and redistributing it to the Council. Michael Kelly raised a question regarding the Code of Ethics discussion at Saturday's work session seeking clarification on a comment.

STAFF REPORTS

Public Safety

- Chief Jordan reported the 48 Hours episode was done very professionally and reflected well on the Department. He indicated that he will be receiving tapes of the show if anyone missed the show and would like to view it.
- The Police Chiefs are working with the School District on the development of a "defense of our schools" project focused on the elementary schools. The school district would be rolling out the program soon.

Public Works

- Keith Bredehoeft reported the Public Works staff received recycling last Friday conducted by Johnson County Environmental staff. The training went well and looking for ways to improve participation.

Brooke Morehead asked if the location of the Ripple Glass container at Corinth Square could be moved further west. Mr. Enslinger replied the location is determined by Lane4 but he will make the request.

Administration

- Dennis Enslinger announced the next Legislative Breakfast will be held on Saturday, February 16th.
- Friday, February 8th is the Art Reception from 6:30 to 7:30.
- The Mission Valley timeline has been moved back. They will be submitting drawings to the City on March 1st and having a work session with the Planning Commission after their March 5th meeting. The public hearing on their application will be Tuesday, April 2nd with the application coming before the Council in May.
- Lisa Santa Maria provided an update on economic factors noting some employment growth with the fed keeping interest rates low.
- Katie Logan reported HB2111 is pending at the statehouse which would repeal all state provision regulating firearms and allow for their regulation at the city level.
- Quinn Bennion noted seven people would be attending City Hall Day at Topeka on Wednesday, February 6th.
- Quinn announced that he will be distributing follow-up information from the Council retreat on Saturday.

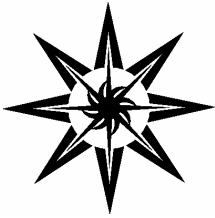
Mayor's Report

Mayor Shaffer reported he attended the following events on behalf of the City: Kansas City Chamber event and participated in the NE Johnson County Leadership class on January 23rd; MARC KC for Aging event, Shawnee Chamber dinner, Kansas City Chamber Board Meeting, and the Johnson County Volunteer Reception on January 28th; and the Metro Policy Institute and United Community Services Board of Directors, meetings.

Adjournment

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

Charles Clark
Council President



PARK AND RECREATION COMMITTEE

Park and Recreation Committee Meeting Date: February 13, 2013

Council Meeting Date: February 19, 2013

Consent Agenda - Consider Recreation Contracts with Johnson County Parks & Omega Soccer

RECOMMENDATION

Staff recommends the approval of the recreation contracts with Johnson County Parks and Recreation District and Omega Soccer as written.

BACKGROUND

The City annually contracts with these outside agencies to offer recreation programming in the various parks and/or pool. The attached contracts are similar to ones signed in the past. These contracts were approved by the Park and Recreation Committee on February 13, 2013.

FINANCIAL IMPACT

There are no direct costs to the City in administering these contracts outside of normal park/pool maintenance costs and minimal administrative staff time. The service providers directly charge and collect fees of which a nominal portion is passed on to the City to cover the above costs.

ATTACHMENTS

Omega Soccer; JCPRD Learn to Swim, Pool Usage and Day Camp agreements.

PREPARED BY

Jeanne Koontz
Deputy City Clerk
February 13, 2013

**Johnson County Park and Recreation District
Learn to Swim Program
2013 Participation Agreement**

As a Community Service, the Johnson County Park and Recreation District (JCPRD) agrees to provide the Learn to Swim program for the City of Prairie Village (the City). The program will be held at the Prairie Village Pool Complex at 7711 Delmar in Prairie Village, Kansas.

1. The Johnson County Park and Recreation District will provide:
 - The Learn to Swim Program
 - Private/Semi Private Lessons
 - The scheduling for the lessons in the program
 - Sufficient certified staff
 - A staff member to monitor and control the entrance
 - Promotion of the program
 - Registration of the participants
 - Equipment needed for the program
 - Emergency action plans and first aid kit

The City of Prairie Village will provide a temporary barrier at the entrance to assist staff in the control of patrons at the entrance.

2. The Johnson County Park and Recreation District will have use of the facility beginning June 6, 2013 and ending August 5, 2013. Morning lessons will be held in the Yard Pool and Diving Well until 11 a.m. and at 11 a.m. in the Splash Down Pool and the Meter Pool (there will be no diving or deep water skills during the evening). Exceptions can be made at the discretion of the City Management. The Adult Pool is off-limits during lessons.
 - Lessons offered Monday through Thursday, with Fridays to be held for make-up and training days as needed.
 - Morning lessons held between 9 a.m. – 12 p.m. Session dates:
 1. June 3-7
 2. June 10-14
 3. June 17-28
 4. July 8-19
 5. July 22-Aug 2
Aug 5-9 (Mornings Only)
 - Evening lessons held between 5:00 p.m. and 6:45 p.m. Session dates:
 1. June 3-7
 2. June 10-4
 3. July 17-28
 4. July 8- 19
 5. July 22 – Aug 2

3. The Johnson County Parks and Recreation District courses offered:

- Parent & Child 3yrs and under
- Pre-school 3yrs to 5yrs
-

- Progressive Swim Lessons Ages 5 and up

Introductory/Beginning level -Minnows-Assistance Sea Horses

Intermediate level – Sea Horses-Minimal Assistance/Intermediate/Advanced level – Sea Turtles-

Advanced level – Dolphins

Sharks are pre-competitive level

- Adult Lessons
- Private Lessons (to be held during group lesson times only)

4. Course Fees will be:

4-30 Minutes Sessions:

- \$39 Learn to Swim per Session (Johnson County Resident)
- \$43 Learn to Swim per Session (Non-Johnson County Resident)

6-30 Minutes Sessions: (6 days are scheduled with two makeup days if needed.) M,T,W,R,M,T (W,R

makeup)

- \$55 Learn to Swim per Session (Johnson County Resident)
- \$60 Learn to Swim per Session (Non-Johnson County Resident)
- \$45 for Two-30 minute Private Lessons (Johnson County Resident)
- \$50 for Two-30 minute Private Lessons (Non-Johnson County Resident)
- \$55 for Two-30 minute Semi-private Lessons (Johnson County Resident)
- \$60 for Two-30 minute Semi-private Lessons (Non-Johnson Count Resident)

5.

6. Non-Discrimination Clause

JCPRD shall comply with all applicable state and federal laws in carrying out this agreement.

In connection with the performance of this agreement, JCPRD agrees to comply with the applicable provisions of all state and federal discrimination laws.

JCPRD further agrees not to discriminate against any person because of race, religion, color, sex, disability, age, national origin or ancestry in the admission or access to, or participation or employment in, its programs, services and activities.

If the City determines that JCPRD has violated any applicable provision of any state or federal law, or has discriminated against any person because or race, religion, color, sex, disability, age, national origin, or ancestry in the admission or access to, or participation or employment in its programs, services and activities, such violation and/or discrimination shall constitute a breach of contract and the City may cancel, terminate or suspend this agreement in whole or in part. The parties do not intend this provision to subject any party to liability under state or federal laws unless it applies.

7. JPCRD shall furnish to the City a valid certificate of insurance providing the following coverage:

General Aggregate	\$2,000,000
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Products and Completed Operations	\$2,000,000
Personal/Advertisement Injury	\$ 500,000
Fire Damage	\$ 300,000
Each Occurrence	\$ 500,000

Workers Compensation and Employers Liability as determined by Kansas Statutes.

Copies of said policies shall be provided to the City on or before May 31, 2013.

JCPRD agrees to defend, indemnify, and hold harmless the City and its agents and/or employees from any and all claims, settlements, and judgments for personal injury, bodily injury, property damage, and/or death arising out of JCPRD's or any of its agents', servants', and/or employees' negligent acts and/or failures to act in the performance of this agreement provided, however, that in no event shall JCPRD be subjected to any liability greater than found in the Kansas Tort Claims Act, K.S.A. 75-6101, et seq., and amendments thereto.

JCPRD and its employees are independent contractors and are not employees, servants, or agents of the City. JCPRD has the sole responsibility of providing worker's compensation coverage for its employees and the City shall not be responsible for injuries or bodily damage sustained by JCPRD volunteers, employees, representatives and/or staff.

This agreement evidences the entire agreement between parties hereto and supersedes any and all prior agreements and understandings between the parties pertaining to the provision of swimming lessons at the Prairie Village Pool Complex.

Changes can be made to any part of this agreement with the consent of both parties. If the agreement is suitable to the parties involved, please sign below.

CITY OF PRAIRIE VILLAGE, KANSAS

Date

Mayor Ronald L. Shaffer

BOARD OF PARK AND RECREATIONS COMMISSIONERS
JOHNSON COUNTY PARK AND RECREATION DISTRICT

Date

Steven L. Baru, Board Chair

ATTEST:

R. Eric Hughes, Secretary

APPROVED AS TO FORM:

Ernest C. Ballweg, JCPRD Legal Counsel

2013 CITY OF PRAIRIE VILLAGE DAY CAMP AGREEMENT

THIS AGREEMENT, made and entered into this ____ day of _____, 2013 by and between the City of Prairie Village, Kansas, hereinafter referred to as City, and the Johnson County Park and Recreation District, hereinafter referred to as JCPRD, each party having been organized and now existing under the laws of the State of Kansas.

WHEREAS, K.S.A. 19-2862 authorizes JCPRD to enter into contracts; and the City is authorized to enter into contracts by virtue of Article 12, Section 5, of the Kansas Constitution and K.S.A. 12-101; and

WHEREAS, JCPRD has established and conducts a program to provide for the recreational, cultural, educational and social needs of children; and

WHEREAS, the City owns and operates Harmon Park, hereinafter referred to as the "Park", and the Prairie Village Municipal Swimming Pool, hereinafter referred to as the "Pool"; and

WHEREAS, JCPRD desires to obtain permission of the City to operate a summer day camp program at the Park and to lease from the City the right to use parts of the Pool and the Park in program activities and the City is willing to lease the Park and parts of the Pool to JCPRD; and

WHEREAS, the Governing Body of the City did approve and authorize its Mayor to execute this Agreement by official vote on the ____ day of _____, 2012; and

WHEREAS, the Governing Body of JCPRD did authorize its chairperson to execute this agreement by official vote of said body on the ____ day of _____, 2012.

NOW, THEREFORE, in consideration of the above recitals, the mutual covenants and agreements herein contained, and for other good and valuable consideration, the parties agree as follows:

1. JCPRD shall have access to and the use of the Park, including its shelter, restroom and playground facilities, and the Pool for the terms, times and use as mutually agreed upon herein.
2. Duration of Agreement and Termination. This Agreement shall be in effect from **May 22, 2013** through the period ending **August 2, 2013** provided that this Agreement may be terminated by either party, giving at least 30 days' prior written notice to the other party of its intention to terminate this Agreement; further provided that if the City or District shall fail or refuse to comply with any of the obligations or provisions herein agreed, the non-defaulting party shall have the right to notify the defaulting party in writing of such default; and if the defaulting party so notified shall remain in default for 10 days thereafter, the non-defaulting party may elect to cancel this Agreement immediately thereafter.
3. No Legal Entity Created. There will be no separate legal entity created under this Agreement.
4. Purpose of the Agreement. The purpose of this Agreement is to allow JCPRD to operate a summer day camp at the Park and for the City to lease to JCPRD the right to use the Park and parts of the Pool as hereinafter set forth in operating JCPRD's day camp activities.
5. Financing. Except as may be otherwise provided herein, JCPRD shall provide all funding and personnel necessary to manage the day camp program.

6. Acquisition Holding and Disposal of Property. The Park and Pool shall remain the property of the City. JCPRD may not install any fixtures or make any physical changes to the premises and facilities of the Park or Pool except as otherwise provided in this Agreement. Any equipment used in the Park or Pool will either be owned by the City or JCPRD. No equipment is to be jointly owned. In the event that this Agreement is terminated all property shall be returned to the owner agency. The maintenance, repair, replacement and general upkeep of equipment shall be the responsibility of the owner except as otherwise provided by this Agreement.
7. Administration of Program. The day camp program shall be administered, staffed and operated solely by JCPRD.
8. Responsibilities

JCPRD:

- a. Shall operate a fully licensed day camp program for children, ages 5 – 10. It is the responsibility of JCPRD to ensure the program meets all licensing requirements established by the Kansas Department of Health and Environment.
- b. Shall pay the City a shelter rental fee for each day or part of a day of Park usage at a rate of \$20 per day.
- c. Shall pay the City a Pool usage fee for each day of Pool usage. The fee for day camp attendance will be \$4.50 per person per visit and must be paid in advance on dates listed in the Agreement in accordance with Prairie Village Council Policy #620. Pool usage will be as approved by the pool manager.
- d. Shall provide the City an annual report that includes the number of camp participants and a zip code summary of where they reside no later than September 30, 2013.
- e. Will make arrangement to transport participants to another location, not the Municipal Building, when there is inclement weather. City property may be used if necessary during tornado warnings or lightning storms.
- f. Shall provide an adequate number of supervisors at all times to operate the program with at least one adult on the site to manage the staff and program.
- g. Will provide supervised activities to interest the campers.
- h. Will provide trash containers and on each day of camp will collect trash created by participants in and around the facility and deposit in the City's trash dumpster.
- i. Will provide a telephone to eliminate use of City telephones.
- j. Will repair and/or replace property or equipment damage that is directly attributed to participants and/or District staff while the program is in session. This will be required to meet the standards of the City.
- k. Will provide locked storage box to be located in the park shelter for the storage of camp supplies.

- i. Will provide refrigerator to be located in the Prairie Village Community Center for storage of participant lunches.

The City:

- a. Shall provide JCPRD exclusive use of the park shelter from 7:00 a.m. to 5:30 p.m., each Monday through Friday, from May 22, through August 2, 2012 except as otherwise provided herein.
 - b. Shall provide JCPRD with exclusive use of the park shelter on Wednesday, May 22, 2013, from 10:00 a.m. to 8:00 p.m. for parent orientation.
 - c. Shall provide JCPRD with entrance to the Pool per a schedule to be approved by the Pool manager on behalf of the City at the beginning of the swim season.
 - d. Shall allow JCPRD to park a school bus in the south Harmon Park parking lot when not in use for participant transportation from May 22 through August 2, 2012.
 - e. Shall allow JCPRD use of the Prairie Village Community Center between the hours of 7:00 a.m. – 5:30 p.m., Monday-Friday, from May 22 through August 2 , 2013 as an inclement weather location on an as needed (by JCPRD) and as available (by City) basis. The rental fee for the facility is covered by the shelter rental fee established in Section 8b and reservation of the facility will be made no more than 24 hours in advance. If dangerous weather is imminent, access to the City Hall basement will be provided.
9. Indemnification. JCPRD agrees to defend, indemnify, and hold harmless the CITY and its agents and/or employees from any and all claims, settlements, and judgments for personal injury, bodily injury, property damage, and/or death arising out of JCPRD’s or any of its agents’, servants’, and/or employees’ negligent acts and/or failures to act in the performance of this Agreement, provided, however, that in no event shall JCPRD be subjected to any liability greater than found in the Kansas Tort Claims Act, K.S.A. 75-6101, et seq., and amendments thereto.
10. Disclaimer of Liability. The City shall not be liable or obligated to JCPRD for damage incurred by JCPRD upon the premises by fire, theft, casualty, acts of God, civil disaster and such other occurrences and events beyond the control of the City.
11. Insurance. JCPRD shall secure and maintain, or have maintained throughout the duration of this Agreement, insurance of such types and in such amounts as may be necessary to protect JCPRD and the City against all hazards or risks generated by JCPRD or any of its agents. JCPRD shall offer to the City evidence of such insurance coverage, and any and all renewals thereof, in the form of a Certificate of Insurance. This Certificate of Insurance shall list the City of Prairie Village as an additional insured. The Certificate of Insurance shall list the following insurance coverage:

Commercial General Liability:	
General Aggregate	\$2,000,000
Products and Complete Operations	\$2,000,000
Personal and Advertisement Injury	\$ 500,000
Fire Damage	\$ 300,000
Each Occurrence	\$ 500,000

Workers Compensation and Employers Liability as determined by Kansas Statutes

12. Miscellaneous Provisions

- a. JCPRD shall pay to the City shelter rental on or before September 30, 2013.
- b. JCPRD shall pay to the City Pool fees in two installments, based on usage from May 29 through June 29 (first payment) and from July 2 through August 3 (second payment), upon receipt of invoice by the City.
- c. Residents of the City shall have permission to use the shelter during camp hours when JCPRD program is off-site for field trips. JCPRD shall provide the City with a notice of off-site scheduling on first day of each week.
- d. All surface cleaning in the park shelter and restroom shall be the responsibility of JCPRD. Trash removal of general Park trash from containers and general maintenance shall remain the responsibility of the City.

13. Verbal Statements Not Binding. It is understood and agreed that the written terms and provisions of this Agreement shall supersede all prior verbal statements of any and every official and/or other representatives of the City and District, and such statements shall not be effective or be construed as entering into, forming a part of, or altering in any way whatsoever the written Agreement.

14. Inspection of Premises by City. The City shall have the right to inspect the premises and facilities occupied by JCPRD within the Park and the Pool at all reasonable times.

15. Provisions Separable. It is the intent of the parties hereto in the preparation and execution of the Agreement to avoid a conflict with the applicable laws or regulations of the State of Kansas; and if any provision herein is found to be in conflict with the regulation, it is the intent of the parties hereto that such provision shall have no force and effect, and the remainder of the Agreement shall be valid as though such conflicting provision had not been written or made a part hereof.

16. Nonassignability of Agreement. This Agreement shall not be assigned, transferred, or sold, nor the premises and facilities, in whole or part, except with the express written consent of the City.

17. Non-Discrimination Clause. JCPRD shall comply with all applicable state and federal laws in carrying out this Agreement. In connection with the performance of this Agreement, JCPRD agrees to comply with the applicable provisions of all state and federal non-discrimination laws. JCPRD further agrees to not discriminate against any person because of race, religion, color, sex, disability, age, national origin or ancestry in the admission or access to, or participation or employment in, its programs, services and activities.

If the City determines that JCPRD has violated any applicable provision of any state or federal law, or discriminated against any person because of race, religion, color, sex, disability, age, national origin or ancestry in the admission or access to, or participation or employment in, its programs, services and activities, such violation and/or discrimination shall constitute a breach of this Agreement and the City may cancel, terminate or suspend this agreement in whole or in part, pursuant to the terms contained in paragraph 2.

The parties do not intend this provision to subject any party to liability under any state or federal law unless it applies.

IN WITNESS WHEREOF, three copies of the above and foregoing Agreement have been executed by each of the parties on the day and year first written above.

CITY OF PRAIRIE VILLAGE, KANSAS

Date

Ronald L. Shaffer, Mayor

ATTEST:

Joyce Hagen Mundy, City Clerk

APPROVED AS TO FORM:

Catherine P. Logan, City Attorney

BOARD OF PARK AND RECREATION COMMISSIONERS
JOHNSON COUNTY PARK AND RECREATION DISTRICT

Date

Steven L. Baru, Board Chair

ATTEST:

_____, Secretary

APPROVED AS TO FORM:

Ernest C. Ballweg, District Legal Counsel

The following is list of dates and times the 2013 Summer Escapades Camp run by Johnson County Park and Recreation District would like the use of the large pavilion at Harmon Park:

Day	Date	Time	Use
Wednesday,	May 22	6:00 p.m. - 8:00 p.m.	Set-up / Parent Orientation
Thursday & Friday	May 23 & 24	8:00 a.m. - 5:00 p.m.	Set-up
Tuesday-Friday	May 28- May 31	7:00 a.m. - 5:30 p.m.	Day Camp
Monday-Friday	June 3 - June 7	7:00 a.m. - 5:30 p.m.	Day Camp
Monday-Friday	June 10 - June 14	7:00 a.m. - 5:30 p.m.	Day Camp
Monday-Friday	June 17- June 21	7:00 a.m. - 5:30 p.m.	Day Camp
Monday-Friday	June 24-June 28	7:00 a.m. - 5:30 p.m.	Day Camp
Monday, Tuesday & Wednesday, Friday (No Thursday)	July 1-3 & July 5	7:00 a.m. - 5:30 p.m.	Day Camp
Monday-Friday	July 8- July 12	7:00 a.m. - 5:30 p.m.	Day Camp
Monday-Friday	July 15 - July 19	7:00 a.m. - 5:30 p.m.	Day Camp
Monday-Friday	July 22 – July 26	7:00 a.m. - 5:30 p.m.	Day Camp
Monday-Friday	July 29- August 2	7:00 a.m. - 5:30 p.m.	Day Camp

The following is list of dates and times the 2013 Summer Escapades Camp run by Johnson County Park and Recreation District would like to swim at the Prairie Village Pool:

Day	Date	Time
	May	1-3:30 p.m. on all dates
Tuesday,	28	
Wednesday,	29	
Thursday,	30	
	June	
Tuesday,	4	
Wednesday,	5	
Thursday,	6	
Tuesday,	11	
Wednesday,	12	
Thursday,	13	
Tuesday,	18	
Wednesday,	19	
Thursday,	20	
Tuesday,	25	
Wednesday,	26	
Thursday,	27	
	July	
Tuesday,	2	
Wednesday,	3	
Tuesday,	9	
Wednesday,	10	
Thursday,	11	
Tuesday,	16	
Wednesday,	17	
Thursday,	18	
Tuesday,	23	
Wednesday,	24	
Thursday,	25	
Tuesday,	30	
Wednesday,	31	
	August	
Thursday,	1	

2013 CITY OF PRAIRIE VILLAGE POOL USAGE AGREEMENT

THIS AGREEMENT, made and entered into this ____ day of _____, 2013 by and between the City of Prairie Village, Kansas, hereinafter referred to as City, and the Johnson County Park and Recreation District, hereinafter referred to as the JCPRD, each party having been organized and now existing under the laws of the State of Kansas.

WHEREAS, K.S.A. 19-2862 authorizes JCPRD to enter into contracts; and the City is authorized to enter into contracts by virtue of Article 12, Section 5, of the Kansas Constitution and K.S.A. 12-101; and

WHEREAS, JCPRD has established and conducts a program to provide for the recreational, cultural, educational and social needs of senior citizens; and

WHEREAS, the City owns and operates Harmon Park, hereinafter referred to as the Park, and the Prairie Village Municipal Swimming Pool, hereinafter referred to as the Pool; and

WHEREAS, a coordinated approach to the provision of recreational services to the population is most effective and efficient; and

WHEREAS, co-sponsorship of aquatics programs held at the Pool would ensure a coordinated approach to the provision of the needed services; and

WHEREAS, the Governing Body of the City did approve and authorize its Mayor to execute this agreement by official vote of said body on the ____ day of _____, 2013; and

WHEREAS, the Governing Body of JCPRD did authorize its chairperson to execute this agreement by official vote of said body on the ____ day of _____, 2013.

NOW, THEREFORE, in consideration of the above recitals, the mutual covenants and agreements herein contained, and for other good and valuable consideration, the parties agree as follows:

1. JCPRD shall have access to and the use of the Pool for the term, times and use as hereinafter specifically defined.
2. Duration of Agreement and Termination. This agreement shall be in effect from May 27, 2013 through the period ending September 2, 2013 provided that this agreement may be terminated by either party, giving at least 30 days' prior written notice to the other party of its intention to terminate this agreement; further provided that if the City or JCPRD shall fail or refuse to comply with any of the obligations or provisions herein agreed, the affected party shall have the right to notify the other party in writing of such default; and if the party so notified shall remain in default for 30 days thereafter, the affected party may elect to cancel this agreement immediately thereafter.
3. No Legal Entity Created. There will be no separate legal entity created under this agreement.
4. Purpose of the Agreement. The purpose of this agreement is to facilitate cooperation in the establishment and operation of an aquatics program and to define responsibilities for the operation, finances, publicity, facility maintenance and other matters pertaining to the program.
5. Financing. Except as may be otherwise provided herein, JCPRD shall provide all funding and personnel necessary to manage the aquatics program.

6. Acquisition Holding and Disposal of Property. The Pool shall remain the property of the City. JCPRD may not install any fixtures or make any physical changes to the premises and facilities of the Pool. No equipment is to be jointly owned. In the event that this agreement is terminated all property shall be returned to the owner agency. The maintenance, repair, replacement and general upkeep of equipment shall be the responsibility of the owner except as otherwise provided by this agreement. The City will permit JCPRD the use of the pool lanes during the Master Swim practice. JCPRD will be responsible for the setup and take down each evening and for any maintenance or repair.
7. Administration of Agreement. JCPRD's aquatics program at the Prairie Village Municipal Swimming Pool shall be known as a co-sponsored program between JCPRD and the City.
8. Responsibilities

The District:

- a. Shall operate an aquatics program for adults 16 and over and senior citizens age 50 or older. Only persons qualified to conduct aquatics programs will be permitted to instruct the classes. It is the responsibility of JCPRD to ensure that the instructors are qualified.
- b. Shall provide an annual report to include the number of programs, the number of people served, the residency of persons served and inventory of equipment, the class fee structure and other information as may be requested by the City.
- c. Shall provide a printed list, for review and approval by the City, of proposed facility improvements or program enhancements to benefit aquatic program participants utilizing the Prairie Village Swimming Pool.

The City:

- a. Shall provide access to the Pool during the following days and times:
 1. Water Exercise (50+) – Mondays and Wednesdays
5:30–6:30 p.m. June 3 to August 28, 2013
 2. Master's Swim Workouts – Monday through Thursday
6:30–8:00 p.m. Tuesday, May 27 to Thursday, September 2, 2013
9. Indemnification. JCPRD agrees to defend, indemnify, and hold harmless the City and its agents and/or employees from any and all claims, settlements, and judgments for personal injury, bodily injury, property damage, and/or death arising out of JCPRD's or any of its agents', servants', and/or employees' negligent acts and/or failures to act in the performance of this agreement provided, however, that in no event shall the JCPRD be subjected to any liability greater than found in the Kansas Tort Claims Act, K.S.A. 75-6101, et seq., and amendments thereto.
10. Disclaimer of Liability. The City shall not be liable or obligated to JCPRD for damage insured to JCPRD upon the premises by fire, theft, casualty, acts of God, civil disaster and such other occurrences and events beyond the control of the City.
11. Insurance. JCPRD shall secure and maintain, or have maintained throughout the duration of this contract, insurance of such types and in such amounts as may be necessary to protect JCPRD and the City against all hazards or risks generated by JCPRD or any of its agents. JCPRD shall offer to the City other evidence of such insurance coverage, and any and all renewals thereof, in the form of a Certificate of Insurance. This

certificate of insurance shall list the City of Prairie Village as an additional insured. The Certificate shall list the following insurance coverage:

Commercial General Liability	
General Aggregate	\$2,000,000
Products	\$2,000,000
Personal and Advertisement Injury	\$ 500,000
Personal & Advertisement (each occurrence)	\$ 500,000
Fire Damage	\$ 300,000

Workers Compensation and Employers Liability as determined by Kansas Statutes

12. Miscellaneous Provisions

- a. For 50+ and Adult Water Exercise programs JCPRD agrees to pay to the City a “pool use fee” in the amount of \$9.00 per hour. Each program will be limited to the use of two (2) lap lanes during each class period.
- b. For the Master’s program, JCPRD agrees to pay to the City a “pool use fee” in the amount of \$2.00 per participation and allow access to a maximum of four (4) lap lanes from 6:30 p.m. to 8:00 p.m. If the pool manager requires participants to leave the pool due to overcrowding, a partial refund of the use fee may be made.
- c. By the terms of this agreement, the aquatics program shall be known as a Co-sponsored program; all written and verbal publicity should reflect the Co-sponsorship. Every effort shall be made by both agencies to inform the participants and public of the Co-sponsorship arrangement.

13. Verbal Statements Not Binding. It is understood and agreed that the written terms and provisions of this agreement shall supersede all prior verbal statements of any and every official and/or other representatives of the City and JCPRD, and such statements shall not be effective or be construed as entering into, forming a part of, or altering in any way whatsoever the written agreement.

14. Inspection of Premises by City. The City shall have the right to inspect the premises and facilities occupied by JCPRD within the Park at all reasonable times.

15. Provisions Separable. It is the intent of the parties hereto in the preparation and execution of the agreement to avoid a conflict with the applicable laws or regulations of the State of Kansas; and if any provision herein is found to be in conflict with the regulation, it is the intent of the parties hereto that such provision shall have no force and effect, and the remainder of the agreement shall be valid as though such conflicting provision had not be written or made a part hereof.

16. Nonassignability of Agreement. This agreement shall not be assigned, transferred, or sold, nor the premises and facilities corporation, in whole or part, except with the express written consent of the City.

17. Non-Discrimination Clause. JCPRD shall comply will all applicable state and federal laws in carrying out this agreement. In connection with the performance of this agreement, JCPRD agrees to comply with the applicable provisions of all state and federal non-discrimination laws. JCPRD further agrees to not discriminate against any person because of race, religion, color, sex, disability, age, national origin or ancestry in the admission or access to, or participation or employment in, its programs, services and activities.

If the City determines that JCPRD has violated any applicable provision of any state or federal law, or discriminated against any person because of race, religion, color, sex, disability, age, national origin or ancestry in the admission or access to, or participation or employment in, its programs, services and activities, such violation and/or discrimination shall constitute a breach of contract and the City may cancel, terminate or suspend this agreement in whole or in part.

The parties do not intend this provision to subject any party to liability under state or federal laws unless it applies.

IN WITNESS WHEREOF, three copies of the above and foregoing Agreement have been executed by each of the parties on the day and year first written above.

CITY OF PRAIRIE VILLAGE, KANSAS

Date

Ronald L. Shaffer, Mayor

ATTEST:

Joyce Hagen Mundy, City Clerk

APPROVED AS TO FORM:

Catherine P. Logan, City Attorney

BOARD OF PARK AND RECREATION COMMISSIONERS
JOHNSON COUNTY PARK AND RECREATION DISTRICT

Date

Steven L. Baru, Board Chair

ATTEST:

Bill Flohrs, Secretary

APPROVED AS TO FORM:

Ernest C. Ballweg, JCPRD Legal Counsel

2013 AGREEMENT BETWEEN THE CITY OF PRAIRIE VILLAGE AND OMEGA SOCCER CAMP ORGANIZATION

The undersigned, Omega Soccer Camp Organization (hereinafter termed "Omega") and the City of Prairie Village (hereinafter termed "City"), enter into the following rental agreement with regard to the dates and terms specified below. This rental agreement is for the purpose of conducting a soccer camp for the children of Prairie Village and its surrounding area.

Omega and the City do hereby agree to the following terms:

Facility Reserved:

Omega and the City agree that the camp will be held at Franklin Park, which is located in the City of Prairie Village, Kansas. Soccer fields A and B will be reserved for use by Omega.

Camp Date:

The camps will take place from: June 3-7 and June 10-14.

Facility Use/Condition:

The City will allow Omega use of said facility from 8:00 - 3:30 p.m. daily. This applies to all applicable areas of said facility.

In the event of any property damage caused directly through the negligence of or the act or actions of Omega or participants in said camp program, the City will notify Omega within five (5) business days of the damage and any related claims against Omega, and Omega shall be liable for the costs of repair or replacement thereof.

Rental Payment:

Omega agrees to pay a rental fee of *thirteen U.S. dollars (\$13.00)* per student enrolled in each camp. Payment shall be delivered to the City no later than June 30, 2013. This shall be the only payment required in consideration of the use of said site for said camp. Omega will provide enrollment rosters as proof of camp attendance.

Insurance:

Omega will provide proof of insurance prior to the first day of camp. The City will be listed as "Additional Insured" and a copy of the insurance certificate will be sent to the City.

The City shall be free from all liabilities and claims for damages and/or suits for or by reason of any injury or injuries to any person or persons or property of any kind whatsoever, whether the person or property of Omega, its agents, employees, or camp attendants, from any cause or causes whatsoever while in or upon the facility or any part thereof during the term of the camp or occasioned by any occupancy or use of the facility or any activity carried on by Omega in connection therewith. Omega agrees to indemnify and save harmless the City from any claim or loss by reason of Omega, or

any camp attendant under the supervision of Omega, or person connected thereto, use or misuse of the facility and from any claim or loss by reason of any accident or damages, during the camp, to any person or property happening on or in said facility.

The Agreement

When signed by an authorized representative of both parties, this document accurately reflects the entire and only agreement between these parties. This agreement may be modified only in writing signed by an authorized representative of each party. This agreement also contains within the option to renew annually upon the written consent of both parties.

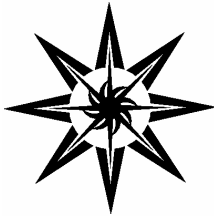
Acknowledged and agreed:

Omega Soccer Camp Organization Representative

Date

City of Prairie Village Representative
Ronald L. Shaffer, Mayor

Date



PLANNING COMMISSION

Council Meeting Date: February 19, 2013
Consent Agenda

Consider Final Plat for Saint Ann's Catholic Church

RECOMMENDATION

Authorize the Mayor to execute the Final Plat for Saint Ann's Catholic Church subject to the following conditions required by the Planning Commission.

BACKGROUND

On January 8, 2013, the Planning Commission approved a Site Plan for additions and improvements to St. Ann's Church and School. One of the conditions of approval was that the property be platted. On February 5, 2013, the preliminary and final plats were approved by the Planning Commission subject to the following conditions:

1. That the dimension of 365.52 feet on the north side of Lot 2 be removed.
2. That the following text be added to the Dedication section:
"All right-of-ways and easements as shown on the face of the plat are hereby dedicated to the public."
3. That the signature block for the Governing Body be revised as follows:
"The Governing Body of the City of Prairie Village, Kansas does hereby accept all public easements and right-of-ways contained herein, this ____ day of _____, 2013."
4. That the sanitary sewer easement be shown on Lot 2.
5. That the water line east of the gym be in an easement or the easement released by WaterOne.
6. That the Final Plat as approved be revised and three copies submitted to the City for their records.
7. That the applicant submit the Final Plat to the Johnson County surveyor for a review.

ATTACHMENTS

Planning Commission Minutes of February 5, 2013 (Draft)
Proposed Plat

PREPARED BY

Joyce Hagen Mundy
City Clerk

Date: February 7, 2013

**PLANNING COMMISSION MINUTES
FEBRUARY 5, 2013**

ROLL CALL

The Planning Commission of the City of Prairie Village met in regular session on Tuesday, February 5, 2013, in the Council Chambers, 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, Gregory Wolf and Nancy Vennard.

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

APPROVAL OF MINUTES

Nancy Vennard noted Mr. Kerr's address on page 3 should be 86th Street, not 83rd Street. Gregory Wolf moved the minutes of the January 8, 2013 be approved as corrected. The motion was seconded by Nancy Vennard and passed unanimously.

PUBLIC HEARINGS

PC2013-02 Ordinance Revisions to Section 19.25 "Overlay zoning District" to adopt Design Guidelines for Countryside East Homes Association

On January 8, 2013, the Planning Commission set the public hearing date for consideration of the Countryside East Neighborhood Overlay District for February 5, 2013. The notice of hearing was published; however, the mailing to the area residents was not sent within the required timeframe. Therefore, staff requests that the Planning Commission continue this item to their March 5, 2013 meeting to allow for proper notification.

Gregory Wolf questioned what would be on the agenda for the March 5th meeting and if it would be better to continue the application to the April Meeting. Dennis Enslinger responded the March agenda has a public hearing for a special use permit for St. Ann's School, a church monument sign, site plan approval for a lot in Mission Pines and the items requesting continuance from this evening's agenda followed by the Mission Valley work session. He noted that it is a full agenda; however, the April agenda will include the public hearing on the Mission Valley Project which is anticipated to include significant resident comments. There will not be any resident comment allowed at the work session.

Nancy Wallerstein moved the Planning Commission continue item PC2013-02 Ordinance Revisions to Section 19.25 "Overlay Zoning District" to adopt Design Guidelines for Countryside East Homes Association to March 5, 2013. The motion was seconded by Randy Kronblad and passed unanimously.

NON-PUBLIC HEARINGS

**PC2013-101 Site Plan Approval - Roe 89 Shops
8825 & 8839 Roe Avenue**

Dennis Enslinger stated the applicant has requested that this item be continue to the March 5th meeting of the Planning Commission.

Nancy Wallerstein moved that PC2013-101 be continued to the March 5, 2013 meeting of the Planning Commission. The motion was seconded by Randy Kronblad and passed unanimously.

**PC2013-104 Preliminary & Final Plat Approval - St. Ann's
7231 Mission Road**

Arnie Tulloch, with Shafer, Kline & Warren, stated St. Ann Catholic Church and School are proposing a number of changes to their campus which were approved by the Planning Commission on January 8th with the condition that the property be platted. The area is proposed to be platted in two lots. Lot 1 is approximately 6.1 acres; includes the developed portion of the property, and fronts on Mission Road. Lot 2 is approximately 4.6 acres, includes the recreation area and fronts on Windsor Street.

They have received the staff comments on their application and agree to the staff recommended conditions of approval.

PRELIMINARY PLAT

Ron Williamson noted the Preliminary Plat contains the information normally required. As can be seen there are several easements for sanitary sewer, power and drainage. There is a water line on the east side of the gym that does not show a connection to either the north or south. It is also noted that it is in a "possible easement." An easement needs to be shown on the Final Plat unless a release is granted by Johnson County WaterOne.

FINAL PLAT

Mr. Williamson noted the Final Plat contains essentially all the information required. There is one minor item. A dimension of 365.52' is shown on the north side of Lot 2. There does not appear to be any purpose for this number and it should be removed.

Also, the Governing Body does not approve plats but accepts easements and right-of-ways. A note should be added under dedications as follows: "All right-of-ways and easements as shown on the face of the plat are hereby dedicated to the public." The signature of the Governing Body should also be changed as follows: "The Governing Body of the City of Prairie Village, Kansas does hereby accept all public easements and right-of-ways contained herein, this ____ day of _____, 2013."

The sanitary sewer easement running north and south through Lot 2 is shown on the Preliminary Plat but is left off the Final Plat.

The water line easement on the east side of the gym needs to be shown on the Final Plat or released.

Nancy Vennard moved the Planning Commission approve the Preliminary and Final Plats of Saint Ann's Catholic Church subject to the following conditions:

1. That the dimension of 365.52 feet on the north side of Lot 2 be removed.
2. That the following text be added to the Dedication section:
"All right-of-ways and easements as shown on the face of the plat are hereby dedicated to the public."
3. That the signature block for the Governing Body be revised as follows:
"The Governing Body of the City of Prairie Village, Kansas does hereby accept all public easements and right-of-ways contained herein, this _____ day of _____, 2013."
4. That the sanitary sewer easement be shown on Lot 2.
5. That the water line east of the gym be in an easement or the easement released by WaterOne.
6. That the Final Plat as approved be revised and three copies submitted to the City for their records.
7. That the applicant submit the Final Plat to the Johnson County surveyor for a review.

The motion was seconded by Dirk Schafer and passed by a vote of 6 to 0.

Dennis Enslinger noted the final plat will be forwarded to the City Council for acceptance of easements and rights-of-way.

**PC2013-105 Amendment to Sign Standards
4601 - 4621 West 90th Street - Somerset Plaza**

Jennifer Schellhase, 4617 West 90th Street, is locating her business in the Somerset Plaza Shops and is seeking signage that would allow for logos and lighted signs. Her proposed sign is a sign ban that is building into the façade, similar to that of the adjacent tenant. Shirley Nelkin, owner of the center, was also present and has approved the proposed revisions to the sign standards.

Ron Williamson stated the initial sign standard were approved by the Planning Commission in November, 1987. The proposed changes are minor. The old sign standards did not allow logos or lighted signs and the new standards do. The Somerset Plaza Shops were built in 1961 and the tenant that is probably most well-known is Tatsu's French Restaurant.

After reviewing the proposed Sign Standards there are three comments. First, the title of the Sign Standards should contain the addresses of the Plaza Shops, 4601 - 4621 West 90th Street, and the date of Approval, February 5, 2013.

Second, under Tenant Signs in the second line of the first paragraph the word "faced" should be "facade".

Third, a section should be added for the monument sign as follows:

Monument Sign: One monument sign shall be permitted for the Center. The sign face may be changed by approval of City Staff. If the sign is relocated or redesigned it shall be submitted to the Planning Commission for review and approval.

Nancy Wallerstein moved the Planning Commission approve the Amended Sign Standards for Somerset Plaza Shops subject to the following conditions:

1. That the applicant add the shop addresses and date of approval to the title of the Sign Standards.
2. That the word "face" be changed to "facade" in the Tenant Signs section.
3. That a Monument Sign Section be added as follows:
Monument Sign: One monument sign shall be permitted for the Center. The sign face may be changed by approval of City Staff. If the sign is relocated or redesigned it shall be submitted to the Planning Commission for review and approval.
4. That the applicant revise the Sign Standards and submit three copies to City Staff.

The motion was seconded by Gregory Wolf and passed by a 6 to 0 vote.

OTHER BUSINESS

PC2011-116 Consider requested sign change at Corinth Square Hen House

Dennis Enslinger stated on June 5, 2012, the Planning commission approved a site plan for the building façade changes to the Hen House building at Corinth Shopping Center. As part of that process the applicant provided proposed signage for the building that was approved.

The applicant has modified the proposed signage on the south elevation. Originally, the signage was contained within the sign band and was 20 square feet. The proposed signage has been moved to the wall and consists of 85.7 square feet.

Ron Williamson noted the current sign is located on the south wall in the same location as proposed for the new sign.

Jana Foster with Words & Pictures Signs was present representing the Ball Group to answer any questions of the Commission.

Nancy Wallerstein moved the Planning Commission approve the proposed sign modification as shown in the drawings dated 01-08-2013 to allow for a larger wall mounted sign on the south elevation. The motion was seconded by Dirk Schafer and passed by a 6 to 0 vote.

Mission Valley Project

Dennis Enslinger announced that Tutera has moved the timeline back one month. They will be submitting plans on March 1st and hold a work session with the Planning Commission after its March 5th meeting. The official public hearing and consideration of the applications will be at the April 2nd Planning Commission meeting with the item being considered by the Governing Body the month following the Commission action.

Mr. Enslinger announced that Tutera will be holding another community meeting on February 21st at Shawnee Mission East from 6:30 to 8:30 p.m. Staff has not seen revised plans but will be meeting with the applicant on February 11th.

The commission members and staff discussed the process for review of the application and the protocol to be followed. The impact of a probable protest petition was reviewed. Staff reminded the Commission that they are not required to take action on the application on April 2nd if they feel they need more information or time to make a decision. Staff noted this is a very large multi-phase project and that they do not expect the applicant to have detailed information available particularly on the later phases of the project.

Next Meeting

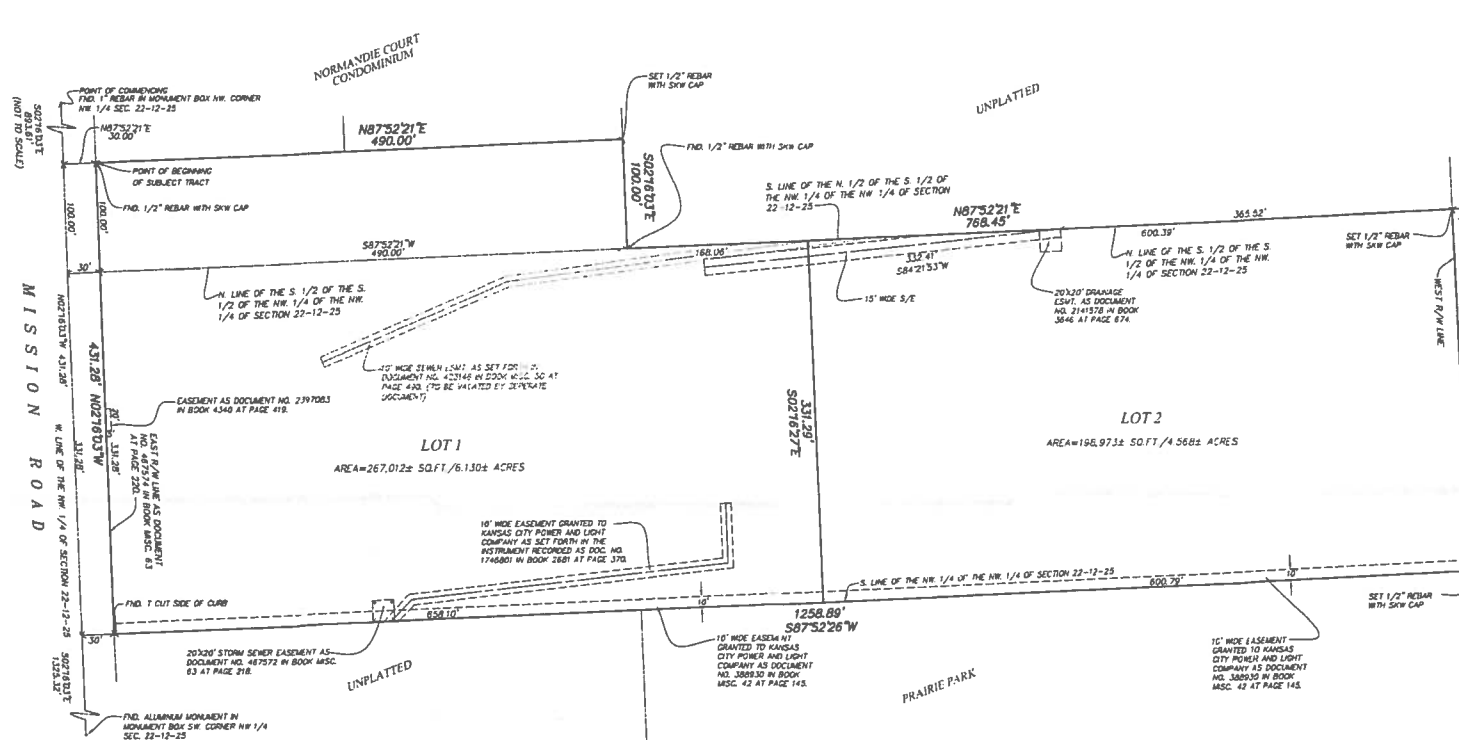
The March 5th meeting of the Planning Commission will be held at the Indian Hills Middle School Gymnasium. The agenda items will include the public hearing for the Country East Neighborhood Overlay District and for a Special Use Permit for St. Ann's School, the continued application PC2013-101 for site plan approval at 8825 & 8839 Roe Avenue, site plan approval for a lot in Mission Pines and a monument sign request by Hillcrest Covenant Church. The meeting will be followed by a work session with the development team for the former Mission Valley School property. No public comment will be accepted at the work session.

ADJOURNMENT

With no further business to come before the Planning Commission, Chairman Ken Vaughn adjourned the meeting at 7:50 p.m.

Ken Vaughn
Chairman

FINAL PLAT OF
SAINT ANN'S CATHOLIC CHURCH
 PART OF NW1/4 OF SECTION 22, TOWNSHIP 12 SOUTH, RANGE 25 EAST,
 THE CITY OF PRAIRIE VILLAGE, JOHNSON COUNTY, KANSAS



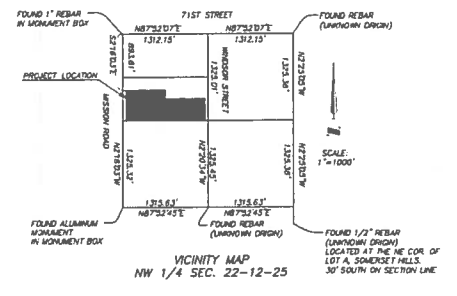
LEGAL DESCRIPTION:
 All that part of the S 1/2 of the NW 1/4 of the NW 1/4 of section 22, Township 12 South, Range 25 East, within the City of Prairie Village, Johnson County, Kansas, more particularly described as follows:
 Commencing at the NW Corner of the NW 1/4 of Section 22, Township 12, Range 25, thence S 2° 16' 03" E, along the west line of the NW 1/4 of said Section 22, a distance of 893.81 feet; thence N 87° 52' 21" E, a distance of 30.00 feet, to a point on the east right-of-way line of Mission Road as established by Document No. 467574 in Book Misc. 63 at Page 490 as filed in the Register of Deeds Johnson County, Kansas, said point being the True Point of Beginning of Subject Tract; thence N 87° 52' 21" E, a distance of 490.00 feet; thence S 02° 16' 03" E, a distance of 100.00 feet, to a point on the north line of the South 1/2 of the Northwest 1/4 of the Northwest 1/4 of said Section 22; thence N 87° 52' 21" E, along the said north line, a distance of 768.45 feet, to a point on the west right-of-way line of Windsor Street, as now established; thence S 02° 20' 34" E, along said west right-of-way line, being 25 feet West of and parallel with the east line of the Northwest 1/4 of the Northwest 1/4 of said Section 22, a distance of 331.31 feet, to a point on the south line of the Northwest 1/4 of the Northwest 1/4 of said Section 22, thence along said south line, S 87° 52' 26" W, a distance of 1258.89 feet, to a point on the east right-of-way line of said Mission Road; thence N 02° 16' 03" W, along said east right-of-way line, being 30 feet East of and parallel with the west line of the Northwest 1/4 of said Section 22 line, a distance of 431.28 feet, to the True Point of Beginning.

OWNERS CERTIFICATION AND DEDICATION:
 The undersigned proprietor of the above described tract of land has caused the same to be subdivided in the manner as shown on the accompanying plat, which subdivision and plat shall hereafter be known as 'SAINT ANN'S CATHOLIC CHURCH'.
 In accordance with KSA 12-512b, all rights, obligations, reservations, easements, or interest not shown on this plat shall be vacated as to use and as in title, upon filing and recording of this plat. The proprietors, successors, and assigns of property shown on this plat hereby observe and agree, jointly and severally, to indemnify the Prairie Village, Kansas, of any expense incident to the relocation of any existing utility improvements heretofore installed and required to be relocated in accordance with proposed improvements described in this plat.
 An easement is granted to lay, construct, alter, repair, replace or operate one or more sewer lines and all appurtenances convenient for the collection of sanitary sewage, together with the right of ingress and egress, over and through those areas designated as 'Sanitary Sewer Easement' or 'S/E' on this plat are hereby dedicated to the Johnson County Wastewater Districts or their assigns.

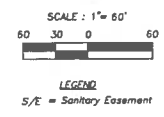
IN TESTIMONY WHEREOF, the undersigned proprietors have hereunto subscribed their hand.
OWNER:
 ROMAN CATHOLIC ARCHDIOCESE OF KANSAS CITY IN KANSAS, A NON-PROFIT CORPORATION
 By _____
 STATE OF _____)
 COUNTY OF _____)
 This instrument was acknowledged before me on this _____ day of _____, 2013 by _____
 My Commission Expires: _____
 Notary Public _____

APPROVED by the Planning Commission of the City of Prairie Village, Johnson County, Kansas, this ____ day of _____, 2013.
 Ken Vaughn, Chairman _____ Joyce Hagen Mundy, Secretary _____
APPROVED by the Governing Body of the City of Prairie Village, Johnson County, Kansas, this ____ day of _____, 2013.
 Ronald L. Shaffer, Mayor _____ Joyce Hagen Mundy, City Clerk _____

Flood Note:
 This property lies within Flood Zone X, defined as 'Areas determined to be outside the 0.2% annual chance floodplain' as shown on the National Flood Insurance Program Flood Insurance Rate Map prepared by the Federal Emergency Management Agency for the City of Lenexa, Johnson County, Kansas, Map No. 20091C0036G, dated August 3, 2009.

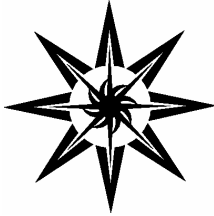


- General Notes:**
1. Current Zoning R-1E, Single Family Residential.
 2. Plat corner monuments are as noted.
 3. The Horizontal shown hereon is based on NAD 83, Kansas North State Plane Coordinate System, Kansas NCS Data using the Virtual Reference Station Network, provided through MODOT and using a grid factor of 0.999925931.
 4. The error of closure exceeds 1 in 50,000.
 5. Information shown on this survey was taken from Stewart Title Guaranty Company, Report No. 211100035, effective date, September 30, 2011.



I hereby certify that the information shown hereon is based on a field survey performed under my direct supervision on January 2, 2013.

SHAFER, KLINE & WARREN, INC.
ENGINEERS ~ SURVEYORS
 11260 CORPORATE AVENUE
 LENEXA, KANSAS 66219
 (913) 888-7800 www.ekw-inc.com



ADMINISTRATION

Council Committee Meeting Date: February 4, 2013
Council Meeting Date: February 18, 2013

Consider approval of an amendment to the Employee Handbook – 1.7 Residency Requirement

RECOMMENDED MOTION:

Move that City Council approve an amendment to the Employee Handbook to modify residency requirement of the Public Works Director and Chief of Police positions.

BACKGROUND:

This item was discussed by Council Committee at the January 22, 2013 meeting. Council Committee approved a motion to direct staff to prepare necessary amendments to modify the residency requirements of the Police Chief and Public Works Director positions.

The proposed amendment states (with strikethrough and additions in **bold**):

1.7 RESIDENCY REQUIREMENTS

The City Administrator, ~~Chief of Police and Public Works Director~~ must become **be** a residents of Prairie Village, Kansas within two (2) years of being appointed to the position and remain a residents of the City during the rest of their appointment. **The Chief of Police and Public Works Director must be a resident of Johnson County, Kansas within two (2) years of being appointed to the position and remain residents of the County during the rest of their appointment.** No later than two (2) years after their date of hire, other employees (hired after January 1, 2013), are to live and remain living within a 35 mile radius from their place of work. The City Administrator may grant temporary exceptions to the residency requirements for exceptional circumstances, upon the recommendation of the Department Manager and approval of the Mayor.

In preparing the amendment, it was realized that the proposed residency changes only requires modifying the Employee Handbook. The residency requirements for Department Heads are not included in the City Code.

Currently, the City Code and Employee Handbook require that the City Administrator, Public Works Director and Chief of Police be residents of Prairie Village within two years of position appointment and remain residents. All other employees must live within a 35 mile radius of their place of work. The other appointed positions of City Clerk and Assistant City Administrator do not have a residency requirement beyond the standard 35 mile radius provision.

This topic was mentioned as a future discussion item during the Handbook revisions in November. Prairie Village is one of a few cities in Johnson County that require the Department Head to reside in the City.

City Administrator recommends removing the residency requirement for the Public Works Director and Chief of Police positions. The primary reason for the recommendation is to increase the applicant pool during a Director search. A residency requirement dissuades quality candidates who reside in nearby communities and place a high value on their current neighborhood, house, or school.

On the other side, consideration could be given to the advantage of residency including possible greater involvement in the immediate community, schools and a Prairie Village neighborhood.

ATTACHMENT:

- Proposed amendment to Section 1.7 of the Employee Handbook
- Comparison of Johnson County city residency requirements

PREPARED BY:

Quinn Bennion

City Administrator

Date: February 1, 2013

1.7 RESIDENCY REQUIREMENTS

The City Administrator, ~~Chief of Police and Public Works Director~~ must ~~become be a~~ residents of Prairie Village, Kansas within two (2) years of being appointed to the position and remain ~~a~~ residents during the rest of their appointment. The Chief of Police and Public Works Director must be a resident of Johnson County, Kansas within two (2) years of being appointed to the position and remain residents of the County during the rest of their appointment. No later than two (2) years after their date of hire, other employees (hired after January 1, 2013), are to live and remain living within a 35 mile radius from their place of work. The City Administrator may grant temporary exceptions to the residency requirements for exceptional circumstances, upon the recommendation of the Department Manager and approval of the Mayor.

Modified 02/04/13: Change in residency requirements of Public Works Director and Chief of Police.

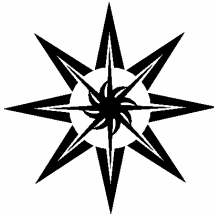
Comparison of Johnson County city requirements

	City Administrator	Public Works Director	Chief of Police	Comments
Leawood	Y	N	N	PD & Fire within a given response time
Lenexa	Y	Y	Y	
Merriam	N	N	N	No residency requirements
Mission	N	N	N	Just need to live in Johnson County
Olathe	Y	N	N	Asst City Manager req'd. If director is hired from outside of area, they must move to Olathe.
Overland Park	N	N	N	Officer w/in 45 minute response time. Director preferred, but not req'd.
Shawnee	Y	Y	Y	Current Metro resident when hired/promoted, not req'd; Outside Metro when hired, Shawnee resident w/in 1 year
Mission Hills	N	N	N	
Fairway	N	N	N	Police Chief within a given response time - believed to be 30 mins City Administrator must live within Johnson County
Roeland Park	N	N	N	

EMPLOYEE HANDBOOK

1.7 RESIDENCY REQUIREMENTS

The City Administrator, Chief of Police and Public Works Director must become residents of Prairie Village, Kansas within two (2) years of being appointed to the position and remain residents during the rest of their appointment. No later than two (2) years after their date of hire, other employees (hired after January 1, 2013), are to live and remain living within a mile radius from their place of work. The City Administrator may grant temporary exceptions to the residency requirements for exceptional circumstances, upon the recommendation of the Department Manager and approval of the Mayor.



AMINISTRATION

City Council Meeting Date: February 19, 2013

Request from Lane4 Regarding City Staff Determination of CID Reimbursement Request

BACKGROUND:

The City of Prairie Village, Kansas and CSN and CSS Retail Partners, LLC executed a Development Agreement for the Corinth Square Community Improvement District on November 2, 2010. Under the Development Agreement the developer can submit for reimbursement of costs associated with Developer CID projects as outlined in the agreement.

DISCUSSION:

Project A2 under the Redevelopment Agreement is the modification of the Main Building of the Corinth Square Shopping Center. A description of the improvements for Project A2 indicates the façade remodel includes the following:

- Enhanced pedestrian walkways
- Building skin upgrade
- Roof screening for mechanical equipment
- Roofline modification

As part of Reimbursement Request #4, the Developer submitted a request for reimbursement of the permanent signage for the tenants who occupied the main center building.

When the Corinth Square CID was approved the concept for Developer Projects (Listed in Exhibit C) was that they were for public enhancements to the center and were to be “permanent” public improvements. Based upon this intent and the description contained in Exhibit C, staff made the determination that the CID could reimburse only a portion of the sign costs under the Developer Project reimbursement provisions of the agreement.

Based on discussions with the sign manufacturer staff, staff determined that the sign cabinets (not including the actual signage) for the oval signs contained in the gables of the facility would be eligible for full reimbursement. This determination was based on the fact that they could be used for future tenants and thus were a permanent improvement integral to the overall façade remodel. Examples of the oval signs are Westlake Hardware, Urban Table and Sopra Salon & Spa. A detail listing of the signs has been attached along with sign prototypes approved as part of the sign standards. Staff indicated that the actual sign portions of the oval signs could be submitted for reimbursement under the Tenant Improvement provisions of the agreement.

With regard to the inline signs, staff made the determination that since it was very unlikely that the cabinets could be reused they were not eligible for reimbursement under the Developer Project provisions of the agreement. However, staff has indicated they would be eligible under the Tenant Improvement provisions of the agreement.

The Tenant Improvement provisions of the agreement allow for reimbursement of tenant improvements at a rate of 50% above the "Base Amount" as defined in the agreement.

Under the current determination, staff has approved reimbursement of \$32,045.44 under the Developer Project provisions for the signs. The Developer is requesting reimbursement of \$154,904.12.

RECOMMENDATION

Staff recommends the City Council discuss the request from Lane4 and either confirm staff's determination or direct staff according to their determination.

ATTACHMENTS

Email from Jeff Berg, Senior Vice President - Principal dated 2-11-2013
Excerpt from Development Agreement (Exhibit C -Project A2)
Spreadsheet detailing sign costs submitted for reimbursement
Sample of the sign types within Corinth Shopping Center

PREPARED BY

Dennis Enslinger
Assistant City Administrator
Date: February 14, 2013

Dennis Enslinger

From: Jeffrey Berg [JBerg@lane4group.com]
Sent: Monday, February 11, 2013 2:17 PM
To: Dennis Enslinger
Cc: Quinn Bennion; 'Kylie Wiser'; DavidC@cosentinos.com; DonnieC@cosentinos.com; Owen Buckley
Subject: Corinth CID Reimbursement - Signage Appeal

Dennis, please let this email serve as notice that CSN Retail Partners LLC's requests the Prairie Village City Council to reconsider your denial of CID reimbursement for the majority of signage replacements installed as part of the Corinth Square North Remodel.

I understand that you denied reimbursement because you categorized most of the new signage as a "Tenant Improvement Project" as defined on Page 5 of the Development Agreement. Please note, however, that Tenant Improvements are generally defined as adding or replacing items to enhance and improve a specific space for a specific tenant. Examples include adding bathrooms, replacing or adding HVAC facilities, increasing electrical capacity or installing grease traps.

In the case of the Corinth Square, new signage was required throughout the remodeled portion of the center in order to comply with the new sign code that was adopted as integral to, and as a condition of, the Main Building Modification (Project A2, Exhibit C – Building skin upgrade). This was not a voluntary upgrade -- the old signs could not be re-used and the Main Building Modification project could not have taken place without replacing signage for each tenant. Because the existing tenants had already paid once for their original signage, the Landlord had no basis to ask tenants to pay again to replace what they already had.

CSN's reimbursement request does not include any costs to upgrade new signage beyond the minimum standards required by the new code and the minimum required to achieve the intent of the Main Building Modification. Tenants were, however, offered the opportunity to enhance their signage above the minimum code-required standards – and several paid for these upgrades at their sole expense. Tenants that self-funded their upgrades include Westlake Hardware, Great Harvest Bread, Learning Tree, Sopra, Wild Bird Center and Dancerz Unlimited.

In addition, CSN's reimbursement request does not include any tenants whose signs were not removed because of the Main Building Modification. This includes tenants that signed leases during the remodeling (Kempo Fitness and SPIN! Pizza) and tenants that agreed to renovate their premises before the remodeling started (Salty Iguana, and Johnny's). These tenants, like all future tenants that create new signs (and those that choose to voluntarily upgrade existing signs), are required to pay for their own.

In our opinion, we are limiting our CID reimbursement request to the cost of replacing signs that were an integral and required part of the Main Building Modification. The Main Building Modification qualifies for full CID Reimbursement, and the new signage that was required thereby should also qualify for full reimbursement.

I appreciate the Council's consideration of this request.

Jeff Berg
Senior Vice President – Principal

LANE4 Property Group, Inc.
4705 Central Street
Kansas City, MO 64112
D: (816) 268-9102
F: (816) 960-1441
C: (816) 769-5996
jberg@lane4group.com
www.lane4group.com



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Corinth Square Lane 4 Detail

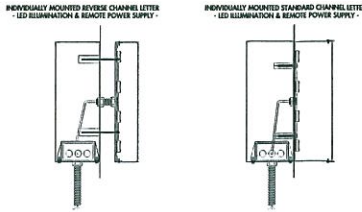
Item #	Tenant	Signage	Job Value	Remaining Sign Costs *	Cabinet ^
1	Westlake Ace Hardware	F/I (3) faces and channel letters	\$ 19,496.00	\$ 11,697.60	\$ 7,798.40
2	Urban Table	F/I channel letters (east Inline sign)	\$ 4,513.49	\$ 2,708.09	\$ 1,805.40
3	Urban Table	F/I oval tenant sign (south gable sign)	\$ 6,244.72	\$ 3,746.83	\$ 2,497.89
4	Great Harvest Bread	F/I channel letters & logo (Inline sign)	\$ 6,730.84	\$ 4,038.50	\$ 2,692.34
5	The Learning Tree	F/I channel letters & logo (Inline sign)	\$ 5,869.00	\$ 3,521.40	\$ 2,347.60
6	In Clover Boutique	F/I channel letters & logo (Inline sign)	\$ 6,372.49	\$ 3,823.49	\$ 2,549.00
7	Fry Orthodontic Specialists	F/I Channel letters (gable sign)	\$ 6,244.72	\$ 3,122.36	\$ 3,122.36
8	Sopra Salon & Spa	F/I Channel letters (gable sign)	\$ 6,224.72	\$ 3,734.83	\$ 2,489.89
9	Wild Bird Center	F/I channel letters (gable sign)	\$ 6,244.45	\$ 3,122.23	\$ 3,122.23
10	Wild Bird Center	F/I channel letters (In line sign)	\$ 5,659.63	\$ 3,395.78	\$ 2,263.85
11	Wooten Liquors	F/I channel letters (in line sign)	\$ 5,330.11	\$ 3,198.07	\$ 2,132.04
12	Wooten Liquors	F/I channel letters (gable sign)	\$ 6,220.70	\$ 3,732.42	\$ 2,488.28
13	Sole Patch Barbershop	F/I channel letters (In line sign)	\$ 6,484.90	\$ 3,890.94	\$ 2,593.96
14	Smart Feet	F/I channel letters & logo (gable sign)	\$ 6,146.72	\$ 3,688.03	\$ 2,458.69
15	Jewelry Art	F/I channel letters (gable sign)	\$ 6,244.72	\$ 3,746.83	\$ 2,497.89
16	Jewelry Art	F/I channel letters (In line sign)	\$ 5,043.81	\$ 3,026.29	\$ 2,017.52
17	Mely's Yogurt	F/I channel letters (In line sign)	\$ 7,107.45	\$ 4,264.47	\$ 2,842.98
18	Dancerz Unlimited	F/I channel letters (In line sign)	\$ 6,100.61	\$ 3,660.37	\$ 2,440.24
19	Prairie Village Animal Hospital	F/I channel letters (In line sign)	\$ 9,112.48	\$ 5,467.49	\$ 3,644.99
20	Land of Paws	F/I channel letters & logo (gable sign)	\$ 6,196.68	\$ 3,718.01	\$ 2,478.67
21	Mely's Yogurt & Ice Cream	F/I channels letters (gable sign)	\$ 6,182.27	\$ 3,091.14	\$ 3,091.14
Subtotal			\$ 143,770.51	\$ 84,395.16	\$ 59,375.35
Permits			\$ 495.00		
Sales Tax			\$ 10,636.61		
Grand Total			<u>\$ 154,902.12</u>		

F/I = Furnish and Install

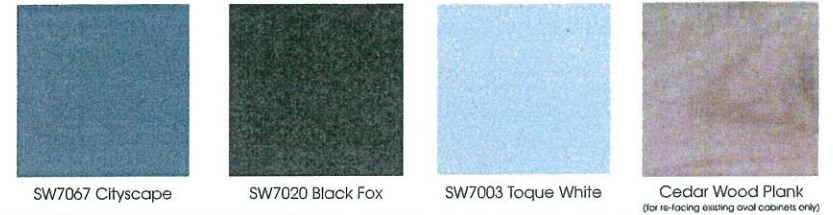
* Includes electrical components and illuminated tenant identification.

^ Enclosed background and face material.

Attachment A: IN-LINE TENANT SPACES



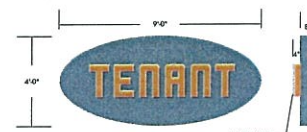
Pre-approved finishes



- TENANT SIGN**
- FASCIA MOUNT SIGNS**
- INTERNALLY-ILLUMINATED, PAN CHANNEL INDIVIDUAL LETTERS/LOGO
 - 3/16" THICK PLEXIGLAS FACES WITH 1" TRIM CAPS AND PAINTED 4" DEEP (MINIMUM) RETURNS
 - LETTERS/LOGO MOUNTS TO .090" THICK, 18" HIGH BACKGROUND PANEL IN ONE OF APPROVED FINISHES. PANEL MOUNTS FLUSH TO 3" DEEP X 12"H RACEWAY INSET FROM PANEL EDGES AND PAINTED SAME COLOR AS BACKGROUND PANEL
 - LED ILLUMINATION
 - ATTACHES WITH EXISTING MOUNTING BRACKETS
 - MUST BE MINIMUM OF 8" FROM BOTTOM OF SIGN TO SIDEWALK AND CONSISTANT ACROSS ELEVATION



- TENANT**
- GABLE MOUNT TYPICAL SIGNS**
- INTERNALLY-ILLUMINATED, PAN CHANNEL INDIVIDUAL LETTERS/LOGO
 - 3/16" THICK PLEXIGLAS FACES WITH 1" TRIM CAPS AND PAINTED 4" DEEP (MINIMUM) RETURNS
 - LETTERS/LOGO MOUNTS TO .090" THICK, 18" HIGH BACKGROUND PANEL IN ONE OF APPROVED FINISHES. MOUNTS TO 3" DEEP RACEWAY SIZED 1" SMALLER (MINIMUM) FROM ALL EDGES AND PAINTED SAME COLOR AS BACKGROUND PANEL
 - LED ILLUMINATION
 - ATTACHES WITH EXISTING MOUNTING BRACKETS
 - MUST BE MINIMUM OF 8" FROM BOTTOM OF SIGN TO SIDEWALK AND CONSISTANT ACROSS ELEVATION



- TENANT**
- GABLE MOUNT OVAL SIGNS**
- RE-USE EXISTING OVAL CABINET
 - INTERNALLY-ILLUMINATED, PAN CHANNEL INDIVIDUAL LETTERS/LOGO
 - 3/16" THICK PLEXIGLAS FACES WITH 1" TRIM CAPS AND PAINTED 4" DEEP (MINIMUM) RETURNS
 - LETTERS/LOGO MOUNTS TO .090" THICK, BACKGROUND PANEL IN ONE OF APPROVED FINISHES, RETRO FITTED FOR OVAL CABINET. CABINET PAINTED TO MATCH FACES
 - RE-INSTALLS SAME LOCATION USING EXISTING MOUNTING BRACKETS



- Routed Sign**
- GABLE MOUNT OVAL SIGNS**
- RE-USE EXISTING OVAL CABINET
 - ROUT COPY FROM .090 ALUMINUM BACKGROUND PAINTED IN ONE OF APPROVED FINISHES, BACKED WITH WHITE PLEXIGLAS
 - PAINT CABINET MATCHING FINISH TO FACE
 - CHECK EXISTING LAMPS
 - RE-INSTALLS SAME LOCATION USING EXISTING MOUNTING BRACKETS



- HALO TENANT**
- FASCIA MOUNT SIGNS**
- HALO LIT, INTERNALLY-ILLUMINATED, REVERSE CHANNEL INDIVIDUAL LETTERS/LOGO
 - FABRICATED METAL LETTER/LOGO IN CUSTOMER COLOR WITH 3" DEEP (MINIMUM) RETURNS WITH CLEAR LEXAN BACKING
 - LETTERS/LOGO PIN MOUNTS OFF 1 1/2" FROM .090" THICK, 18" HIGH BACKGROUND PANEL IN ONE OF APPROVED FINISHES. PANEL MOUNTS FLUSH TO 3" DEEP X 12"H RACEWAY INSET FROM PANEL EDGES AND PAINTED SAME COLOR AS BACKGROUND PANEL
 - WHITE LED ILLUMINATION
 - ATTACHES WITH EXISTING MOUNTING BRACKETS
 - MUST BE MINIMUM OF 8" FROM BOTTOM OF SIGN TO SIDEWALK AND CONSISTANT ACROSS ELEVATION



- HALO SIGN**
- GABLE MOUNT TYPICAL SIGNS**
- HALO LIT, INTERNALLY-ILLUMINATED, REVERSE CHANNEL INDIVIDUAL LETTERS/LOGO
 - FABRICATED METAL LETTER/LOGO IN CUSTOMER COLOR WITH 3" DEEP (MINIMUM) RETURNS WITH CLEAR LEXAN BACKING
 - PIN MOUNTS OFF 1 1/2" FROM .090" THICK BACKGROUND PANEL IN ONE OF APPROVED FINISHES. PANEL MOUNTS TO 3" DEEP RACEWAY SIZED 1" SMALLER (MINIMUM) FROM ALL EDGES AND PAINTED SAME COLOR AS BACKGROUND PANEL
 - WHITE LED ILLUMINATION
 - ATTACHES WITH EXISTING MOUNTING BRACKETS
 - MUST BE MINIMUM OF 8" FROM BOTTOM OF SIGN TO SIDEWALK AND CONSISTANT ACROSS ELEVATION



- HALO SIGN**
- GABLE MOUNT OVAL SIGNS**
- RE-USE EXISTING OVAL CABINET
 - HALO LIT, INTERNALLY-ILLUMINATED, REVERSE CHANNEL INDIVIDUAL LETTERS/LOGO
 - FABRICATED METAL LETTER/LOGO IN CUSTOMER COLOR WITH 3" DEEP (MINIMUM) RETURNS WITH CLEAR LEXAN BACKING
 - MOUNTS TO BACKGROUND PANEL IN ONE OF APPROVED FINISHES WITH OVAL CABINET PAINTED TO MATCH
 - LETTERS PIN MOUNT OFF PANEL 1 1/2"
 - RE-INSTALLS SAME LOCATION USING EXISTING MOUNTING BRACKETS



- NON-LIGHTED**
- GABLE MOUNT OVAL SIGNS**
- RE-USE EXISTING OVAL CABINET
 - .090 ALUMINUM BACKGROUND PAINTED IN ONE OF APPROVED FINISHES OR CEDAR PLANK
 - PAINT CABINET MATCHING FINISH TO FACE
 - FLUSH MOUNT FLAT CUT OUT LETTERS/LOGO IN CUSTOMER COLOR
 - RE-INSTALLS SAME LOCATION USING EXISTING MOUNTING BRACKETS

- SPECIFICATIONS:**
- SURVEY REQUIRED BEFORE ALL FABRICATION/INSTALLATION
 - ALL LED COMPONENTS MUST BE CLASS 2 LOW VOLTAGE
 - MUST MEET ALL APPLICABLE ELECTRICAL AND BUILDING CODES.
 - MUST HAVE UL LABEL

CUSTOMER: LANE 4 PROPERTIES	DATE: 8/18/11
NAME:	DESIGN NO: SS-6535
LOCATION: CORINTH SQUARE SC PRAIRIE VILLAGE, KS	ARTIST: JH
PHONE:	SCALE: 3/16" = 1'
APPROVED:	DATE:



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EXHIBIT C

DESCRIPTION OF DEVELOPER CID PROJECTS CORINTH SQUARE

PROJECT: PROJECT SCOPE OF WORK: SUB-SCOPES OF WORK: ESTIMATED TOTAL PROJECT COSTS:

Project A1: Lot E - Former Tippin's

Lot E	Demolish existing building
	Relocate existing vehicular entrance(s)
	New building
	New landscaping/irrigation
Buildings A & B	Enhanced pedestrian walkways
	New irrigation system
	New permanent planters
	Upgrade irrigation system (new water tap)
	Increase/modify landscaping
	New benches
	New trash receptacles
	Bike racks
LOT E - FORMER TIPPIN'S TOTALS:	
	\$1,923,519

Project A2: Main Building Modification

Building A & B Façade Remodel	Enhanced pedestrian walkways
	Building skin upgrade
	Roof screening for mechanical equipment
	Roofline modification
Streetscaping	New irrigation system
	New permanent planters
	Upgrade irrigation system (new water tap)
	Increase/modify landscaping
	New benches
	New trash receptacles
	Bike racks
Surrounding parking lot modifications	Relocate existing vehicular entrances
	Reconfigure surrounding parking lots
	New monument signage
	New landscaping
	New parking lot islands
	Restripe
	New irrigation
	New energy efficient parking lot lighting
	Provide new paved pedestrian crosswalks
MAIN BUILDING MODIFICATION TOTALS:	
	\$5,418,743

Project B: Town Square

Corinth Town Square	Reconfigure parking lot
	New pedestrian crosswalks
	New parking lot islands
	New energy efficient parking lot lighting
	New landscaping
TOWN SQUARE TOTALS:	
	\$233,091

MAYOR'S ANNOUNCEMENTS

February 19, 2013

Committee meetings scheduled for the next two weeks include:

Prairie Village Arts Council	02/20/2013	7:00 p.m.
Environmental/Recycle Committee	02/27/2013	7:00 p.m.
VillageFest Committee	02/28/2013	7:00 p.m.
Council Committee of the Whole	03/04/2013	6:00 p.m.
City Council	03/04/2013	7:30 p.m.

The Prairie Village Arts Council is pleased to announce an mixed media exhibit by Jere Hanney in the R. G. Endres Gallery for the month of March.

The City offices will be closed February 18th in observance of President's Day. Trash will not be delayed this week.

The annual large item pick-up has been scheduled. Homes on 75th Street and north of 75th Street will be collected on Saturday, April 13th. Homes south of 75th Street will be collected on Saturday, April 20th.

INFORMATIONAL ITEMS
February 19, 2013

1. Planning Commission Minutes - January 8, 2013
2. Park & Recreation Committee Minutes - January 9, 2013
3. Sister City Committee Minutes - January 14, 2013
4. Tree Board Minutes - February 6, 2013
5. Mark Your Calendars

PLANNING COMMISSION MINUTES
January 8, 2013

ROLL CALL

The Planning Commission of the City of Prairie Village met in regular session on Tuesday, January 8, 2013, in the Multi-Purpose Room, 7700 Mission Road. Chairman Ken Vaughn called the meeting to order at 7:00 p.m. with the following members present: Randy Kronblad, Bob Lindeblad, Dirk Schafer, Nancy Wallerstein, Gregory Wolf and Nancy Vennard.

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

APPROVAL OF MINUTES

Randy Kronblad moved the minutes of the December 4, 2012 be approved as written. The motion was seconded by Nancy Vennard and passed by a vote of 6 to 0 with Gregory Wolf abstaining.

PUBLIC HEARINGS

PC2013-01 Proposed Amendment to Chapter 19.28 "Special Use Permits" to incorporate a protest process

Ron Williamson noted the City Council established a 90 day moratorium on Special Use Permits at their meeting on November 5, 2012, to allow for the consideration of incorporating a protest process currently found in the rezoning process to the special use permit process. The City of Prairie Village has used the Special Use Permit provision for forty years or more, but a protest provision has never been a part of the approval process.

The special use permit regulations include several provisions that build in protection, such as, the ability to impose conditions, safeguards and restrictions upon the premises benefited by the special use as may be necessary to reduce or minimize any potentially injurious effect upon other property in the neighborhood. All special use permits are valid for a specified time period and cannot be transferred or assigned without acceptance of the terms or conditions of the original approval. Special use permits may be revoked by the Governing Body for violation of the ordinances of the City, for violation of district regulations or non-compliance with the conditions, limitations or requirements contained in the special use permit. With these built in protections, a protest process was not included in the original drafting of the zoning regulations.

Staff has verified that the Cities of Overland Park, Olathe, Lenexa, Mission, Fairway, Westwood, Roeland Park, Shawnee, Bonner Springs, Gardner and Leawood all have

protest petitions for Special Use Permits. The Cities of Springhill and Edgerton do not use Special Use Permits, but use Conditional Use Permits instead and have protest petitions. Johnson County also has a protest petition for Special Use Permits.

Mr. Williamson noted that by adding the protest petition provision the application will be presented to the Governing Body at their first meeting of the month rather than the next Council meeting after the Planning Commission meeting. The opponents of a Special Use Permit will have 14 days after the conclusion of the Planning Commission public hearing to file valid protest petitions. There are only 13 days between a regular Planning Commission meeting (2nd Tuesday of the month) and a Governing Body meeting (3rd Monday of the month). Therefore, the application will normally be considered by the Governing Body at its first meeting of the month (1st Monday of the month). This will add two to three weeks to the approval process.

In reviewing the ordinances from other cities, several clarify what is a “valid” protest petition and some language has been added for clarification.

The proposed amendment is as follows:

Add the following Section to Chapter 19.28 Special Use Permits:

19.28.041 Protest

Regardless of whether or not the Planning Commission recommends approval or disapproval of a Special Use Permit, if a valid protest petition against such Special Use Permit is filed in the Office of the City Clerk within 14 days after the date of the conclusion of the public hearing, signed by the owners of record of 20% or more of the total area required to be notified of the proposed Special Use Permit, excluding streets and public ways, such Special Use Permit shall not be passed except by at least a 3/4 vote (10 votes) of all members of the Governing Body.

Valid Protest Petitions must be signed and acknowledged by each and every owner(s) of property protesting a given action. The word “owner(s)” for purposes of protest petitions shall include all those individuals that may have ownership in subject real property or property within the notification area. If the property is owned by joint tenancy, all such owners must sign the petition by their own hand to be valid, unless the petition itself clearly indicates that one tenant has the legal authority to sign for and on behalf of the other. In the event a corporation, partnership or other organization meets the requirements to protest an action and desires to sign a petition, the following must appear on the petitions for such an organization to be counted with the petition: a) the proper name in which title to their property is held; and b) the address of their property; and c) the name of the individual signing on behalf of the corporation, partnership or other organization; and d) some indication of capacity or authorization of the individuals to sign on behalf of the corporation, partnership or organization.

To be a valid protest petition, the signature of each owner(s) signing the petition must be properly notarized.

Chairman Ken Vaughn reviewed the process to be followed for the public hearing asking speakers to identify themselves and asking those present to remain quiet during the comments to allow for all to be heard. He asked those speaking to keep their comments brief and not to repeat things previously stated.

Neil Shortlidge, attorney for the Mission Valley Neighborhood Association, addressed the Commission in support of the proposed language. He noted special use permits normally are a change in land use which may have a negative impact on the underlying zoning and noted this is why many cities allow for the protest of special use permits, as well as, rezoning. Mr. Shortlidge referenced case law regarding the interpretation and treatment of special use permits and zoning applications and the applicability of the "Golden Factors" to special use permits as well as in rezoning. He noted the KS Supreme Court ruled in at least 4 cases on the validity of the protest process for special use permits recognizing the neighboring property owners' right to be heard.

Mr. Shortlidge noted that protest petitions are allowed by state statutes and if the city fails to add the protest process, he feels its actions would be against state statutes and could be effectively challenged. Gregory Wolf asked if he was saying the current process followed by the city is flawed by Kansas law requirements. Mr. Shortlidge responded that it is his interpretation that it is.

Craig Satterlee, 8600 Mission Road, spoke in support of the proposed revision addressing the potential of in-fill development to negatively impact the existing neighborhood character and property values and the need to grant residents due process in consideration of the requested special use permit as well as in rezoning. .

Brian Doerr, 4000 West 86th Street, spoke in support of the proposed amendment noting that a land use change is a land use change whether it be by the rezoning of property or the allowance of a special use permit and a protest petition process should be available to residents in both scenarios to ensure their due process rights.

Mr. Doerr noted the extensive community input and involvement sought in the development of Village Vision and the Parks Master Plan. He stated a recent example of the city's support of its residents and neighborhoods is the recent approval of the establishment of neighborhood conservation districts giving residents a greater voice in the development and preservation of their community. The addition of the protest petition process for special use permits is another opportunity for the City to facilitate greater participation by its residents. There is no reason to not approve the proposed amendment.

Whitney Kerr, 4020 West 86th Street, spoke in support of the amendment. He referenced the lack of communication during the initial Mission Road & 84th Street development proposal and between the developer and the residents. He feels the protest petition is needed to get the maximum communication between developers, residents and the City. He believes that without the protest petition process, it is easier for developers to strong-arm their plans through the process.

Jori Nelson, 4802 West 69th Terrace, spoke in support of the amendment as she believes residents should have a voice in the development of property surrounding

their property. She noted that Prairie Village is one of very few cities that do not already allow for this process in the consideration of special use permits. She feels this process will encourage a more open line of communication between the developer, the City and the residents. Ms. Nelson stated that when residents become involved the outcome is better development and urged the Commission to vote to recommend the adoption of the proposed language.

Larry Dollar, 4112 West 91st Street, spoke in support of the amendment which affords neighbors a larger voice in the development of surrounding property. He feels this will improve communication between the city, community and developer. He noted getting neighborhoods involved is the role of government. The amendment will give Prairie Village residents the same rights given to most other Johnson County residents.

David Lillard, 3607 West 84th Terrace, a long-time resident of the city spoke in support of the proposed amendment and urged the City to join other cities by adopting the proposed amendment as others have. He believes the best results are achieved when all stakeholders have a voice and referenced his involvement in the development of property by Village Church along Mission Road and 94th Street in which the original application was challenged and through work with the neighboring residents a better project design and layout was created. It is important to give the community the opportunity to participate as full-fledged stakeholders in the development of land surrounding their properties.

With no one else wishing to address the Commission, Chairman Vaughn closed public participation at 7:35 p.m.

Gregory Wolf confirmed the City Attorney is aware of and will review the proposed amendment.

A resident in the audience confirmed that the protest petition applies to all property owners within 200' of the property and requires signatures of 20% of the landowners to be valid. If the protest petition is valid, Mr. Williamson stated the Governing Body will be required to have a supermajority (10 votes) to approve the requested special use permit.

Nancy Vennard stated she agreed with the concept of the protest petition process, but questioned the required 20% criteria. She felt that level potentially placed a lot of power with the contiguous property owners which may not represent the feelings of the entire neighborhood.

Bob Lindeblad noted that at the public hearing anyone is allowed to speak. The 20% criteria is established by state statute for rezoning applications. Mrs. Vennard felt that 30% would provide a better representation. Ron Williamson stated he felt it was better to stay with the 20% stipulated by the state for rezoning applications, noting that to increase it would be breaking new ground and would be more likely to be challenged. Ken Vaughn noted Mrs. Vennard raises a good point. Mrs. Vennard stated she does not want to see a protest based on a few opposing residents.

Nancy Wallerstein stated the need to be very clear on the number of votes - clarifying that a ¾ majority is 10 votes. Mr. Williamson responded the Governing Body includes the Mayor and would be 10 votes.

Mr. Williamson reviewed the process that would be followed in that a certified list of property owners would need to be acquired from the County of all property owners within 200 feet of the affected property. The signatures on the petition will need to be notarized with all property owners signing. Once submitted City staff will verify the petition.

Bob Lindeblad moved the Planning Commission recommend the Governing Body adopt the proposed amendment as written. The motion was seconded by Randy Kronblad and passed by a vote of 7 - 0.

Bob Lindeblad moved the Planning Commission recommend that the last two paragraphs of the amendment be added to Section 19.52.045, the protest petition for zoning amendments after the appropriate publication and public hearing. The motion was seconded by Dirk Schafer and passed by a 7-0 vote.

NON-PUBLIC HEARINGS

PC2013-101 Site Plan Approval - Roe 89 Shops 8825 & 8839 Roe Avenue

Dennis Enslinger stated the applicant has requested that this item be continue to the February 5th meeting of the Planning Commission.

Randy Kronblad moved that PC2013-101 be continued to the February 5, 2013 meeting of the Planning Commission. The motion was seconded by Dirk Schafer and passed by a 7 - 0 vote.

PC2013-102 Site Plan Approval - St. Ann's 7231 Mission Road

Arnie Tulloch, with Shafer, Kline & Warren, stated St. Ann Catholic Church and School are proposing a number of changes to their campus. They will be done in four phases. He noted revised plans were distributed at the meeting to address the addition of five feet to the north end of the school building.

Phase 1 changes include the demolition of the existing portion of the building north of the cell tower equipment room. This will be replaced by a smaller addition that will include a chapel and administrative offices. The main entrance to the church will be relocated to the lower level off the parking lot on the east side. A new lobby area will be built including an elevator for ADA accessibility.

Eight new classrooms are proposed to be added to the north end of the classroom wing. These classrooms will be on two levels with four on each level. An elevator will also be added to provide ADA access.

Phase 1 also includes relocation of utility lines as needed to accommodate expansion, as well as construction of a new driveway in front of the church parallel to Mission Road and a row of parking on the east side of the gym. The proposed driveway with five new parking spaces will provide additional access for those with disabilities, but also will provide access for hearses and limousines used for funerals. This provides direct access to the Nave while the new lobby and entrance will be at a lower level which would be more difficult to accommodate funerals.

Phase 2 will be a small addition of offices and hallway to the new chapel area.

Bob Lindeblad confirmed the latest revisions to the the north side of the school building was five feet.

Ron Williamson noted that in 1997 the Zoning Ordinance was amended to require private schools to obtain a Special Use Permit. St. Ann School is a private school and a Special Use Permit has not been approved for it. Since it was in existence prior to 1997, it is a legal nonconforming use, but cannot enlarge or expand until a Special Use Permit is approved. This application will only address the Site Plan for the Church and School expansion, but a permit for the school construction cannot be issued until the Special Use Permit is approved. Assuming the Planning Commission makes a recommendation on the protest petition amendment for Special Use Permits at the January meeting, the amendment will be considered by the Governing Body at its meeting on January 22nd. The Special Use Permit application could then be on the March Planning Commission Agenda and then the April 1st City Council meeting.

This property is unplatted and the applicant will submit a plat for consideration by the Commission at its February meeting.

A neighborhood meeting was held on December 19, 2012 in accordance with the Planning Commission Citizen Participation Policy. One family attended and the questions primarily dealt with the interior of the facility.

Ken Vaughn led the Planning 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 site is approximately 10.6 acres and the east five acres are primarily ball diamonds and play area which is open space. The new chapel and office addition will be a smaller building than what exists which will provide more green space between the church and the north access drive. The applicant is providing 21 new parking spaces on the east side of the gym. When the project is complete, there will be 305 off-street parking spaces and the ordinance requires 239 off-street parking spaces.

The applicant has submitted a landscape plan to replace plantings that will be destroyed during construction. It will need to be submitted to the Tree Board for approval.

The internal parking lot is a large mass of asphalt and some landscape islands are needed to soften the hardscape. The internal trafficway needs to be better defined to facilitate traffic flow.

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

The property is currently served with all utilities and the proposed improvements should not create the demand for additional utilities. No additional needs are contemplated for water and sewer services.

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

The applicant has proposed a small detention pond east of the new parking area. No calculations have been provided regarding the current impervious area versus the amount of impervious area after the project is complete. The applicant will need to prepare a stormwater management plan for submittal to and approval by the Public Works Department.

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

The ingress, egress and internal circulation will be essentially as it is now. Ingress is from the north drive off Mission Road and from Windsor Street to the east. Egress to Mission Road is available from both driveways and egress is also available to Windsor Street.

The new driveway does raise a concern. It will be one-way and accessed from the south. This means that vehicles will either enter the site from Windsor Street or enter from the north drive on Mission Road and drive completely around the entire complex to enter this drive. It is proposed that no left turns will be permitted from this drive to Mission Road. The plans on some sheets show that a left turn to access Mission Road will be allowed while other sheets show a curb that will prevent that movement. If left turns to Mission Road are permitted it could create cross traffic problems when people are arriving or leaving a service. On the other hand, prohibiting a left turn may create problems for exiting traffic during funerals.

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

The location of the proposed improvements work well with the existing development of the site. The applicant has attempted to retain as much of the existing vegetation on the property as possible and to supplement it with new plantings. The overall plan appears to be adequate and is consistent with good planning and site engineering design principles. The details of the storm water management plan need to be worked out with Public Works. The plans have not addressed outdoor lighting and, if outdoor lighting will be added or changed, it will need to conform to the City's new outdoor lighting regulation.

It appears that the two monument signs on Mission Road will be relocated as a part of this project. This will need to be coordinated with Staff to ensure that the signs will be in compliance with the sign ordinance.

F. An appropriate degree of compatibility will prevail between the architectural quality of the proposed building and the surrounding neighborhood.

The applicant has submitted color renderings of the proposed additions and it appears in general that the new improvements will be compatible with the existing buildings on the site. The applicant will need to identify the materials being used on the new addition and provide a materials board showing what materials will be used.

It also should be noted that any new mechanical units will need to be screened from the streets and adjacent property.

G. The plan represents an overall development pattern that is consistent with the comprehensive plan and other adopted planning policies.

One of the goals of the Village Vision is to support a high quality educational and cultural environment for the residents of Prairie Village which includes investment and upgrading of facilities. It is fortunate that the site is adequate to accommodate the proposed expansion. The proposed project is very consistent with the Comprehensive Plan.

Randy Kronblad confirmed there will be sufficient parking on-site with the proposed additions.

Nancy Vennard confirmed the Commission is only approving Phase 1 and 2 at this time.

Arnie Tulloch explained the scheduling to allow for the school addition to be completed for the second semester of the 2013-2014 school year.

Randy Kronblad noted the submitted floor plan does not reflect the Phase 2 addition but noted it is reflected in the elevations and on the site plan. Gordon Kimble, architect on the project, drew the proposed work, an L-shaped addition to the north side of the building, on a floor plan and presented it to the Commissioners. Mr. Kronblad confirmed the building materials will be submitted to staff for review and approval. Ron Williamson added the staff will also review the outdoor lighting plan prior to the issuance of a building permit.

Randy Kronblad moved the Planning Commission approve the revised site plan as presented for Phases 1 & 2 for St. Ann's Church and School additions subject to the following conditions:

1. That the applicant works with Public Works for approval of the storm water management plan.
2. That new drives along Mission Road be designed to prohibit left turns and the design is approved by Public Works.
3. That the applicant use materials similar to those being used on the existing building and submit a material palette to Staff for approval.
4. That an outdoor lighting plan be submitted in accordance with Section 19.34.050 Outdoor Lighting of the Zoning Ordinance if applicable.
5. That the monument sign relocation plans be submitted to Staff for review and approval.
6. That the landscape plan be submitted to the Tree Board for review and approval prior to installation.

7. That all new mechanical units be screened from adjacent streets and properties.
8. That landscape islands be provided in the large parking area subject to review and approval of Staff.
9. That the applicant plat the property and that the plat be completed prior to occupancy of the new expansion.
10. That the site plan for the school expansion is approved subject to the approval of the Special Use Permit for the school. If the Special Use Permit is not approved by the Governing Body, the site plan shall be redrawn and resubmitted to the City removing the proposed school expansion.

The motion was seconded by Nancy Wallerstein and passed by a 7 - 0 vote.

**PC2013-103 Monument Sign Approval - First National Bank
4200 West 83rd Street**

Fred Stieg, with Luminous Neon, addressed the Commission presenting First National Bank located on the northeast corner of the 83rd and Somerset. This property was previously part of Corinth Square, Shopping Center, but is now under new ownership. The new owner is seeking approval for a monument sign and revised sign standards. A new monument sign was distributed to the Commission at the beginning of the meeting without the time & temperature feature on the original submittal. Mr. Steig stated the applicant has reviewed and accepts the staff comments and recommendation.

Nancy Vennard asked how far the proposed monument sign was from the intersection. Ron Williamson replied the plan is not clear and needs to be revised indicating that the sign will be setback 12 feet from the back of the curb from both 83rd Street and Somerset. It also must be on private property.

The proposed sign will be placed diagonally at the corner of 83rd and Somerset Drive and will be double faced. The sign will be five feet in height. The sign face will be 104" x 26" which is 19.5 square feet meeting the city's code. The base of the sign will be made of the same stone as used on the building and the sign will be an aluminum cabinet with the sign base widened so that it matches the edges of the sign. The sign will be internally illuminated.

Nancy Wallerstein asked if there were other monument signs in the City that were back lit. Staff replied there are internally lit signs for UMB, Missouri Bank, Corinth Square and elsewhere.

Ron Williamson noted the temporary sign at this location will need to be removed. The applicant has submitted a landscape plan for the base of the sign identifying specific plant material and that condition #4 of the staff recommendation should be removed. The Commission members acknowledged the colorful landscape plan presented.

Bob Lindeblad moved the Planning Commission approve the revised monument sign presented subject to the following conditions:

1. That the site plan be clarified that the sign will setback 12' from the back of the curb of both 83rd Street and Somerset Drive.

2. That the base of the sign be widened to the same width of the sign.
3. That the applicant remove the temporary sign when the monument sign installation is complete.

The motion was seconded by Gregory Wolf and passed by a 7 - 0 vote.

Ron Williamson noted this property is still operating under the sign standards for the Corinth Square Shopping Center which it was previously part of. New sign standards have been submitted for the building which will be used for a bank and offices.

The Planning Commission may, in the process of approving sign standards, approve deviations for the standard requirements as follows, provided said deviations will provide an equal or better development, adjacent properties will not be adversely impacted, and the spirit and intent of regulation will not be violated by granting of the deviation:

1. One sign may be permitted per façade with no requirement that the tenant has direct outside entrance or that the sign be adjacent to its space.
2. That text not be restricted on monument signs provided the sign is designed and built primarily of brick, stone and masonry, complements the building and does not include a case or enclosed cabinet design.

PROPOSED BUILDING SIGNAGE

In paragraph 2, only one sign is permitted per facade by ordinance, not one sign per tenant. The word fascia should be changed to facade to be compatible with the Sign Ordinance. One facade sign would be permitted on each facade of the building.

In paragraph 3, the maximum size of the sign permitted is 5% of the area of the facade but shall not exceed 50 square feet.

In paragraph 5, only one sign is permitted per facade not per tenant.

The building does not have a sign band and the drawings need to be submitted to identify where the signs will be placed on the building.

MONUMENT SIGNS

In paragraph 1, four wall signs are permitted. In the second sentence, it should state, "The area of the monument sign..."

In the second paragraph, the electronic time and temperature display needs to be deleted because the ordinance only permits a time and temperature display on the wall of the building.

Bob Lindeblad moved the Planning Commission approve the revised sign standards with the following changes recommended by staff:

1. Building Signage Section
 - a. Change the text to one sign per facade.
 - b. Change the word fascia to facade.

- c. Change the maximum size of the sign to 5% of the area of the facade but not exceeding 50 square feet.
 - d. Submit drawings identifying where the signs will be placed on the building.
2. Monument Signs Section
- a. Paragraph 1, four wall signs are permitted. Add "the area of".
 - b. Delete the second paragraph.

Subject to the review and approval by staff. The motion was seconded by Dirk Schafer and passed by a 7 - 0 vote.

OTHER BUSINESS

Direction from City Council to set a Public Hearing on Countryside East Conservation Overlay District

Dennis Enslinger stated the City Council adopted the proposed ordinance revision (Chapter 19.25) allowing for the establishing of Neighborhood Conservation Overlay Districts at its meeting on Monday, December 17, 2012. At that meeting they also directed the Planning Commission to set a public hearing for the consideration of the establishment of the Countryside East Neighborhood Overlay District.

Mr. Enslinger distributed the proposed Countryside East Neighborhood Overlay District final proposal to the Commission noting the only difference from the previous information given to the Commission was the inclusion of the legal description of all the properties within the district and a map.

Nancy Wallerstein moved the Planning Commission authorize a public hearing on Tuesday, February 5th for consideration of the establishment of the Countryside East Neighborhood Overlay District pursuant to Chapter 19.25 of the Prairie Village Municipal Code. The motion was seconded by Gregory Wolf and passed by a 7 - 0 vote.

Next Meeting

The February 5th meeting of the Planning Commission will be held at the Indian Hills Middle School. The agenda items will include the public hearing for the Country East Neighborhood Overlay District, the continued application PC2013-101 for site plan approval at 8825 & 8839 Roe Avenue and approval of a plat for the St. Ann's Church and School property. The meeting will be followed by a worksession with the development team for the former Mission Valley School property. This will be a worksession after the conclusion of the Commission meeting between the Commissioners and the development team. No public comment will be accepted.

Dennis Enslinger noted that the developer is holding a public information meeting on January 24th from 6:30 to 9:30 p.m. at Shawnee Mission East. He advised staff currently has pre-submittal plans that they intend to place on the city's website project page in the next few weeks.

ADJOURNMENT

With no further business to come before the Planning Commission, Chairman Ken Vaughn adjourned the meeting at 8:25 p.m.

Ken Vaughn
Chairman

PARK AND RECREATION COMMITTEE

**January 9, 2013
Council Chambers**

Park and Recreation Committee met at 7:00 pm. In attendance: Laura Wassmer, Chair, Ashley Weaver, Vice-Chair, Diane Mares, Peggy Couch, Maggie Swartz, Clarence Munsch, Max Rieper, Eric Blevins, Kevin Letourneau and Joe Nolke. Staff: Quinn Bennion and Chris Engel. Also present: Kathy Thompsen, Treadwell Jones.

COMMUNITY CENTER PRESENTATION

Chris shared a presentation that was produced by 360 Architecture that followed the Executive Summary of the study. During the ensuing discussion there was favorable support for Option One with the 50m Pool but with serious reservations. Key concerns were the cost of construction, the projected operational subsidy and the concern that Prairie Village residents would bear the majority of the cost, but that those outside Prairie Village might get the majority of the benefit. This is given that the Natatorium would be used by a significant number of non-residents and that many Prairie Village residents already belong to surrounding Community Centers that do not require increases in property or sales taxes.

There was discussion of potential equity partners and the need for those partners to commit to sharing the costs at a significant level. The Committee made a general statement of support for Option #1 with the 50m Pool if equity partners could be identified that would contribute a significant portion of the funding to build and operate the facility.

CONSENT AGENDA

The consent agenda was approved as submitted except for the minutes from December 12, 2012 that were approved with the following corrections: 1) in 'Park Priorities' under Windsor Park add 'Volleyball Court posts secured + new net' with updated pricing from Public Works and 2) under Porter Park make the following change 'Second porta-john ~~or permanent restroom~~ on a new concrete slab by WaterOne facility on Roe' with updated pricing from Public Works.

REPORTS

Public Works Report

Laura reported she had toured Windsor, Bennett and Taliaferro Parks and was alarmed at the major maintenance issues that have received little or no recent attention. These items included rusted BBQ pits, trash receptacles with large holes in the plastic containers and/or were missing lids, sand boxes overgrown with grass or with so little sand the liner is exposed, trails that are extremely cracked, soccer nets that are torn, missing volleyball nets, bent volleyball posts, as well as other items that Public Works should've been repairing. She shared photos of each taken during her visits and gave them to Quinn for reference. She will be meeting soon with city staff to develop a list of items that need attention in each park and get a sense of the cost of bringing each park up to standard. She would also like to create a presentation for Council on the 'State of the Parks' to share a prioritized list of park maintenance and improvement projects and their associated costs for the 2014 budget discussion. Quinn reported many of the items she was sharing should've been repaired/improved using the existing/approved Public Works maintenance budget and did not understand why they had not.

Recreation Report

Chris reported the pastor at the Nall Church was leaving and there was no movement on acquiring any additional land in the area of the church.

NEW BUSINESS

2013 Recreation Fees

There was discussion of the proposed increase in fees and the reasoning. The Committee agreed that fees need to keep pace with salaries and commodities. The Committee discussed the decrease in the pool rental fee. Chris shared the actual cost of staffing the pool for a rental was much less than the fee charged and he felt the sharp decrease in the number of rentals was related to the increase in the fee. It was decided to decrease the pool rental fee from \$387 to \$300. Tennis fee increases were also discussed. The decision was made to increase the JTL fees to \$100 per participant and \$90 for each additional participant in the same family. The reasoning is the JTL program has changed and now requires additional colored/low compression balls that increase costs because the different offerings can no longer share the same yellow balls. All other fees were approved as recommended.

OLD BUSINESS

Trail Plan Discussion

The Committee discussed the Trail Plan and what, if any, statement of support they would like to formulate. After discussion, the committee is unanimously in support of trails within the parks and the segment from the Village Shopping Center to SME. However, the committee as a whole does not support the implementation of the trail system outside of the Parks as currently recommended in the Park's Master Plan.

Adjournment

The next meeting will be February 13, 2013.

SISTER CITY COMMITTEE
14 January 2013
MINUTES

CALL TO ORDER

Chair Jim Hohensee called the meeting to order. Present: Vice Chair Carole Mosher, Bob Glywa, Vera Glywa, Bob McGowan and Mayor Shaffer. Also present: Aaron Noll.

Aaron Noll attended as a visitor. He introduced himself. He has applied for membership on the committee. The committee members introduced themselves.

A discussion of Chris Engel's change in jobs followed.

MINUTES

Minutes from November 11, 2012 were approved.

STUDENT RECEPTION

Carole reported on the student reception. Only 3 exchange students are at Shawnee Mission East. She proposed an early spring reception. We will find out when spring break is to be sure of the timing. We will try to time it with a meeting or other event.

SPEAKER SERIES

Speaker series will be on March 11.

PHOTO EXCHANGE

Jim will make contact with Rod about the photo exchanges. Also we will put out a call for photos in the Village Voice and the Mayor will speak with Kiwanis member Rusty Leffel.

SUNFLOWERS

The sunflower seed project will tie in neatly with the environmental fair at Shawnee Mission East. We need to find a way to package them. Mayor Shaffer stated he has plastic bags that could serve the purpose.

NEW MATTERS

Members should consider Sister City International in San Antonio and advise if they are interested in attending.

Vera moved that Jim and Sally be reimbursemed for gift items they took to Ukraine. Carole seconded the motion. The motion was carried.

Bob McGowan moved to adjourn. Bob Glywa seconded the motion. The motion carried and the meeting adjourned.

The next regularly scheduled meeting will be Monday, February 11, 2013.

Jim Hohensee
Chair

TREE BOARD

City of Prairie Village, Kansas

MINUTES (DRAFT)

Wednesday February 6, 2013
Public Works Conference Room
3535 Somerset Drive

Board Members: Jack Lewis, Greg VanBooven, Luci Mitchell

Other Attendees: Suzanne Lownes, Jeff Robbins, Thos. O'Brien, Sherlyn Olson, Daniel Olson (Boy Scout), Max Palmer and Don Jackson.

Jack Lewis called the meeting to order at 6:00 p.m. with a quorum present.

1) Review and Approve Minutes of September 5, 2012- Motion by Greg VanBooven, second by Jack Lewis **Approved unanimously.**

2) Community Garden Tree Removal Request

Thos. O'Brien explained that the Community Garden group wanted to discuss three trees for potential removal at the Harmon Park location; 1) An elm at the center of the garden, 2) A crabapple on the west side, 3) A spruce/pine tree. After discussing the request for the removals and options **Luci Mitchell moved to approve that the Community Garden group can remove the remaining crabapples that are in decline and the pine tree as discussed with the understanding that they will pay \$210 to Public Works for planting of a replacement for the pine tree, second by Greg VanBooven, Approved unanimously.** Tree Board declined the removal of the Siberian elm tree since it is a healthy viable tree and the tree is a benefit for many but removing it would only benefit a few.

3) First National Bank Plan Review

The Tree Board reviewed the plan submitted for the landscaping around the new sign at 4200 W 83rd St. (First National Bank). **Jack Lewis moved to approve the plan with the revision of removing the 10 plumbago and replacing those with 15 blue lirioppe, seconded by Luci Mitchell, Approved unanimously.**

4) Emerald Ash Borer – Jeff Robbins

Jeff Robbins presented his study on the Emerald Ash Borer. He described what 14 other cities are doing that are already dealing with the infestation and worked up a preliminary cost on treating each tree over a 10 year span using the information obtained. There was discussion concerning the use of interns for the work given that the injection is with a hazardous material and training is required with its use. The timeframe and weather conditions for treatment were also discussed. The Tree Board thanked Jeff Robbins for his hard work and said that his study would be helpful in moving forward on formulating a recommendation to City Council.

5) Sub-Committee Report

5.1) Fall Seminar – Event Review

The Tree Board said that the speaker was very informative and it was a great presentation. It was also discussed that the Tree Board will be reviewing the approved Prairie Village Tree Planting list in its upcoming meetings and using Robert Whitman's presentation as a resource.

6) Heartland Tree Alliance Program

Suzanne Lownes updated the Board that the Heartland Tree Alliance website has been up since late October. There has been one article on the Prairie Village website and currently Prairie Village has \$25 donated. The Heartland Tree Alliance group just contacted us concerning a group that is now matching the donated funds and a new advertising campaign for the program. Luci Mitchell stated if the fliers and posters are done in time she would love to promote it at the Tree Board table at the Earth Day event on April 13th.

7) Old Business

None

8) New Business

- 8.1) **St. Ann's Landscape Plan Review** - The board reviewed the plans submitted for the new landscaping at St. Ann's as part of their driveway addition. **Jack Lewis moved to approve the plans as submitted with a request for Rick Barrett to approve the specific "assorted perennials," seconded by Luci Mitchell, approved unanimously.**
- 8.2) **Application for vacant position** – Suzanne Lownes said that she received an application for the vacant Tree Board position. The Board discussed and suggested that the applicant be invited to the next Tree Board meeting .
- 8.3) **Arbor Day Honoree update** – Suzanne Lownes updated the Board that there have been no applications received at this time but the deadline is the end of February.
- 8.4) **New Chairperson** – The Chairperson position has not officially been filled since the departure of Art Kennedy. **Luci Mitchell moved to install Jack Lewis to a one year term as Chairperson starting immediately, seconded by Greg VanBooven, approved unanimously.**

7) Next Meeting

The next meeting will be March 6, 2013 at 6:00pm at the Public Works Facility.

The meeting adjourned at 7:20 p.m.

Minutes prepared by Suzanne Lownes.

**Council Members
Mark Your Calendars
February 19, 2013**

February 2013

February 18 Richard Findley exhibit in the R.G. Endres Gallery
February 19 City offices closed in observance of Presidents' Day
City Council Meeting

March 2013

March 4 Jere Hanney exhibit in the R.G. Endres Gallery
City Council Meeting
March 8 Artist reception in the R. G. Endres Gallery 6:30 - 7:30 p.m.
March 9-13 National League of Cities Conference in D.C.
March 18 City Council Meeting

April 2013

April 1 Dale Cole and Rick Scaletty exhibit in the R.G. Endres Gallery
City Council Meeting
April 12 Artist reception in the R. G. Endres Gallery 6:30 - 7:30 p.m.
April 15 City Council Meeting

May 2013

May 6 City Council Meeting
May 10 Artist reception in the R. G. Endres Gallery 6:30 - 7:30 p.m.
May 20 City Council Meeting
May 27 City offices closed in observance of Memorial Day

June 2013

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

July 2013

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

August 2013

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

September 2013

September 2 City offices closed in observance of Labor Day
September 3 City Council Meeting
September 13 Artist reception in the R. G. Endres Gallery 6:30 - 7:30 p.m.
September 16 City Council Meeting
September 25 Shawnee Mission Education Foundation Fall Breakfast

October 2013

October 7 State of the Arts Exhibit in the R. G. Endres Gallery
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 12 - 16 National League of Cities Conference in Seattle, WA
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