

CITY OF PRAIRIE VILLAGE

November 17, 2014

Council Committee Meeting 6:00 p.m.

City Council Meeting 7:30 p.m.



COUNCIL COMMITTEE OF THE WHOLE
Council Chambers
November 17, 2014
6:00 PM

AGENDA

ASHLEY WEAVER, COUNCIL PRESIDENT

AGENDA ITEMS FOR DISCUSSION

Update regarding Corinth Square and Prairie Village Shops Community Improvement Districts

- COU2014-45 Consider approval of a resolution approving the Assignment & Assumption Agreements for the Corinth Square and Village Shops Community Improvement Districts

- COU2014-46 *Consider construction contract for the Public Works fiber project
Keith Bredehoeft & JoCo IT Representative

- COU2014-47 *Discuss re-bidding of the 75th Street project from State Line Road to Mission Road, Project 75ST0001
Keith Bredehoeft

- COU2014-48 *Consider approval of a 457(b) plan document
Quinn Bennion

- COU2014-49 Consider approval of Council Policy #29 to enable remote attendance at Council meetings

Review of Council priorities and update
Quinn Bennion

***Council Action Requested the same night**



Update regarding Corinth Square and Prairie Village Shops Community Improvement Districts

Staff has received several inquiries regarding the history, process and current status of the Corinth Square and Prairie Village Shops Community Improvement Districts. The intent of this report is to respond to those inquiries and provide an update to City Council. In addition to the information contained in the packet, staff will present a PowerPoint presentation reviewing this information at the council Committee Meeting.

CID Project Information

On April 2, 2010, the owners of Corinth Square Shopping Center and the Village Shops submitted a petition for the establishment of a Community Improvement District (CID) at each of the shopping centers. The City Council approved the establishment of the CIDs on September 20, 2010. Each center collects an additional 1% sales tax that became effective on January 1, 2011. The additional 1% will be in effect for a maximum of 22 years. The current sales tax rate at both centers is 9.375%.

As part of the CIDs, the City Council entered into a Development Agreement which establishes the allowable uses of the additional sales tax funds. A complete copy of the Development Agreements can be found on the City website. Under the Agreements the Developer was required to start at least one Signature Project within 2 years from the approval of the Agreements and complete within 5 years. The developer must complete another CID project within 5 years of the completion of the last CID project or within 2 years after the full reimbursement of the last completed project.

The City has approved one amendment to the Corinth Square Shops CID. On November 21, 2011 the City Council approved an Amendment to include Project B2, Johnny's and Project B3, Arby's.

The City has approved one amendment to the Village Shops CID. On October 15, 2012, the City Council approved an Amendment modifying the required construction start date of the Mission Lane project from November 2, 2012 to May 2, 2013.

The Signature Project for the Prairie Village CID is improvements to Mission Lane. The Signature Project for the Corinth Square CID is the redevelopment of the former Tippin's building and façade improvements to the main Corinth Square building. The Project Maps for both CIDs are attached. The Developer has submitted and the City has approved Certificates of Substantial Completion for the following projects in Corinth Square:

- Project A1: Lot E, former Tippin's and Buildings A & B site work
- Project B2: Building F – Johnny's/Subway

- Project C: Building C, Hen House ONLY

No Certificates of Substantial Completion have been submitted to date for the Village Shops.

Allowable CID reimbursements

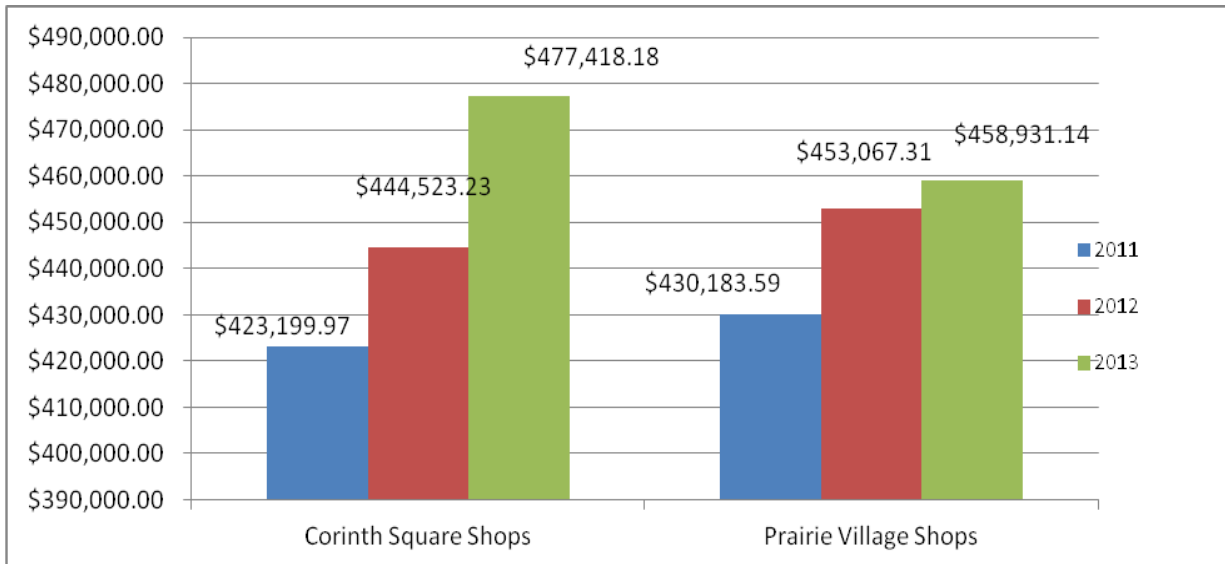
The CID proceeds can only be used for project costs related to the approved projects as outlined in the Development Agreement. Project costs include both soft costs (attorney fees, application fees, design fees, etc.) and hard costs (actual construction costs). A percentage of Tenant Improvement Projects may also be eligible for reimbursement based on additional requirements outlined in the Agreement; however, no Tenant Improvement Projects have been submitted for reimbursement to date.

Under the Development Agreements, the Developer may also submit for reimbursement of interest from the time the expense occurred to when the expense is reimbursed with CID funds. The interest is simple interest based on prime plus an additional 2%. Tenant Improvement Projects are not eligible for interest reimbursement.

Sales Tax collections

At the time of each purchase, an additional 1% sales tax is collected by the retailer and sent to the Kansas Department of Revenue. The Kansas Department of Revenue then distributes the additional 1% to the City of Prairie Village which deposits the funds in a separate CID fund (one for Corinth Square CID and one for Village Shops CID). The fund is represented in the City’s annual budget.

At the time of establishment of the CIDs, it was estimated that each CID would generate between \$400,000-\$450,000 annually. The chart below shows the yearly Corinth Square and Prairie Village Shops CID sales tax revenue received by the City from the Kansas Department of Revenue from March, 2011 – current. Each year runs March – February.



Reimbursements

The City of Prairie Village holds all funds collected by the CID until the developer requests reimbursement for an allowable expense. The City then reviews the reimbursement request to ensure that it was an eligible expense and the project is completed. The City then reimburses the developer for the requested eligible expenses on a "pay as you go" basis. This means the Developer only receives funds based on the amount of cash in each of the CID Funds. The City is under no obligation to issue bonds for any project costs.

Please refer to the attachments titled Corinth and PV Retail CID Reimbursements which provide the amount of each CID Reimbursement Submission and status of payment by the City. In summary, the total of reimbursements requested including **already paid and outstanding** reimbursements for each CID is:

Corinth Square	\$4,193,766.65
Village Shops	\$3,953,177.72*

*Note: Village Shops CID Submission Reimbursement Request #11 is still under review by Staff and has not yet been officially approved.

Administrative Fee

Under the Development Agreements, the City receives CID funds for an annual administration fee, reimbursement of legal and technical assistant costs, and reimbursement of costs associated with the construction of the public trails along Somerset Road in the Corinth Square CID and Tomahawk Road in the Village CID.

The annual administration fee is used to offset costs the City incurs related to the tracking of CID funds, administration of CID projects including review of the Developer Reimbursement Requests and ensuring construction is completed according to the approved plans. From time to time, the City incurs costs associated with legal review of documents and is also eligible for reimbursement of these costs as represented on the summary as "City fees."

The Annual Administration fee is calculated on a percentage basis of 2.5% of the net CID sales tax received from the Kansas Department of Revenue. The Annual Administration fee cannot exceed \$20,000 per year. To date, the City has received the following in Administrative Reimbursement:

Corinth Square	\$33,615.12
Village Shops	\$33,567.96

Trails

Under the terms of the Corinth Square Development Agreement, funds were established for construction of a public trail along Somerset Road. The City then used these funds to construct the trail. The trail project was completed in 2011 for a total cost of \$50,978.87 which was submitted for and reimbursed to the City in December 2013.

Under the terms of the Village Shops Development Agreement, up to \$350,000 has been identified for the construction of a public trail along Tomahawk Road. To establish funds for

construction, \$50,000 per year is being set aside until the \$350,000 balance is reached. The City will then use these funds to construct the trail and any unused funds will be returned to the CID fund. To date, \$150,000 has accumulated in that project account (2011, 2012 and 2013). The estimated project cost is \$298,131 and the trail project will be included in the 2016 CIP Budget.

Arts Projects

Under the terms of both Development Agreements, no less than 1.0% of the total amount of reimbursement shall go to Arts Projects. In Corinth Square, this obligation has been met with the installation of a sculpture piece on the east side of the center. The total for this sculpture and items related to installation was \$45,942. No items have been submitted to date for Arts Projects in the Village Shops.

Transparency and ongoing reporting

The City is committed to open, transparent government. Upon final payment, the City posts the actual CID reimbursement request on the city's website. This is a unique and extraordinary practice for economic development projects. City staff also produces an Annual CID Report (attached) and regular updates are provided to City Council via email and at City Council Meetings.

Attachments

- Description of Developer CID Projects and Project map – Corinth CID (Includes Amendment #1)
- Description of Developer CID Projects and Project map – Village CID
- Summary of Corinth CID Reimbursements
- Summary of Prairie Village Shops Reimbursements
- 2013 Annual CID Report

PREPARED BY:

Kate Gunja

Assistant City Administrator

Date: November 12, 2014

EXHIBIT C (First Amendment) 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 B1: 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	

Project B2: Lot F - Johnny's	
Lot F	Provide new pedestrian sidewalks Façade remodeling Roofline modification & roof upgrade/replacement Create new paved outdoor patio Relocate existing vehicular entrances New landscaping/irrigation
LOT F - JOHNNY'S TOTALS: \$1,350,531	

Project B3: Lot H - Arby's	
Lot H	Demolish building Create pads with sidewalks for future development site O and P Reconfigure parking lot to align with future/new main entrance Provide new paved pedestrian crosswalks
LOT H - ARBY'S TOTALS: \$1,184,365	

Project C: Buildings C, D, & G Modifications	
Building C façade remodel	Building skin modification Façade modification Entrance enhancements Improve/modify landscape along street New irrigation
Building D façade remodel	Façade modification New pedestrian sidewalk
Reconfiguration of Building G	Reconfiguration of Building G
BUILDING C, D & G MODIFICATIONS \$2,893,587	

Project D: Other Corinth Square Redevelopment

<u>Prepare Corinth South for redevelopment</u>	
	Relocate existing vehicular entrances
	New monument signage
	New landscaping
	New irrigation
	New crosswalk and traffic signal
	Reconfigure parking lot & sidewalks
	Demolish building M
	Demolish buildings L
	New sidewalks
	Provide new paved pedestrian crosswalks
<u>Re-Construct existing building B</u>	
	Demolish existing building B
	Provide new service parking court
<u>Construction Of Building O</u>	
<u>Construction Of Building P</u>	
<u>Construction Of Building Q</u>	
<u>Construction Of Building R</u>	
<u>Construction Of Building S</u>	

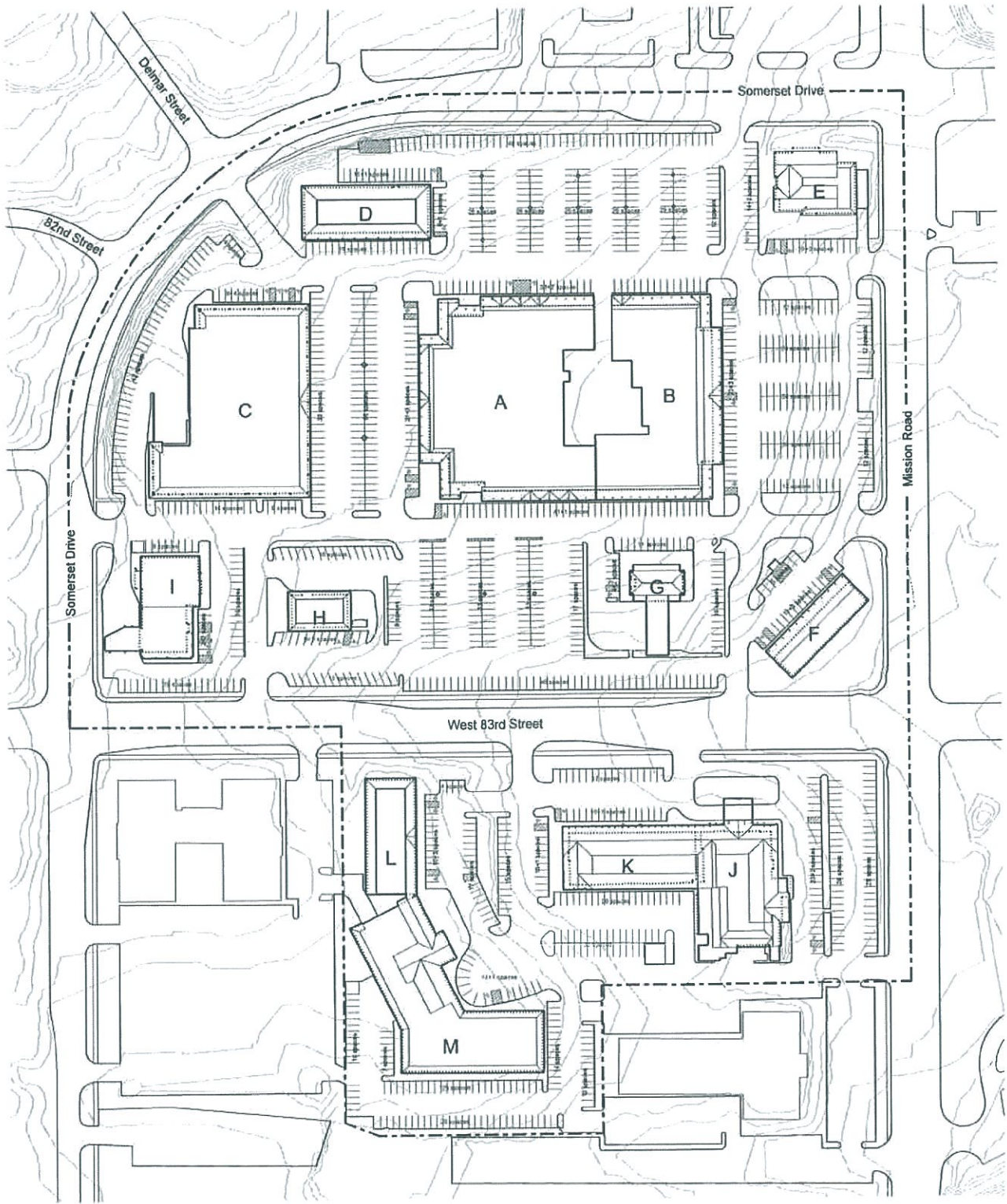
OTHER CORINTH SQUARE REDEVELOPMENT **\$29,712,745**

DEVELOPER CID PROJECTS TOTAL ESTIMATED COSTS: **\$42,179,692**

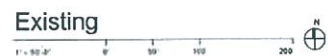
^Amounts for Developer CID Projects listed above are cost estimates and do not include associated financing costs such as Reimbursable Interest. The cost estimates are based on prices for goods and services in 2010, and thus the actual costs incurred over the multi-year phased project may be higher. CID Costs shall not be limited to the cost estimates above, but shall include all actual costs incurred directly related to Developer CID Projects listed above, including construction and associated design and other soft costs (e.g., architectural, engineering, legal, and surveyor fees), as well as legal and other costs incurred by Developer in forming the CID, Arts Projects costs, and Tenant Projects costs, Reimbursable Interest, and financing costs relating to Obligations, pursuant to the definition of "CID Costs" in Section 1.01 hereof and this Agreement generally.

*Other than items listed as part of "Project A" (defined in the Agreement as Project A1 or A2 -- as selected by Developer in its sole discretion), the Developer may undertake any of the items of work listed above in its sole discretion, the costs of which shall be reimbursed with Bond Proceeds or from the Corinth CID Projects Fund under the terms of this Agreement. As part of Developer's right to choose which items to undertake, Developer may determine the sequence and timing for the completion of any such items, regardless of the particular Projects under which such items of work are listed above. To receive reimbursement for any item that does not fall within the meaning of CID Cost as defined herein, the Developer must receive City consent, which shall not be unreasonably withheld.

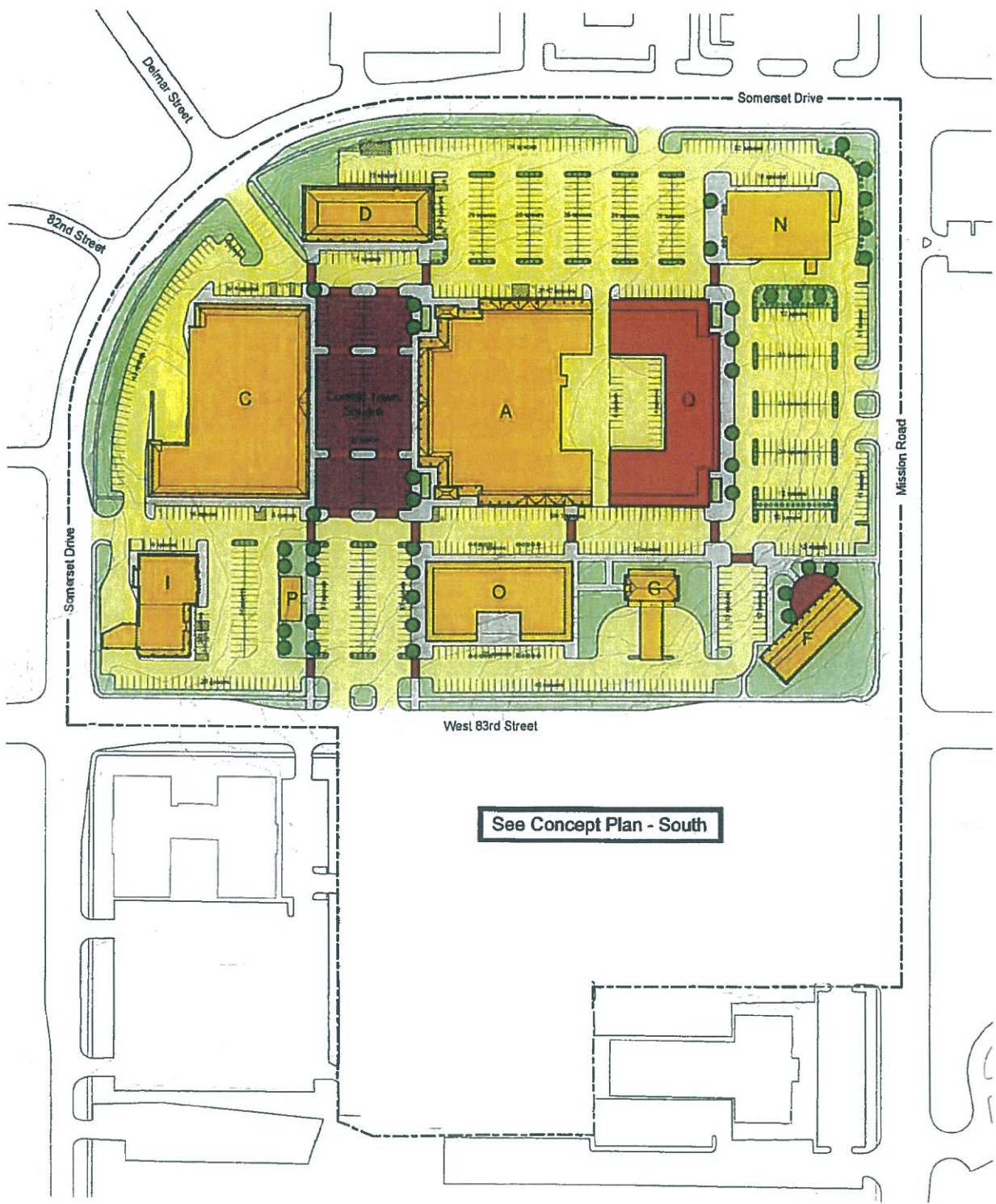
^^Enhanced pedestrian walkways and specified streetscaping improvements associated with Buildings A & B are listed as items of work under Projects A1 and A2. Because these items of work will only be completed in association with one of the aforementioned projects, the estimated cost of those items is only counted once for the Developer CID Projects Total Estimated Costs.



- Retail
- Residential
- Office
- Mixed use
- Enhanced Paving
- Landscape Improvements
- New Concrete Sidewalks
- Paving
- CID boundary



Concept Plan - North



See Concept Plan - South

- Retail
- Residential
- Office
- Mixed use
- Enhanced Paving
- Landscape Improvements
- New Concrete Sidewalks
- Paving
- CID boundary



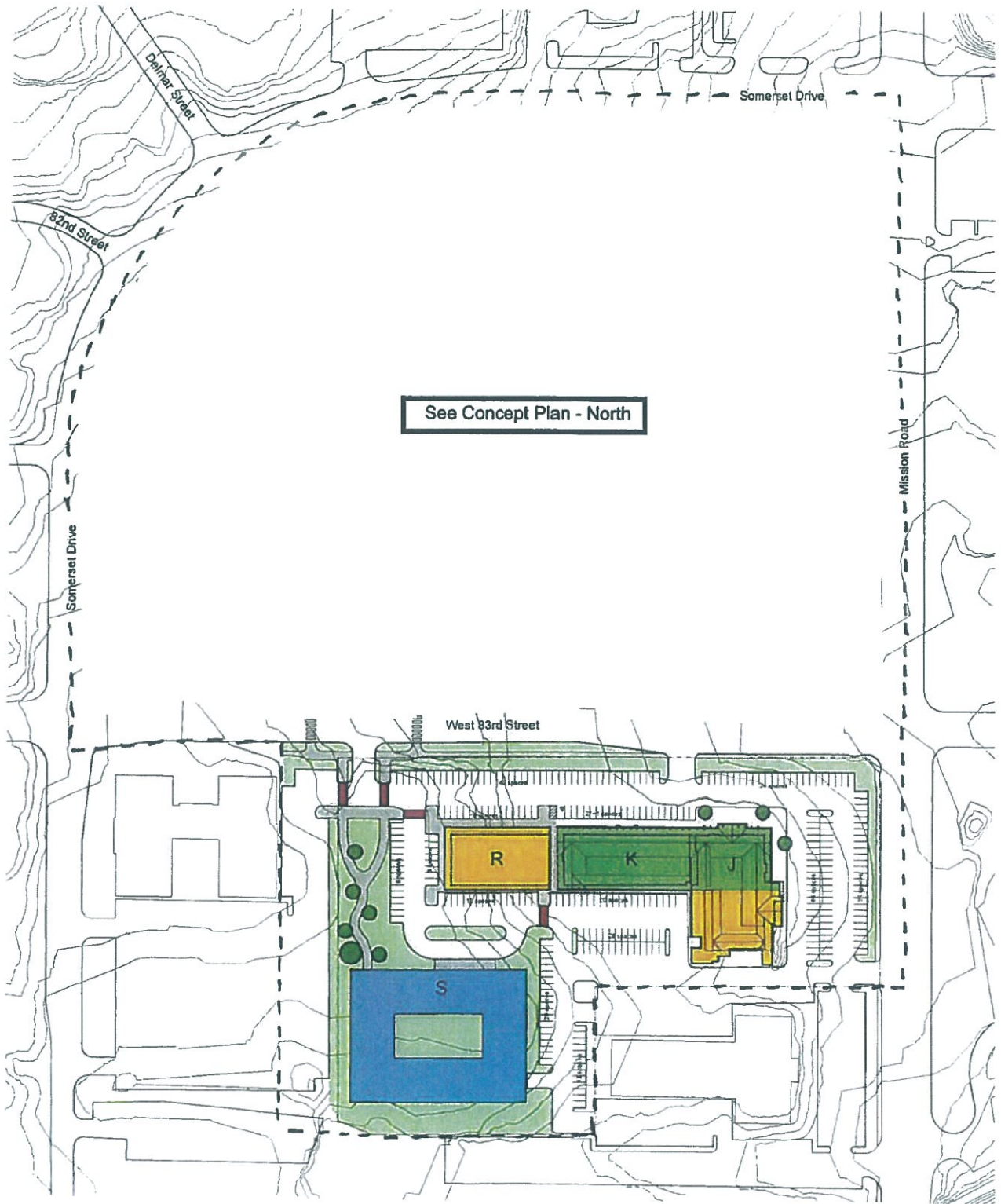
LANE4 PROPERTY GROUP :: Corinth Square

Developer CID Projects
 Concept Plan



06.21.10
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Concept Plan - South



See Concept Plan - North

- Retail
- Residential
- Office
- Mixed use

- Enhanced Paving
- Landscape Improvements
- New Concrete Sidewalks
- Paving

--- CID boundary



EXHIBIT C

DESCRIPTION OF DEVELOPER CID PROJECTS PRAIRIE VILLAGE

PROJECT:	PROJECT SCOPE OF WORK:	SUB-SCOPES OF WORK:	ESTIMATED TOTAL PROJECT COSTS:
Project A: Mission Lane			
	Mission Lane modification	Provide new diagonal parking along Mission Lane Replace existing pavement & provide striped bike lane Provide new pedestrian sidewalks Reconfigure existing parking lots and vehicular entrances Provide paved pedestrian crosswalks Provide paved street medallions Provide new trees and landscaping Streetscaping Upgrade irrigation system New benches New trash receptacles Bike racks	
MISSION LANE TOTALS:			\$3,366,000
Project B: Public Gathering Space @Courtyard			
	Public Gathering Space @ courtyard	Provide open air covering over courtyard Repave and landscape Courtyard Remove walkway roof and column supports between building B,C & D and redesign façade of buildings C & D Add irrigation	
PUBLIC GATHERING SPACE TOTALS:			\$3,798,125
Project C: Culvert Repair			
	Culvert	Remove existing parking area Repair culvert Replace parking area	
CULVERT REPAIR TOTALS:			\$1,794,375
Project D: Building A - Modification			
	Building A Expansion	Store expansion & storefront enhancement Façade enhancements building A	
BUILDING A - MODIFICATION TOTALS:			\$3,031,875
Project E: Tomahawk Road			
	Tomahawk Road	Reconfigure vehicular entrances off Tomahawk to create 1 main entrance Reconfigure parking lots New landscaping Upgrade/add irrigation Provide paved crosswalk in parking lot New monument signage Create landscaped plaza Add walkway irrigation system New benches New trash receptacles Bike racks	
TOMAHAWK ROAD TOTALS:			\$2,307,938

Project F: New Multi-Tenant Building

Site Modifications between Mission Road and Mission Lane

- Demolish building F
- Demolish building H
- Reconfigure parking lots and vehicular access from Mission Road
- Provide new pedestrian sidewalks
- Construction of Building I
- Construction of Building J
- Landscape perimeter
- New irrigation

NEW MULTI TENANT BUILDING TOTALS: \$4,851,000

Project G: Building B Renovation

Renovation building B

- Modify building elevations / façade
- Reconfigure courtyard level
- Reconfigure 71st Street level
- Reconfigure upper level
- Reconfigure basement

Reconfigure parking areas

- New retaining wall
- Build new drive ramp to basement
- Reconfigure surrounding parking areas
- Add new landscape islands
- Reconfigure / replace sidewalks around building
- New landscaping

BUILDING B RENOVATION TOTAL \$21,959,438

DEVELOPER CID PROJECTS TOTAL ESTIMATED COSTS: \$41,108,750

^Amounts for Developer CID Projects listed above are cost estimates and do not include associated financing costs such as Reimbursable Interest. The cost estimates are based on prices for goods and services in 2010, and thus the actual costs incurred over multiple years in the future may be higher. CID Costs shall not be limited to the cost estimates above, but shall include all actual costs incurred directly related to Developer CID Projects listed above, including construction and associated design and other soft costs (e.g., architectural, engineering, legal, and surveyor fees), as well as legal and other costs incurred by Developer in forming the CID, Arts Projects costs, and Tenant Projects costs, Reimbursable Interest, and financing costs relating to Obligations, pursuant to the definition of "CID Costs" in Section 1.01 hereof and this Agreement generally.

*Other than items listed as part of Project A, the Developer may undertake any of the items of work listed above in its sole discretion, the costs of which shall be reimbursed with Bond Proceeds or from the Village CID Projects Fund under the terms of this Agreement. As part of Developer's right to choose which items to undertake, Developer may determine the sequence and timing for the completion of any such items, regardless of the particular Projects under which such items of work are listed above. To receive reimbursement for any item that does not fall within the meaning of CID Cost as defined herein, the Developer must receive City consent, which shall not be unreasonably withheld.

West 69th Street

Brenizer Park

Prairie Lane

Prairie Lane

Tomahawk Road

Oxford Road

A

H

Mission Lane

F

Mission Road

West 69th Terrace

West 69th Terrace

D

B

C

G

E

Alhambra Street

West 71st Street

Village Drive

Buena Vista Street

Alhambra Street

Retail

Enhanced Paving

Paving

Mixed Use

Landscape Improvements

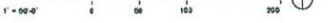
Striped Bicycle Lane

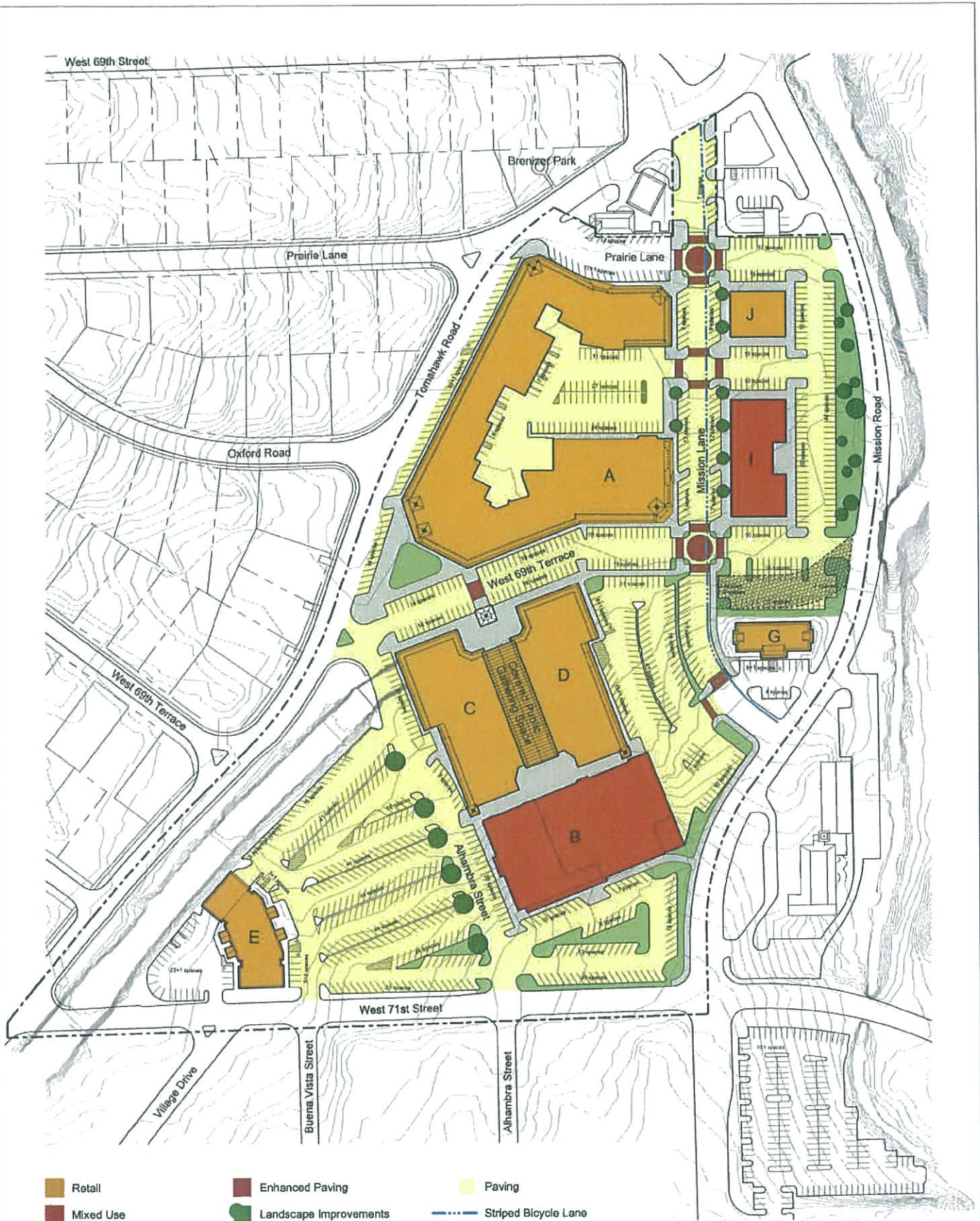
Culvert repairs

New Concrete Sidewalks

CID boundary

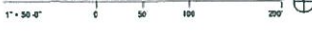
Existing





- Retail
- Mixed Use
- Paving
- Landscape Improvements
- New Concrete Sidewalks
- CID boundary
- Striped Bicycle Lane
- Culvert repairs

**Developer CID Projects
Concept Plan**



**City of Prairie Village
Corinth CID Reimbursements
As of November 4, 2014**

Date of check	CID Submission Number	CSN Retail Partners, LLC	City Fees	City Trail Reimbursement - COMPLETED	City Admin (2.5%) Reimbursement	* Art (1.0%) Reimbursement	Total Expenditures Paid to date
05/13/11			518.18				
10/28/11	1	136,398.05					
12/31/11				50,978.87	10,580.00		198,475.10
03/16/12	2	97,489.47					
10/12/12	3	79,985.70					
10/31/12					11,113.08		188,588.25
06/07/13	4	531,000.00					
07/01/13			4,271.68				
07/24/13	4	35,000.00					
09/13/13	4	35,000.00					
10/11/13	4	35,000.00					
11/08/13	4	35,000.00					
12/17/13	4	35,000.00					
12/31/13					11,922.04		
01/17/14	4	70,000.00					792,193.72
02/28/14	4	35,000.00					
03/14/14	4	105,000.00					
04/14/14	4	35,000.00					
05/09/14	4	70,000.00					
06/06/14	4	13,940.04					
07/18/14	5	35,000.00					
09/09/14	5	105,000.00					
10/01/14	5	35,000.00					
10/31/14	5	35,000.00					468,940.04
		<u>\$ 1,558,813.26</u>	<u>\$ 4,789.86</u>	<u>\$ 50,978.87</u>	<u>\$ 33,615.12</u>	<u>\$ -</u>	<u>\$ 1,648,197.11</u>

**Corinth CID Outstanding Invoices (awaiting reimbursement)
As of November 4, 2014**

Date of Invoice	CID Submission Number	CSN Retail Partners, LLC	Fees	Trail Reimbursement	Admin Reimbursement	* Art (1.0%) Reimbursement	Total Invoices Outstanding to date
07/19/13	5	1,490,193.30					1,490,193.30
08/13/13	6	631,983.55					631,983.55
12/20/13	7	381,141.51					381,141.51
05/05/14	8	46,399.70				45,942.00	92,341.70
06/16/14	9	70,857.33					70,857.33
09/29/14	10	14,378.00					14,378.00
		<u>\$ 2,634,953.39</u>	<u>\$ -</u>	<u>\$ -</u>	<u>\$ -</u>	<u>\$ 45,942.00</u>	<u>\$ 2,680,895.39</u>

Total		\$4,193,766.65	\$4,789.86	\$50,978.87	\$33,615.12	\$45,942.00	\$4,329,092.50
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**City of Prairie Village
PV Retail CID Reimbursements
As of November 4, 2014**

Date of check	CID Submission Number	PV Retail Partners	City Fees	City Trail Reimbursement \$350k maximum	City Admin (2.5%) Reimbursement	* Art (1.0%) Reimbursement	Total Expenditures Paid to date
10/28/2011	1	\$ 134,042.17					
12/31/2011				50,000.00	10,754.59		194,796.76
3/6/2012	2	10,420.86					
10/12/2012	3	18,068.90					
12/31/2012				50,000.00	11,326.68		89,816.44
3/15/2013	4	12,418.48					
3/15/2013	5	31,837.86					
7/1/2013			7,837.18				
7/19/2013	7	161,715.42					
9/3/2013			120.00				
9/6/2013	6	197,617.33					
12/31/2013				50,000.00	11,486.69		473,032.96
2/28/2014	8	546,032.19					
10/1/2014	9	245,000.00					
10/31/2014	9	35,000.00					826,032.19
		<u>\$ 1,392,153.21</u>	<u>\$ 7,957.18</u>	<u>\$ 150,000.00</u>	<u>\$ 33,567.96</u>	<u>\$ -</u>	<u>\$ 1,583,678.35</u>

**PV Retail CID Outstanding Invoices (awaiting reimbursement)
As of November 4, 2014**

Date of Invoice	CID Submission Number	PV Retail Partners	Fees	Trail Reimbursement	Admin Reimbursement	* Art (1.0%) Reimbursement	Total Invoices Outstanding to date
05/16/14	9	772,103.65					772,103.65
06/16/14	10	24,559.92					24,559.92
09/29/14	11*	1,764,360.94					1,764,360.94
		<u>\$ 2,561,024.51</u>	<u>\$ -</u>	<u>\$ -</u>	<u>\$ -</u>	<u>\$ -</u>	<u>\$ 2,561,024.51</u>

Total		\$3,953,177.72	\$7,957.18	\$150,000.00	\$33,567.96	\$0.00	\$4,144,702.86
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* Under review by staff. Has not been officially approved.



City of Prairie Village

Community Improvement Districts

Annual Report
Ended December 31, 2013
Relating to Fiscal Year 2013
Unaudited



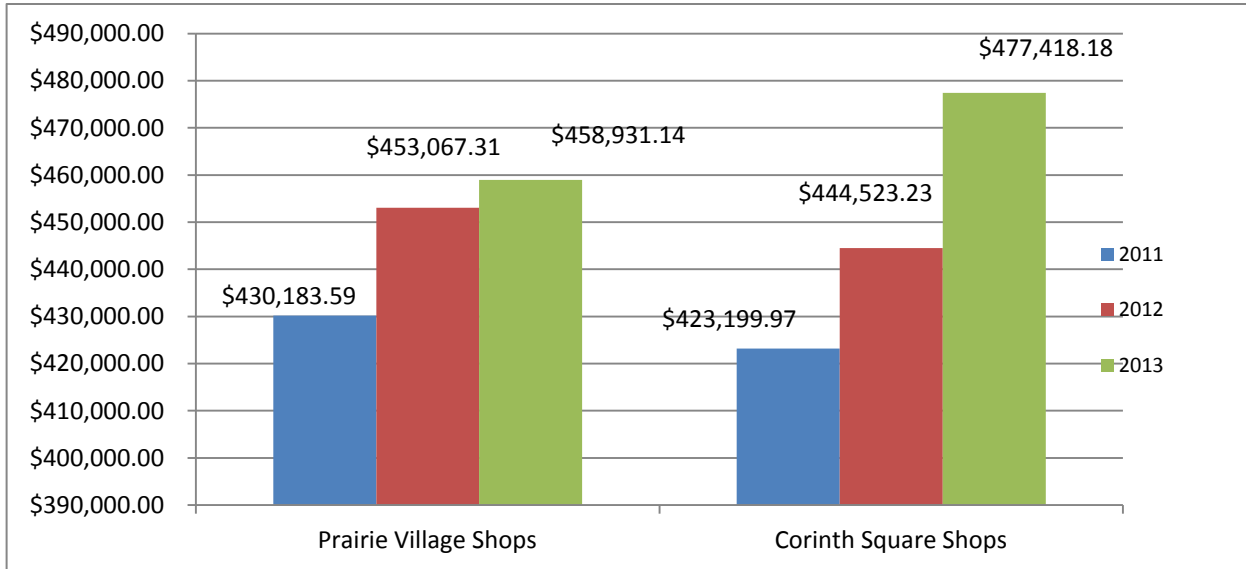
PROJECTS

The Prairie Village City Council approved the establishment of two Community Improvement Districts (CIDs) at the Corinth Square Shopping Center and the Prairie Village Shops in the fall of 2010. Both CIDs collect an additional 1% sales tax that became effective January 1, 2011. The additional 1% will be in effect for a maximum of 22 years. The current sales tax rate at Corinth Square Shopping Center and the Prairie Village Shops is 9.375% (effective July 1, 2013).

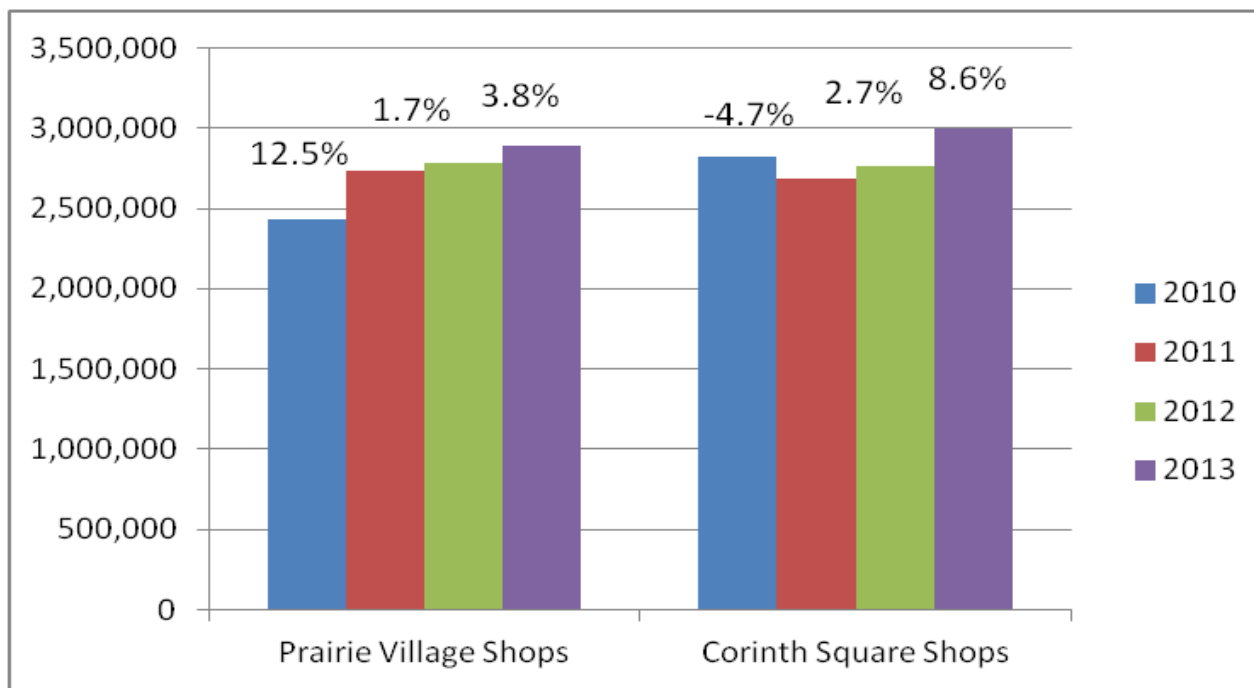


FINANCIAL HIGHLIGHTS

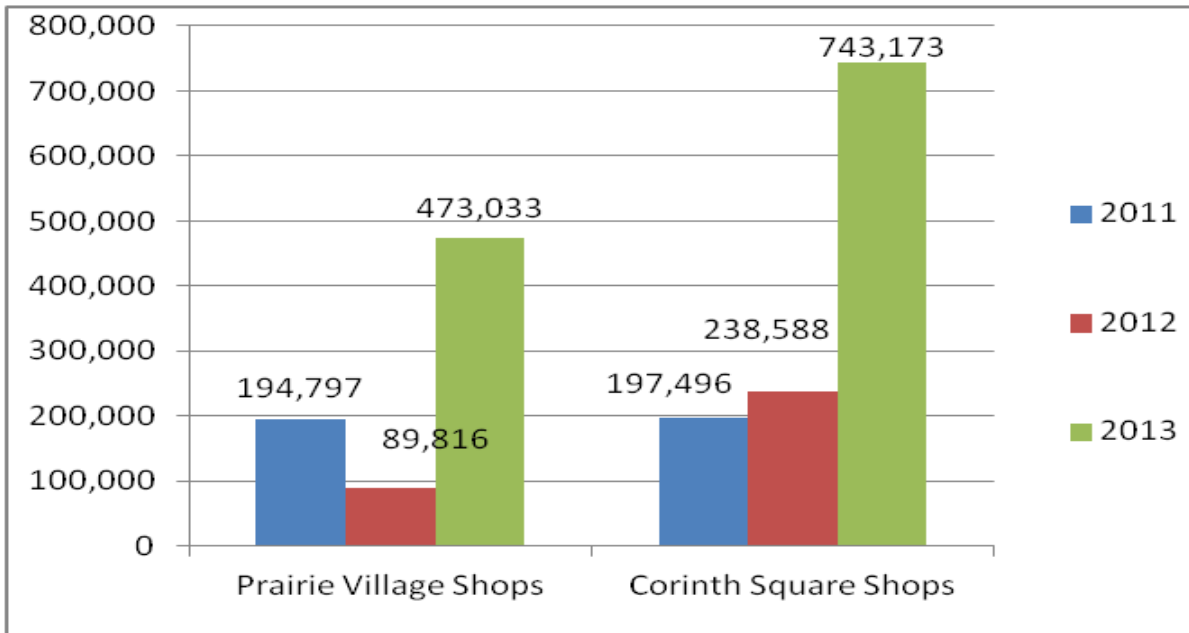
CID Revenue. The chart, below, shows the 2011 thru 2013 actual revenues from 1% sales tax.



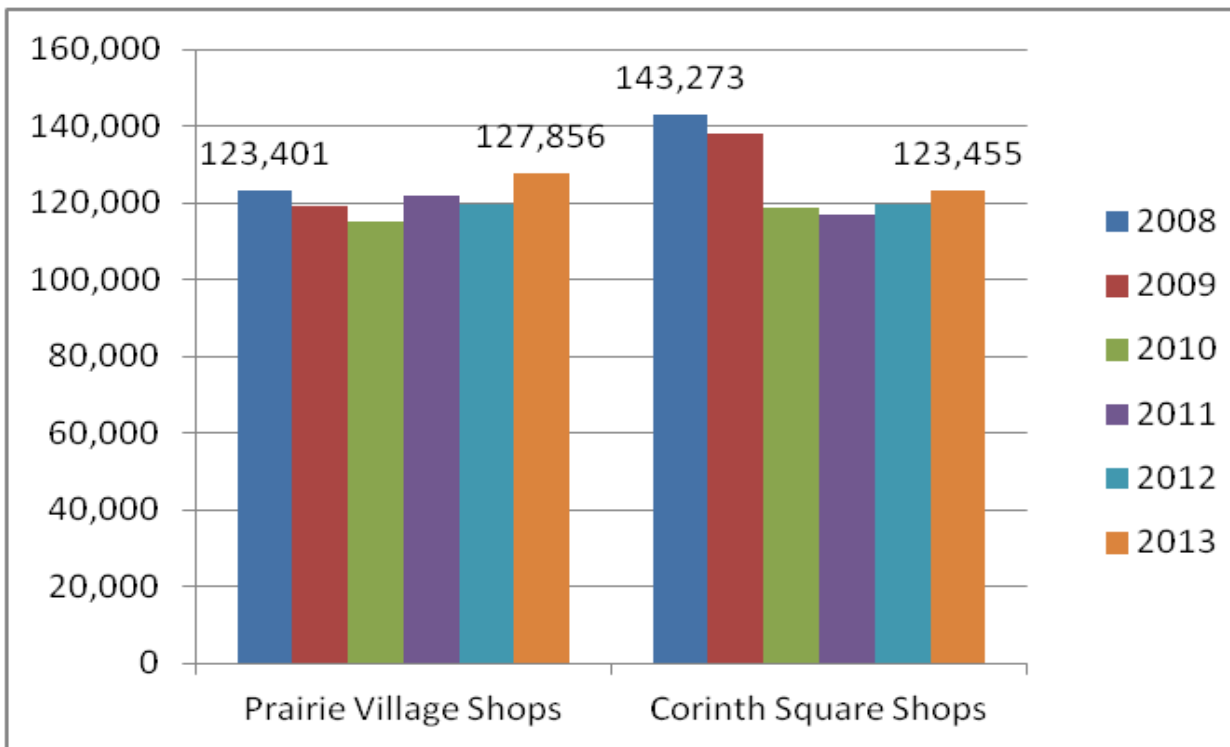
The following chart is a comparison of 2010 thru 2013 Sales Tax collected in the Prairie Village Shops and Corinth Square Shops. This data does not include the 1% CID Sales Tax.



CID Expenditures. The chart, below, shows 2011 thru 2013 actual expenditures.



CID Property Taxes. The chart, below, shows 2008 thru 2013 City portion of property tax collections at the Prairie Village Shops and Corinth Shops.



CONSTRUCTION HIGHLIGHTS

2013 Construction Projects:

- **Completed phase 2 of the Corinth Square Shopping Center improvements which included facade upgrades of the main building and Hen House. 2013 also brought the completion of four new pedestrian plazas and improved parking lot lighting.**
- **The demolition of Waid's and construction of a new retail building began at Prairie Village Shops.**





What is happening in 2014 -

- *Mission Lane improvements will begin in the spring of 2014.*
- *Starbuck's is also scheduled to open in the spring of 2014.*
- *Einstein Bakery will move into the old Starbuck's and Dolce Bakery space.*
- *Completion of the new retail building*



Committee of the Whole Meeting Date: November 17, 2014
City Council Meeting Date: December 1, 2014

Consider approval of a resolution approving the Assignment & Assumption Agreements for the Corinth Square and Village Shops Community Improvement Districts

RECOMMENDED MOTION:

Move for approval of a resolution approving the Assignment & Assumption Agreements for the Corinth Square and Village Shops Community Improvement Districts

BACKGROUND:

In August, 2014, City Staff was provided with initial information indicating that the owners of Corinth Square and the Village Shops were in discussions with First Washington Realty regarding a possible sale of the shopping centers.

On November 5, 2014, the City of Prairie Village received official notification from Curtis Peterson representing PV Retail Partners, LLC, CSN Retail Partners, LLC and CSS Retail Partners, LLC, of the plans to sell Corinth Square and the Village Shops to First Washington and requesting a transfer of assignment of the Development Agreements to First Washington. A copy of this notification is attached. Representatives of First Washington will be at Monday's meeting.

The following transfer language is contained in the Corinth Square and Village Shops Development Agreements. A full copy of the Development Agreements, including the transfer language can be found on the City website.

Article V

Assignment: Transfer

Section 5.01. Transfer of Rights & Obligations

- A. *Restrictions on Assignment of Rights and Certain Obligations. The Developer's rights hereunder, and the Developer's obligations to construct Project A under **Sections 2.03 and 3.02**, indemnify the City under **Section 7.01**, provide easements for the Trail Project under **Section 7.04**, and incur costs for Arts Projects under **Section 7.05**, may not be assigned, in whole or in part, to another entity, without the prior approval of the Governing Body of the City by resolution. The Governing Body shall provide such consent unless a proposed assignee does not have qualifications and financial responsibility, as reasonably determined by the Governing Body, necessary and adequate to fulfill the obligations of the Developer being assigned. Any proposed assignee shall, by instrument in writing, for itself and its successors and assigns, and expressly for the benefit of the City, assume all of the obligations of the Developer being assigned. The Developer shall be relieved from any assigned obligations upon a*

determination by the Governing Body of the City that the assignee has the qualifications and financial responsibility adequate to fulfill the obligations of the Developer being assigned and the proposed assignee has provided the City with the written assumption mentioned above. The Developer agrees, at Developer's cost, to promptly record all assignments in the office of the Register of Deeds of Johnson County, Kansas, in a timely manner following the execution of such agreements.

.....

F. Time of Performance for City's Approval Rights. The City's approval rights under Subsection A of this Section must be exercised in the form of a written consent or rejection within sixty (60) days of receipt of written notice from the Developer or the City shall be deemed to have consented to the Developer's proposed assignment for purposes of this Agreement.

On September 29, 2014, the Prairie Village Finance Committee met to discuss the information desired for the City Council to make its determination whether an assignee has the qualifications and financial responsibility adequate to fulfill the obligations of the CIDs. Staff recommended the selection of a consulting firm familiar with such transactions to assist in collection and assessment of the data. At that meeting, the Committee recommended Ted Murray, CEO of Colliers International as the consultant to review the proposed assignee, First Washington. Mr. Murray was asked to:

- Review the CID documents
- Inventory the Developer obligations
- Research First Washington including information on the overall company, real estate activities of the Company and if the Company has the skill set to meet the Developer obligations contained in the CID
- File a report for the City Council.

A copy of this report is attached and includes a copy of Mr. Murray's qualifications. Mr. Murray will be in attendance at Monday's meeting to summarize his findings.

ATTACHMENTS:

- Resolution approving the Assignment & Assumption Agreements for the Corinth Square and Village Shops Community Improvement Districts
- Assignment and Assumption Agreement – Corinth Square CID
- Assignment and Assumption Agreement – Village CID
- Request for CID reassignment submitted by Curtis Peterson, Polsinelli
- First Washington Realty Profile sheet
- Report from Colliers International

PREPARED BY:

Kate Gunja
Assistant City Administrator
Date: November 12, 2014

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY OF PRAIRIE VILLAGE, KANSAS,
APPROVING A CORINTH CID ASSIGNMENT AND ASSUMPTION
AGREEMENT AND A VILLAGE CID ASSIGNMENT AND
ASSUMPTION AGREEMENT**

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

1. The Governing Body consents to and approves each of the following

A. Assignment and Assumption Agreement dated the __ day of _____, 201_ and by and among CSN RETAIL PARTNERS, LLC, a Kansas limited liability company and CSS RETAIL PARTNERS, LLC, a Kansas limited liability company (collectively, "Assignor"), and GRI CORINTH NORTH, LLC, a Delaware limited liability company and GRI CORINTH SOUTH, a Delaware limited liability company (collectively "Assignee"), and the City of Prairie Village, Kansas, a municipal corporation duly organized under the laws of the State of Kansas (the "City") (the "Corinth CID Assignment and Assumption Agreement"), a copy of which is attached to this Resolution; and

B. Assignment And Assumption Agreement dated the __ day of _____, 201_ by and among PV RETAIL PARTNERS, LLC, a Kansas limited liability company ("Assignor"), and GRI PRAIRIE VILLAGE, LLC, a Delaware limited liability company ("Assignee"), and the City of Prairie Village, Kansas, a municipal corporation duly organized under the laws of the State of Kansas (the "City"), (the "Village CID Assignment and Assumption Agreement"), a copy of which is attached to this Resolution.

2. The Mayor is authorized to execute the Corinth CID Assignment and Assumption Agreement and the Village CID Assignment and Assumption Agreement on behalf of the City.

PASSED, ADOPTED AND APPROVED by the Governing Body of the City of Prairie Village, Kansas this __ day of December, 2014.

CITY OF PRAIRIE VILLAGE, KANSAS

By: _____
Ronald L. Shaffer, Mayor

Attest:

Joyce Hagen Mundy, City Clerk

Approved as to form:

Catherine P. Logan, City Attorney

COVER PAGE

**ASSIGNMENT & ASSUMPTION AGREEMENT
FOR THE CORINTH SQUARE COMMUNITY IMPROVEMENT DISTRICT
DEVELOPMENT AGREEMENT**

_____, 201_

GRANTOR: **CSN Retail Partners, LLC
CSS Retail Partners, LLC**

Address of Grantors: c/o Landmark Retail Properties, LLC
3955 West 83rd Street
Prairie Village, Kansas 66208

GRANTEE: **GRI CORINTH NORTH, LLC
GRI CORINTH SOUTH, LLC**

Address of Grantee: Attn: Jeffrey S. Distenfeld
c/o First Washington Realty, Inc.
4350 East-West Highway, Suite 400
Bethesda, MD 20814

CITY: **CITY OF PRAIRIE VILLAGE, KANSAS**

Address of City: Attn: City Administrator
City Hall
7700 Mission Road
Prairie Village, KS 66208

LEGAL DESCRIPTION: See Exhibit A attached to the document to which this cover page is attached.

**ASSIGNMENT AND ASSUMPTION AGREEMENT
(Corinth Square Community Improvement District)**

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT (this "Assignment") is dated the ___ day of _____, 201_ and is made by and among CSN RETAIL PARTNERS, LLC, a Kansas limited liability company and CSS RETAIL PARTNERS, LLC, a Kansas limited liability company (collectively, "Assignor"), and GRI CORINTH NORTH, LLC, a Delaware limited liability company and GRI CORINTH SOUTH, a Delaware limited liability company (collectively "Assignee"), and the City of Prairie Village, Kansas, a municipal corporation duly organized under the laws of the State of Kansas (the "City").

RECITALS

A. Assignor, as "Developer", and the City entered into that certain Development Agreement dated September 20, 2010, which was amended by that certain First Amendment to Development Agreement dated as of January 24, 2012 (as amended, the "Corinth CID Development Agreement"), which provided for the redevelopment of Corinth Square Shopping Center in Prairie Village, Kansas through formation of the Corinth Square Community Improvement District (the "District"). The boundaries of the District are described on Exhibit A attached hereto.

B. In connection with and subject to the transfer of title to all of the property owned by Assignor within the District to Assignee, the Assignor wishes to assign its rights, duties and obligations under the Corinth CID Development Agreement to Assignee, and Assignee wishes to accept the assignment and assume all of Assignor's rights, duties and obligations as Developer under the Corinth CID Development Agreement pursuant to this Assignment.

C. The Corinth CID Development Agreement provides that the Developer's rights and certain of the Developer's obligations thereunder, may not be assigned, in whole or in part, to another entity, without the prior approval of the Governing Body of the City by resolution, and that the Governing Body shall provide such consent unless a proposed assignee does not have qualifications and financial responsibility, as reasonably determined by the Governing Body, necessary and adequate to fulfill the obligations of the Developer being assigned.

D. By Resolution No. _____ approved by the Governing Body of Prairie Village, Kansas on _____, 2014, the Governing Body consented to and approved the parties' execution of this Assignment.

NOW, THEREFORE, in consideration of the foregoing and the covenants and obligations contained in this Assignment and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. Recitals Incorporated. The above Recitals are hereby incorporated into this Assignment in full and form an integral part hereof.

2. Definitions and Effective Date. All capitalized terms not otherwise defined herein shall have the meaning assigned to them in the Corinth CID Development Agreement. The "Effective Date" of this Assignment shall mean the date Assignee acquires title to all of the

property comprising the District, provided that the Effective Date shall not be later than March 31, 2015.

3. Assignment by Assignor. Assignor hereby assigns to the Assignee all of the Assignor's rights, duties, interests and obligations under the Corinth CID Development Agreement, including, but not limited to, rights, from and after the Effective Date, to receive distributions from the Corinth Square CID Developer Projects Fund to reimburse CID expenses submitted to the City but not reimbursed to Assignor prior to the Effective Date, subject to City approval of such expenses as set forth in the Corinth CID Development Agreement.

4. Assumption by Assignee. Assignee hereby accepts such assignment from Assignor and expressly covenants to the City and Assignor, on behalf of itself, its successors and assigns, that Assignee assumes and agrees to perform those rights, duties, interests and obligations of the Assignor under the Corinth CID Development Agreement initially accruing or arising on or after the Effective Date of this Assignment. As of the Effective Date, all references to Developer in the Corinth CID Development Agreement shall refer to Assignee.

5. Assignor Indemnity. Assignor agrees to protect, defend, indemnify and hold harmless Assignee, its successors and assigns, from and against any and all losses, damages, expenses, fees (including, without limitation, reasonable attorneys' fees), court costs, suits, judgments, liability, claims and demands whatsoever, in law and in equity, incurred or suffered by Assignee, its successors and assigns or any of them, arising out of or in connection with the Corinth CID Development Agreement as to obligations initially arising or events occurring prior to the Effective Date of this Assignment.

6. Assignee Indemnity. Assignees agrees to protect, defend, indemnify and hold harmless Assignor, its successors and assigns, from any and all losses, damages, expenses, fees (including, without limitation, reasonable attorneys' fee), court costs, suits, judgments, liability, claims and demands whatsoever, in law and in equity, incurred or suffered by Assignor, its successors and assigns or any of them, arising out of or in connection with the Corinth CID Development Agreement as to obligations arising or events initially occurring from and after the Effective Date of this Assignment.

7. City's Consent and Release. The City hereby consents to the assignment by Assignor to Assignee of Assignor's rights, duties, interests and obligations as Developer under the Corinth CID Development Agreement as of the Effective Date, and, except as provided in this section, as of the Effective Date releases Assignor from all of Assignor's rights, duties, interest and obligations under the Corinth CID Development Agreement as of the Effective Date. The City does not release Assignor from its obligations pursuant to Section 7.02 of the Corinth CID Development Agreement to indemnify the City for matters occurring prior to the Effective Date, and Assignor acknowledges and agrees that such obligations survive the Effective Date of this Assignment. Notwithstanding anything contained herein to the contrary, the City's consent to this Assignment and release will be null and void and of no force and effect if (a) on or before March 31, 2015, the City Clerk has not received from Assignor or Assignee a copy of a recorded deed confirming that all of the property owned by Assignor in the District has been conveyed to

Assignee on or before March 31, 2015, or (b) a Developer Event of Default occurs after the date hereof and prior to the Effective Date.

8. Assignor Release. The Assignor acknowledges and agrees that the City shall have no duties or obligations to Assignor under the Corinth CID Development Agreement on or after the Effective Date, and as of the Effective Date Assignor releases the City from all of City's obligations to Assignor under the Corinth CID Development Agreement.

9. Assignee Release of City. The Assignee acknowledges and agrees that it has no right to receive distributions from the Corinth Square CID Developer Projects Fund made by the City prior to the Effective Date, including but not limited to any such distributions received by Assignor after the Effective Date, and releases all claims against the City relating to such distributions.

10. Obligation of Assignor. The Assignor will promptly remit and send to Assignee any and all payments, funds, assets, notices, reports and other documents and information received by the Assignor or its agents or representatives after the Effective Date pertaining to or affecting the Corinth CID Development Agreement.

11. Assignor Acknowledgment. Assignor confirms and acknowledges to City and to Assignee the following:

a. The Corinth CID Development Agreement is in full force and effect and has not been amended or modified.

b. No Developer Event of Default or, to the best of Developer's knowledge, City Event of Default has occurred and is continuing under the Corinth CID Development Agreement, and there has been no occurrence which, with the passing of time or the delivery of notice, would constitute a Developer Event of Default or, to the best of Developer's knowledge, a City Event of Default under the Corinth CID Development Agreement.

12. City Acknowledgment. The City confirms and acknowledges the following:

a. The Corinth CID Development Agreement is in full force and effect and has not been amended or modified.

b. No City Event of Default, and to the best of the City's knowledge, no Developer Event of Default, has occurred and is continuing under the Corinth CID Development Agreement, and there has been no occurrence which, with the passing of time or the delivery of notice, would constitute a City Event of Default, or, to the best of City's knowledge, a Developer Event of Default, under the Corinth CID Development Agreement. As used in this Assignment the phrase "City's knowledge" means the actual knowledge of facts or other relevant information by Quinn Bennion, the City Administrator and Kate Gunja, the Assistant City Administrator, without any duty to further investigate or inquire.

13. Assignee Representations and Warranties. Assignee represents and warrants to City and Assignor the following:

a. Assignee has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and to consummate the transactions contemplated hereby and to assume rights, duties, interests and obligations of the Assignor under the Corinth CID Development Agreement.

b. Assignee has the qualifications and financial responsibility necessary and adequate to fulfill the obligations of the Developer being assigned it.

c. From and after the Effective Date, it shall be bound by the provisions of the Corinth CID Development Agreement as “Developer” thereunder.

d. Assignor has received a copy of the Corinth CID Development Agreement, together with copies of all City records it has requested relating to the Corinth CID Development Agreement.

14. Amendment to Section 8.03 of Development Agreement. The parties hereto acknowledge and agree that Section 8.03A.(i) of the Corinth CID Development Agreement as executed incorporates a typographical error requiring correction, and hereby agree to amend said section by deleting the following clause:

“from the Corinth Square CID Developer Projects Fund, or if Obligations have been issued, from Bond Proceeds, until the Event of Default has been cured.

action, mandamus or other proceeding to enforce and compel the performance of the duties and obligations of the Developer as set forth in this Agreement, to enforce or preserve any other rights or interests of the City under this Agreement or otherwise existing at law or in equity and to recover any damages incurred by City resulting from such Developer Event of Default provided, the Developer’s liability for monetary amounts shall be limited to the actual amount, if any, in question, and under no circumstances shall the City be liable for any remote or consequential damages.”

and substituting the following therefor:

“The City shall have the right to suspend disbursements to the Developer from the Corinth Square CID Developer Projects Fund, or if Obligations have been issued, from Bond Proceeds, until the Event of Default has been cured.

The City may pursue any available remedy at law or in equity by suit, action, mandamus or other proceeding to enforce and compel the performance of the duties and obligations of the Developer as set forth in this Agreement, to enforce or preserve any other rights of interests of the City under this Agreement or otherwise existing at law or in equity and to recover any damages incurred by the City resulting from such Developer Event of Default provided, the Developer’s liability for monetary amounts shall be limited to the actual amount, if any, in

question, and under no circumstances shall the City be liable for any remote or consequential damages.”

15. Notices. All notices, requests and other communications hereunder shall be deemed to be duly given if delivered by hand or if mailed by certified or registered mail with postage prepaid as follows:

If to Assignee:

GRI Corinth North, LLC
GRI Corinth South, LLC
Attn: Jeffrey S. Distenfeld
c/o First Washington Realty, Inc.
4350 East-West Highway, Suite 400
Bethesda, MD 20814

With a copy to:

Lewis, Rice & Fingersh, L.C.
1010 Walnut, Suite 500
Kansas City, Missouri 64106
Attn: William Carr, Esq.

If to Assignor:

c/o Landmark Retail Properties, LLC
3955 West 83rd Street
Prairie Village, Kansas 66208
Attention: Kylie Stock

With a copy to:

Polsinelli PC
6201 College Boulevard, Suite 500
Overland Park, Kansas 66211
Attention: Curtis Petersen, Esq

If to City:

City of Prairie Village
7700 Mission Road
Prairie Village, KS 66208
Attention: City Administrator

With a copy to:

Lathrop & Gage, LLP

10851 Mastin, Suite 1000
Overland Park, Kansas 66210
Attention: Catherin P. Logan, Esq.

On the Effective Date, the address for Developer as set forth in Section 9.13 of the Corinth CID Development Agreement shall be the address of Assignee, with copy to Assignee's counsel, set forth above.

16. Successors and Assigns. All rights, benefits and obligations of Assignor and Assignee hereunder shall inure to and bind Assignor and Assignee, respectively, and this Assignment shall be binding upon and inure to the benefit of the parties' respective successors and assigns.

17. Governing Law. This Assignment shall be governed by the laws of the State of Kansas.

18. Counterparts. This Assignment may be executed in one or more counterparts, each of which shall constitute an original and all of which, when taken together, shall constitute one agreement.

19. Full Force and Effect. The Corinth CID Development Agreement, as modified by Section 14 of this Assignment, shall continue in full force and effect in accordance with its terms.

[Remainder Of This Page Intentionally Left Blank; Signature Pages Immediately Follow]

IN WITNESS WHEREOF, the parties have executed this Assignment as of the day and year first above written.

ASSIGNOR:

**CSN RETAIL PARTNERS, LLC,
a Kansas limited liability company**

By: Landmark Retail Properties, LLC, a Missouri limited liability company

By: Enterprises Retail Investors, LLC, a Missouri limited liability company

By: _____
William D. Cosentino, President

By: Group Retail Investors, LLC, a Missouri limited company

By: _____
David G. Cosentino, President

STATE OF _____)
) ss.
COUNTY OF _____)

This instrument was acknowledged before me on _____, _____ by William D. Cosentino and David G. Cosentino, as authorized representatives of CSN Retail Partners, LLC.

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

NOTARY PUBLIC

My Commission Expires:

**CSS RETAIL PARTNERS, LLC,
a Kansas limited liability company**

By: Landmark Retail Properties, LLC, a Missouri
limited liability company

By: Enterprises Retail Investors, LLC, a
Missouri limited liability company

By: _____
William D. Cosentino, President

By: Group Retail Investors, LLC, a Missouri
limited company

By: _____
David G. Cosentino, President

STATE OF _____)
) ss.
COUNTY OF _____)

This instrument was acknowledged before me on _____, _____ by William D. Cosentino and David G. Cosentino, as authorized representatives of CSS Retail Partners, LLC.

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

NOTARY PUBLIC

My Commission Expires:

CITY:

CITY OF PRAIRIE VILLAGE, KANSAS

Ronald L. Shaffer, Mayor

ATTEST:

Joyce Hagen-Mundy, City Clerk

APPROVED AS TO FORM:

Catherine P. Logan, City Attorney

STATE OF KANSAS)

) ss.

COUNTY OF JOHNSON)

This instrument was acknowledged before me on _____, 2014 by Ronald L. Shaffer and Joyce Hagen Mundy as Mayor and City Clerk, respectively, of the City of Prairie Village, Kansas.

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

NOTARY PUBLIC

My Commission Expires:

EXHIBIT A

**LEGAL DESCRIPTION OF CORINTH SQUARE
COMMUNITY IMPROVEMENT DISTRICT**

Corinth Square

February 17, 2010

CID Description

All that part of the West half of Section 28, Township 12 South, Range 25 East, in the City of Prairie Village, Johnson County, Kansas, described as follows:

BEGINNING at the Northeast corner of the Southeast Quarter of Section 28, Township 12 South, Range 25 East; thence South 0 degrees 13 minutes 15 seconds East along the East line of the Southeast Quarter of said Section 28 a distance of 353.00 feet to a point; thence South 89 degrees 41 minutes 10 seconds West a distance of 433.00 feet to a point; thence South 0 degrees 13 minutes 15 seconds East a distance of 200.84 feet to a point; thence South 89 degrees 46 minutes 45 seconds West a distance of 302.83 feet to a point; thence North 68 degrees 06 minutes 40 seconds West a distance of 49.84 feet to a point; thence North 0 degrees 13 minutes 15 seconds West a distance of 534.51 feet to a point on the South line of the Northeast Quarter of said Section 28; thence South 89 degrees 41 minutes 10 seconds West along the South line of the Northeast Quarter of said Section 28 a distance of 367.99 feet to a point on the centerline of Somerset Drive; thence North 0 degrees 17 minutes 50 seconds West along the centerline of Somerset Drive a distance of 355.25 feet to a point; thence in a Northeasterly direction along the centerline of Somerset Drive and along a curve to the right, having a radius of 500.00 feet, through a central angle of 90 degrees 26 minutes 00 seconds, an arc distance of 789.18 feet to a point; thence South 89 degrees 51 minutes 50 seconds East along the centerline of Somerset Drive a distance of 647.71 feet to a point on the East line of the Northeast Quarter of said Section 28; thence South 0 degrees 11 minutes 53 seconds East along the East line of the Northeast Quarter of said Section 28 a distance of 850.00 feet to the POINT OF BEGINNING and containing 1,274,340 Square Feet or 29.255 Acres, more or less.

The description above includes all property owned by the Applicant and shall also include all adjacent right-of-way to the centerline thereof.

COVER PAGE

**ASSIGNMENT & ASSUMPTION AGREEMENT
FOR THE VILLAGE COMMUNITY IMPROVEMENT DISTRICT
DEVELOPMENT AGREEMENT**

_____, 201_

GRANTOR: **PV RETAIL PARTNERS, LLC**

Address of Grantors: c/o Landmark Retail Properties, LLC
3955 West 83rd Street
Prairie Village, Kansas 66208

GRANTEE: **GRI PRAIRIE VILLAGE, LLC**

Address of Grantee: Attn: Jeffrey S. Distenfeld
c/o First Washington Realty, Inc.
4350 East-West Highway, Suite 400
Bethesda, MD 20814

CITY: **CITY OF PRAIRIE VILLAGE, KANSAS**

Address of City: Attn: City Administrator
City Hall
7700 Mission Road
Prairie Village, KS 66208

LEGAL DESCRIPTION: See Exhibit A attached to the document to which this cover page is attached.

**ASSIGNMENT AND ASSUMPTION AGREEMENT
(Village Community Improvement District)**

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT (this "Assignment") is dated the ___ day of _____, 201_ and is made by and among PV RETAIL PARTNERS, LLC, a Kansas limited liability company ("Assignor"), and GRI PRAIRIE VILLAGE, LLC, a Delaware limited liability company ("Assignee"), and the City of Prairie Village, Kansas, a municipal corporation duly organized under the laws of the State of Kansas (the "City").

RECITALS

A. Assignor, as "Developer," and the City entered into that certain Development Agreement dated September 20, 2010, which was amended by that certain First Amendment to Development Agreement dated as of October 31, 2012 (as amended, the "Village CID Development Agreement"), which provided for the redevelopment of Prairie Village Shopping Center in Prairie Village, Kansas through formation of the Village Community Improvement District (the "District"). The boundaries of the District are described on Exhibit A attached hereto.

B. In connection with and subject to the transfer of title to all of the property owned by Assignor within the District to Assignee, the Assignor wishes to assign its rights, duties and obligations under the Village CID Development Agreement to Assignee, and Assignee wishes to accept the assignment and assume all of Assignor's rights, duties and obligations as Developer under the Village CID Development Agreement pursuant to this Assignment.

C. The Village CID Development Agreement provides that the Developer's rights and certain of the Developer's obligations thereunder, may not be assigned, in whole or in part, to another entity, without the prior approval of the Governing Body of the City by resolution, and that the Governing Body shall provide such consent unless a proposed assignee does not have qualifications and financial responsibility, as reasonably determined by the Governing Body, necessary and adequate to fulfill the obligations of the Developer being assigned.

D. By Resolution No. _____ approved by the Governing Body of Prairie Village, Kansas on _____, 2014, the Governing Body consented to and approved the parties' execution of this Assignment.

NOW, THEREFORE, in consideration of the foregoing and the covenants and obligations contained in this Assignment and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. Recitals Incorporated. The above Recitals are hereby incorporated into this Assignment in full and form an integral part hereof.

2. Definitions and Effective Date. All capitalized terms not otherwise defined herein shall have the meaning assigned to them in the Village CID Development Agreement. The "Effective Date" of this Assignment shall mean the date Assignee acquires title to all of the property comprising the District, provided that the Effective Date shall not be later than March 31, 2015.

3. Assignment by Assignor. Assignor hereby assigns to the Assignee all of the Assignor's rights, duties, interests and obligations under the Village CID Development Agreement, including, but not limited to, rights, from and after the Effective Date, to receive distributions from the Village CID Developer Projects Fund to reimburse CID expenses submitted to the City but not reimbursed to Assignor prior to the Effective Date, subject to City approval of such expenses as set forth in the Village CID Development Agreement.

4. Assumption by Assignee. Assignee hereby accepts such assignment from Assignor and expressly covenants to the City and Assignor, on behalf of itself, its successors and assigns, that Assignee assumes and agrees to perform those rights, duties, interests and obligations of the Assignor under the Village CID Development Agreement initially accruing or arising on or after the Effective Date of this Assignment. As of the Effective Date, all references to Developer in the Village CID Development Agreement shall refer to Assignee.

5. Assignor Indemnity. Assignor agrees to protect, defend, indemnify and hold harmless Assignee, its successors and assigns, from and against any and all losses, damages, expenses, fees (including, without limitation, reasonable attorneys' fees), court costs, suits, judgments, liability, claims and demands whatsoever, in law and in equity, incurred or suffered by Assignee, its successors and assigns or any of them, arising out of or in connection with the Village CID Development Agreement as to obligations initially arising or events occurring prior to the Effective Date of this Assignment.

6. Assignee Indemnity. Assignees agrees to protect, defend, indemnify and hold harmless Assignor, its successors and assigns, from any and all losses, damages, expenses, fees (including, without limitation, reasonable attorneys' fee), court costs, suits, judgments, liability, claims and demands whatsoever, in law and in equity, incurred or suffered by Assignor, its successors and assigns or any of them, arising out of or in connection with the Village CID Development Agreement as to obligations arising or events initially occurring from and after the Effective Date of this Assignment.

7. City's Consent and Release. The City hereby consents to the assignment by Assignor to Assignee of Assignor's rights, duties, interests and obligations as Developer under the Village CID Development Agreement as of the Effective Date, and, except as provided in this section, as of the Effective Date releases Assignor from all of Assignor's rights, duties, interest and obligations under the Village CID Development Agreement as of the Effective Date. The City does not release Assignor from its obligations pursuant to Section 7.02 of the Village CID Development Agreement to indemnify the City for matters occurring prior to the Effective Date, and Assignor acknowledges and agrees that such obligations survive the Effective Date of this Assignment. Notwithstanding anything contained herein to the contrary, the City's consent to this Assignment and release will be null and void and of no force and effect if (a) on or before March 31, 2015, the City Clerk has not received from Assignor or Assignee a copy of a recorded deed confirming that all of the property owned by Assignor in the District has been conveyed to Assignee on or before March 31, 2015, or (b) a Developer Event of Default occurs after the date hereof and prior to the Effective Date.

8. Assignor Release. The Assignor acknowledges and agrees that the City shall have no duties or obligations to Assignor under the Village CID Development Agreement on or after the Effective Date, and as of the Effective Date Assignor releases the City from all of City's obligations to Assignor under the Village CID Development Agreement.

9. Assignee Release of City. The Assignee acknowledges and agrees that it has no right to receive distributions from the Village CID Developer Projects Fund made by the City prior to the Effective Date, including but not limited to any such distributions received by Assignor after the Effective Date, and releases all claims against the City relating to such distributions.

10. Obligation of Assignor. The Assignor will promptly remit and send to Assignee any and all payments, funds, assets, notices, reports and other documents and information received by the Assignor or its agents or representatives after the Effective Date pertaining to or affecting the Village CID Development Agreement.

11. Assignor Acknowledgment. Assignor confirms and acknowledges to City and to Assignee the following:

a. The Village CID Development Agreement is in full force and effect and has not been amended or modified.

b. No Developer Event of Default or, to the best of Developer's knowledge, City Event of Default has occurred and is continuing under the Village CID Development Agreement, and there has been no occurrence which, with the passing of time or the delivery of notice, would constitute a Developer Event of Default or, to the best of Developer's knowledge, a City Event of Default under the Village CID Development Agreement.

12. City Acknowledgment. The City confirms and acknowledges the following:

a. The Village CID Development Agreement is in full force and effect and has not been amended or modified.

b. No City Event of Default, and to the best of the City's knowledge, no Developer Event of Default, has occurred and is continuing under the Village CID Development Agreement, and there has been no occurrence which, with the passing of time or the delivery of notice, would constitute a City Event of Default, or, to the best of City's knowledge, a Developer Event of Default, under the Village CID Development Agreement. As used in this Assignment the phrase "City's knowledge" means the actual knowledge of facts or other relevant information by Quinn Bennion, the City Administrator and Kate Gunja, the Assistant City Administrator, without any duty to further investigate or inquire.

13. Assignee Representations and Warranties. Assignee represents and warrants to City and Assignor the following:

a. Assignee has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and to consummate the transactions contemplated hereby and to assume rights, duties, interests and obligations of the Assignor under the Village CID Development Agreement.

b. Assignee has the qualifications and financial responsibility necessary and adequate to fulfill the obligations of the Developer being assigned it.

c. From and after the Effective Date, it shall be bound by the provisions of the Village CID Development Agreement as “Developer” thereunder.

d. Assignor has received a copy of the Village CID Development Agreement, together with copies of all City records it has requested relating to the Village CID Development Agreement.

14. Notices. All notices, requests and other communications hereunder shall be deemed to be duly given if delivered by hand or if mailed by certified or registered mail with postage prepaid as follows:

If to Assignee:

GRI PRAIRIE VILLAGE, LLC
Attn: Jeffrey S. Distenfeld
c/o First Washington Realty, Inc.
4350 East-West Highway, Suite 400
Bethesda, MD 20814

With a copy to:

Lewis, Rice & Fingersh, L.C.
1010 Walnut, Suite 500
Kansas City, Missouri 64106
Attn: William Carr, Esq.

If to Assignor:

c/o Landmark Retail Properties, LLC
3955 West 83rd Street
Prairie Village, Kansas 66208
Attention: Kylie Stock

With a copy to:

Polsinelli PC
6201 College Boulevard, Suite 500
Overland Park, Kansas 66211
Attention: Curtis Petersen, Esq.

If to City:

City of Prairie Village
7700 Mission Road
Prairie Village, KS 66208
Attention: City Administrator

With a copy to:

Lathrop & Gage, LLP
10851 Mastin, Suite 1000
Overland Park, Kansas 66210
Attention: Catherin P. Logan, Esq.

On the Effective Date, the address for Developer as set forth in Section 9.13 of the Village CID Development Agreement shall be the address of Assignee, with copy to Assignee's counsel, set forth above.

15. Successors and Assigns. All rights, benefits and obligations of Assignor and Assignee hereunder shall inure to and bind Assignor and Assignee, respectively, and this Assignment shall be binding upon and inure to the benefit of the parties' respective successors and assigns.

16. Governing Law. This Assignment shall be governed by the laws of the State of Kansas.

17. Counterparts. This Assignment may be executed in one or more counterparts, each of which shall constitute an original and all of which, when taken together, shall constitute one agreement.

18. Full Force and Effect. The Village CID Development Agreement shall continue in full force and effect in accordance with its terms.

[Remainder Of This Page Intentionally Left Blank; Signature Pages Immediately Follow]

IN WITNESS WHEREOF, the parties have executed this Assignment as of the day and year first above written.

ASSIGNOR:

PV RETAIL PARTNERS, LLC, A KANSAS LIMITED LIABILITY COMPANY

By: Landmark Retail Properties, LLC, a Missouri limited liability company

By: Enterprises Retail Investors, LLC, a Missouri limited liability company

By: _____
William D. Cosentino, President

By: Group Retail Investors, LLC, a Missouri limited company

By: _____
David G. Cosentino, President

STATE OF _____)
) ss.
COUNTY OF _____)

This instrument was acknowledged before me on _____, _____ by William D. Cosentino and David G. Cosentino, as authorized representatives of PV Retail Partners, LLC.

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

NOTARY PUBLIC

My Commission Expires:

ASSIGNEE:

**GRI PRAIRIE VILLAGE, LLC,
A DELAWARE LIMITED LIABILITY COMPANY**

By: Global Retail Investors, LLC,
a Delaware limited liability company
Its sole member

By: First Washington Realty, Inc.,
a Maryland corporation
Its manger

By: _____
Name:
Title:

STATE OF _____)
) ss.
COUNTY OF _____)

This instrument was acknowledged before me on _____, _____ by
_____, as authorized representatives of GRI Prairie Village, LLC.

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

NOTARY PUBLIC

My Commission Expires:

CITY:

CITY OF PRAIRIE VILLAGE, KANSAS

Ronald L. Shaffer, Mayor

ATTEST:

Joyce Hagen-Mundy, City Clerk

APPROVED AS TO FORM:

Catherine P. Logan, City Attorney

STATE OF KANSAS)
) ss.
COUNTY OF JOHNSON)

This instrument was acknowledged before me on _____, 2014 by Ronald L. Shaffer and Joyce Hagen Mundy as Mayor and City Clerk, respectively, of the City of Prairie Village, Kansas.

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

NOTARY PUBLIC

My Commission Expires:

EXHIBIT A

LEGAL DESCRIPTION OF VILLAGE COMMUNITY IMPROVEMENT DISTRICT

File No. 2010-0303

Prairie Village

February 17, 2010

Revised March 29, 2010

CID Description

All that part of the Southwest Quarter of Section 15, the Southeast Quarter of Section 16, and the Northeast Quarter of Section 21, all lying in Township 12 South, Range 25 East, in Prairie Village, Johnson County, Kansas, described as follows:

BEGINNING at the Northeast corner of the Northeast Quarter of Section 21, Township 12 South, Range 25 East; thence South 2 degrees 16 minutes 41 seconds East along the East line of the Northeast Quarter of said Section 21 a distance of 30.00 feet to a point on the Easterly prolongation of the South right of way line of 71st Street; thence South 86 degrees 53 minutes 11 seconds West along the South right of way line of 71st Street and its prolongation a distance of 1088.72 feet to a point on the centerline of Tomahawk Road; thence in a Northeasterly direction along the centerline of Tomahawk Road and along a curve to the right whose initial tangent bears North 35 degrees 13 minutes 52 seconds East, having a radius of 2400.00 feet, through a central angle of 2 degrees 33 minutes 57 seconds, an arc distance of 107.48 feet to a point; thence North 37 degrees 47 minutes 49 seconds East along the centerline of Tomahawk Road a distance of 133.88 feet to a point; thence in a Northeasterly direction along the centerline of Tomahawk Road and along a curve to the right, having a radius of 2540.00 feet, through a central angle of 5 degrees 38 minutes 00 seconds, an arc distance of 249.73 feet to a point; thence North 43 degrees 25 minutes 49 seconds East along the centerline of Tomahawk Road a distance of 101.12 feet to a point; thence in a Northeasterly direction along the centerline of Tomahawk Road and along a curve to the left, having a radius of 538.05 feet, through a central angle of 26 degrees 07 minutes 52 seconds, an arc distance of 245.39 feet to a point; thence North 17 degrees 20 minutes 36 seconds East along the centerline of Tomahawk Road a distance of 128.03 feet to a point; thence in a Northeasterly direction along the centerline of Tomahawk Road and along a curve to the right whose initial tangent bears North 17 degrees 28 minutes 08 seconds East, having a radius of 1218.00 feet, through a central angle of 9 degrees 22 minutes 33 seconds, an arc distance of 199.31 feet to a point; thence North 26 degrees 50 minutes 41 seconds East along the centerline of Tomahawk Road a distance of 185.88 feet to a point; thence in a Northeasterly direction along the centerline of Tomahawk Road and along a curve to the right, having a radius of 410.00 feet, through a central angle of 28 degrees 46 minutes 12 seconds, an arc distance of 205.87 feet to a point; thence South 64 degrees 01 minutes 44 seconds East a distance of 67.86 feet to a point; thence South 1 degree 47 minutes 56 seconds East a distance of 10.83 feet to a point; thence North 88 degrees 12 minutes 04 seconds East a distance of 115.98 feet to a point on the West right of way line of Mission Lane; thence North 2 degrees 19 minutes 27 seconds West along the West right of way line of Mission Lane a distance of 97.09 feet to a point; thence in a Northwesterly direction along the West right of way line of Mission Lane and along a curve to the left, having a radius of 15.00 feet, through a central angle of 123 degrees 27 minutes 14 seconds, an arc distance of 32.32 feet to a point on the Southerly right of way line of Tomahawk Road; thence North 54 degrees 13 minutes 37 seconds East a distance of 108.79 feet to a point

on the East right of way line of Mission Lane; thence South 2 degrees 19 minutes 27 seconds East along the East right of way line of Mission Lane a distance of 177.09 feet to a point; thence North 87 degrees 40 minutes 31 seconds East a distance of 195.87 feet to a point on the centerline of Mission Road; thence in a Southwesterly direction along the centerline of Mission Road and along a curve to the right whose initial tangent bears South 21 degrees 30 minutes 37 seconds East, having a radius of 860.00 feet, through a central angle of 28 degrees 38 minutes 25 seconds, an arc distance of 429.89 feet to a point; thence South 7 degrees 07 minutes 47 seconds West along the centerline of Mission Road a distance of 101.50 feet to a point; thence in a Southwesterly direction along the centerline of Mission Road and along a curve to the right, having a radius of 410.00 feet, through a central angle of 28 degrees 09 minutes 01 seconds, an arc distance of 201.44 feet to a point; thence South 35 degrees 16 minutes 47 seconds West along the centerline of Mission Road a distance of 49.38 feet to a point; thence South 35 degrees 17 minutes 09 seconds West along the centerline of Mission Road a distance of 111.77 feet to a point; thence in a Southwesterly direction along the centerline of Mission Road and along a curve to the left, having a radius of 365.00 feet, through a central angle of 37 degrees 34 minutes 28 seconds, an arc distance of 239.37 feet to a point; thence South 2 degrees 17 minutes 17 seconds East along the centerline of Mission Road a distance of 102.21 feet to the POINT OF BEGINNING and containing 977,418 Square Feet or 22.438 Acres, more or less.

The description above includes all property owned by the Applicant and shall also include all of the Prairie Lane right-of-way that is adjacent to the property described above, as well as all other right-of-way that is adjacent to the property described above to the center line thereof.

First Washington Realty Global Retail Investors



Who We Are

- Joint Venture between First Washington Realty, Inc. (FWR) and the California Public Employees' Retirement System (CalPERS).
- Owns a controlling interest in 93 shopping centers with a market value of approximately \$3.5 Billion, located across the United States.
- CalPERS is the largest public pension fund in the U.S. with ~\$300B in assets; serves 1.6 million beneficiaries.

Experience & Capabilities

Experience

- Privately owned real estate investment, advisory and management company, formerly traded on the NYSE as FRW.
- Since 1983, our sole focus is neighborhood community shopping centers.
- We invest our own money and own for the long term.
- Our principals have worked together for over 25 years and managed or financed over \$20B in real estate.
- Our average employee tenure is > 15 years.

Capabilities

- Acquisitions & Market Analysis
- Leasing & Property Management
- Finance, Reporting & Accounting
- Legal, HR & IT
- Development & Construction



First Washington Realty Global Retail Investors



Capabilities: Leasing Snapshot

1,200 new leasing transactions for over 5 million square feet since 2012

Financial Strength

1. GRI Balance Sheet
 - \$1.5 billion of equity
2. Conservative Use of Leverage
 - 35% leverage as of 11/12/2014
 - > 90% of debt is fixed rate
3. Risk Management
 - Geographic and tenant diversification
 - Low volatility; high occupancy
 - Staggered debt maturities

Contacts for Kansas City

Joshua M. Brown
Executive Vice President and Chief Investment Officer
jbrown@firstwash.com
(214) 389-8808

Alex Nyhan
Senior Vice President
anyhan@firstwash.com
(301) 907-7800



ASSIGNMENT OF DEVELOPER'S RIGHTS
VILLAGE COMMUNITY IMPROVEMENT DISTRICT
CORINTH SQUARE COMMUNITY IMPROVEMENT DISTRICT

A REPORT TO THE PRAIRIE VILLAGE CITY COUNCIL

NOVEMBER 17, 2014

Prepared by:
Ted A. Murray, CEO
Colliers International | Kansas City

INTRODUCTION

On September 29, 2014, the Finance Committee of the Prairie Village City Council met regarding the process for reviewing the transfer of CID Development Agreements relating to Prairie Village Shopping Center and Corinth Square Shopping Center. Both agreements provide “that the Developer’s rights and certain of the Developer’s obligations thereunder, may not be assigned, in whole or in part, to another entity, without the prior approval of the Governing Body of the City by resolution, and that the Governing Body shall provide such consent unless a proposed assignee does not have qualifications and financial responsibility, as reasonably determined by the Governing Body, necessary and adequate to fulfill the obligations of the Developer being assigned.”

In order to assist the Governing Body in making such a determination, the Finance Committee recommended the hiring of Ted A. Murray, CEO of Colliers International | Kansas City (Consultant) as a consultant to review the proposed assignee and it’s abilities relating to meeting the necessary qualifications and financial responsibilities required by Developer in the CID Development Agreements. Mr. Murray’s qualifications can be found in Exhibit A of this report.

SCOPE OF ASSIGNMENT

The scope of the consulting assignment includes the following data points:

- A. Review both Development Agreements and any Amendments
- B. Review Developer obligations in both Agreements
- C. Research proposed Buyer/Assignee
 - a. Overall company
 - b. Real Estate activities of the company
 - c. Ability to meet the Developer obligations
- D. Interview contacts of Buyer regarding plans

REVIEW OF DOCUMENTS

The following documents were reviewed by Consultant.

- A. Development Agreement for the Corinth Square Community Improvement District, dated as of September 20, 2010

- B. Development Agreement for the Village Community Improvement District, dated as of September 20, 2010
- C. Amendments to both documents

After reviewing both Agreements and the Developer obligations found in both Agreements, Consultant determined that the following aspects of the Buyer needed to be reviewed in order to determine its capacity to assume the obligations of the Seller as the Assignee.

- A. Corporate structure
- B. Corporate real estate experience
- C. Corporate operations
- D. Proposed transaction
- E. Future positioning of both properties

CORPORATE STRUCTURE

The following information has been provided to Consultant by Joshua Brown, Chief Investment Officer at First Washington Realty. The proposed Buyer is Global Retail Investors, LLC (“GRI”) a Delaware Limited Liability Company. The owners of this LLC are First Washington Investment II, LLC and the California Public Employees’ Retirement System (CalPERS). GRI has \$1.5 billion of equity available to make acquisitions of real property around the country. Actual title of the Corinth and Prairie Village Shopping Centers will most likely be taken by separate Kansas LLC’s formed for this purpose, but the equity will be provided by GRI. The owners of these new Kansas LLC’s will be the same entities that own Global Retail Investors, LLC.

First Washington Investment II consists of 5 individual Principals of First Washington Realty (FWR). They have provided some of the equity to GRI but the amount has not been disclosed. The Principal primarily involved with the acquisition of Prairie Village and Corinth Shopping Centers is Joshua Brown. Mr. Brown is Executive Vice President and Chief Investment Officer of First Washington Realty, Inc. as well as being one of the 5 principals of First Washington Investment II. He is responsible for all firm investments and expanding First Washington's national retail portfolio. Mr. Brown will also provide ongoing oversight of both shopping centers, including future positioning.

The California Public Employees' Retirement System is the largest pension fund in the United States and invests heavily in real estate. According to its website, "the CalPERS real estate program is comprised of two distinct portfolios - Core and Specialized. The Core Portfolio is managed to be broadly diversified by property type and geography, maintain high occupancy, emphasize current income and exhibit prudent use of leverage. The Core includes four property types: apartment, industrial, office, and retail. These investments are acquired and managed through REITs, separate accounts, partnerships and limited liability corporations between CalPERS and investment advisory firms. The program has developed partnerships with various external managers whose mandate is to explore new opportunities in various real estate sectors." According to an October 7, 2014 article in the Wall Street Journal, CalPERS has \$26 billion invested in real estate and plans to increase this by 27% according to its latest asset allocation report.

First Washington Realty (FWR) is one of the external managers that CalPERS utilizes to purchase and operate retail property. First Washington Realty, Inc. is the employer of the 5 Principals of First Washington Investment II and FWR is the entity that provides the real estate operating expertise for the ownership group.

CORPORATE REAL ESTATE EXPERIENCE

First Washington Realty and its related entities currently own 95 shopping centers located in 21 states and the District of Columbia. The centers contain 12 million square feet with over 2,000 retail tenants. FWR and its successor entities have been in existence for over 31 years. Its senior executives have been together since 1988. A related entity to FWR currently owns Brookside Shopping Center in Kansas City, MO. The Brookside Shopping Center also has a CID, although the structure in Kansas City, Missouri is different than in Prairie Village.

FWR has a full staff of real estate professionals and is organized to provide the full range of real services for its owned properties. The services include management, leasing coordination, accounting, acquisition and development services. Exhibits B and C show the organizational structure of FWR and its Principals.

Consultant asked for comments from colleagues within the Colliers International network regarding First Washington Realty. Responses included, "highly skillful in retail real estate", "very good at what they do", and "top management has been there for over 20 years". Consultant also conducted a phone interview with Marti

Lee, the District Manager of the Brookside CID. In 2005 the Brookside CID was formed to provide a source of funding through a sales tax for the ongoing maintenance and beautification of Brookside Shopping Center. Marti Lee's role is to manage the public areas with sales tax revenues generated by the CID. As such she is an employee of the Brookside CID. The FWR Brookside ownership entity is one of several owners in the Brookside CID, having purchased property in March, 2014. She provided no negative comments and indicated FWR has been diligent in attending all tenant meetings.

CORPORATE OPERATIONS

A typical structure for property purchased by GRI controlled entities will be used in Prairie Village. The single purpose LLC entities that will own each center will hire First Washington Realty to provide accounting, property management, leasing oversight and development oversight for both Prairie Village and Corinth Shopping Centers. Consultant has been informed that First Washington Realty plans to open an office in the Kansas City area and will staff it with property management and leasing oversight professionals to take care of not only the Prairie Village centers but also Brookside Shopping Center in Kansas City, MO and Fairway Shops. All accounting functions will be run out of the company headquarters in Bethesda, MD., as will development and construction management of future CID obligations.

TRANSACTION

The purchase price for the two centers is undisclosed. GRI reports that it intends to close the purchase using its equity resources. At a later date it may seek mortgage financing on a portion of the purchase price. The Buyer will assume all warranties for current construction. It is anticipated that all current construction will be completed and lien-free by the end of November. The closing is contingent on the assignment of CID rights and obligations. Following closing all CID payments will go to the Buyer.

POSITIONING

According to Joshua Brown, the plan of ownership is to own the assets and manage the retail operations on a long-term basis. In addition, the Buyer intends to add additional components to create a quality mixed-use environment that enhances the retail shopping experience. Mr. Brown indicated a preference to find local vs. national tenants for the two centers. Decisions regarding any future development or redevelopment will be made in conjunction with feedback from the community, public sector and First Washington Realty, according to Mr.

Brown. This may include the addition of quality housing and enhanced public spaces and gathering places. Mr. Brown also indicates additional land uses could be explored in the future as well. He prefers to pursue opportunities in a transparent and inclusive manner with appropriate opportunities for community and public sector input.

CONCLUSION

The Buyer's ownership has considerable equity strength and CalPERS is the largest pension fund in the United States with considerable real estate experience. Since the CID payments can only be made on a pay as you go basis, the Developer is required to advance funds for CID costs as necessary. This is not an issue for the Buyer.

The proposed Assignee has considerable experience in operating retail properties and is fully aware of all obligations to indemnify the City and related individuals against liabilities. Developer has a master policy through AON. AON is a global leader in risk management insurance.

All activities required under the CID relating to operating real estate can easily be met by the Assignee. Buyer owns 95 centers in 21 states and the District of Columbia and is fully aware of obligations regarding maintenance and repair, compliance with Laws and payment of taxes which are all important aspects of real estate ownership.

Consultant believes Global Retail Investors, LLC and First Washington Realty, Inc. appear to be highly qualified and have the experience and financial responsibility to assume the obligations of the Developer in both Development Agreements.



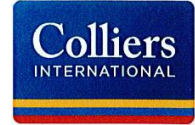
Ted A. Murray, CEO
Colliers International
4520 Main Street, Suite 1000
Kansas City, MO 64111
816-556-1114
ted.murray@colliers.com

EXHIBIT A
CONSULTANT
QUALIFICATIONS



Ted A. Murray

CEO | KANSAS CITY



ted.murray@colliers.com

EDUCATION AND QUALIFICATIONS

Bachelor of Economics – University of Missouri, Columbia

Master of Business Administration with emphasis in Marketing – University of Missouri – Kansas City

Master of Regional Planning– Cornell University

AFFILIATIONS AND MEMBERSHIPS

Licensed Real Estate Broker – Kansas and Missouri

ICSC

ULI – Small Scale Development Council

CONTACT DETAILS

DIR +1 816 556 1114
MAIN +1 816 531 5303
FAX +1 816 531 5409

Colliers International
4520 Main Street, Ste 1000
Kansas City, MO 64111

www.colliers.com

AREA OF EXPERTISE

Ted Murray began his real estate career in 1977 as a salesperson for Coldwell Banker Commercial Real Estate Services, where he also served as sales manager. In 1983, Ted was named director of marketing for the Linclay Corporation, a development company serving primarily the Midwest. Ted became the Kansas City operating partner for Property Company of America (PCA) in 1984, and in 1989, he and two other PCA partners formed The Winbury Group. Ted became CEO of the firm in 2005 and has been president of its predecessor companies since their inception in 1984. In 2010, Colliers International acquired an interest in The Winbury Group, merging the two into the Kansas City branch of Colliers International.

Ted has been in the commercial real estate business in Kansas City since 1977, bringing a vast amount of experience in commercial real estate development, brokerage and consultation. Since 1984, Ted has developed over 1.2 million square feet of commercial property in the Kansas City area.

PROFESSIONAL ACCOMPLISHMENTS

- Chairman of the Lee’s Summit Economic Development Council (2005 – 2006)
- Legal Board of Directors of Enterprise Bank and Trust (2005 – Present)
- Chairman of the Enterprise Bank Commercial Advisory Board (2012 – Present)
- Member of Colliers International U.S. Board of Advisors (2012 – Present)

- ULI’s Small Scale Development Council (2002 – Present)
- Chairman of the ULI Kansas City District Council (2007 – 2009)
- Broker of the year – Kansas City Regional Real Estate Board - 1997
- Past Ex-officio member of the board of directors of the Kansas City Chamber of Commerce
- Graduate of the Chamber’s Centurion program and past Chairman of the Chamber’s Metro Affairs Committee
- Past president of the Main Street Redevelopment Corporation
- Past board member of the UMKC Bloch School of Business Administration
- Past board member of Kansas City chapter of the National Association of Office and Industrial Parks

COMMUNITY INVOLVEMENT

- Leader’s Board of Department of Economics at the University of Missouri – Columbia (2012 – Present)
- Board of Directors – Real Estate Charitable Foundation (2010 – Present)
- Mentor with the Helzberg Entrepreneurial Mentoring Program (2003 – Present)
- Board member of Mill Street Park Association (1985 – Present)
- Member of Advisory Council of the Lewis White Center for Real Estate at the University of Missouri – Kansas City (2008 – Present)
- Past board member - American Cancer Society – Kansas City



Ted A. Murray

CEO | KANSAS CITY

ted.murray@colliers.com

REPRESENTATIVE CLIENTS AND PROJECTS

Beautification Award – City of Merriam, Kansas (Antioch Plaza)

Award of Landscape Excellence – City of Overland Park, Kansas (Commerce Plaza)

Best New Office Building Award – Squire Magazine (Twentieth Century Tower)

Commitment to Kansas City Award – Kansas City Corporation for Industrial Development (Twentieth Century Tower)

Special Recognition Award - Prestressed Concrete Institute (Twentieth Century Tower)

Cornerstone Award – Kansas City – Economic Development Council (Hewlett Packard Building)

EXHIBIT B

FIRST WASHINGTON REALTY, INC.

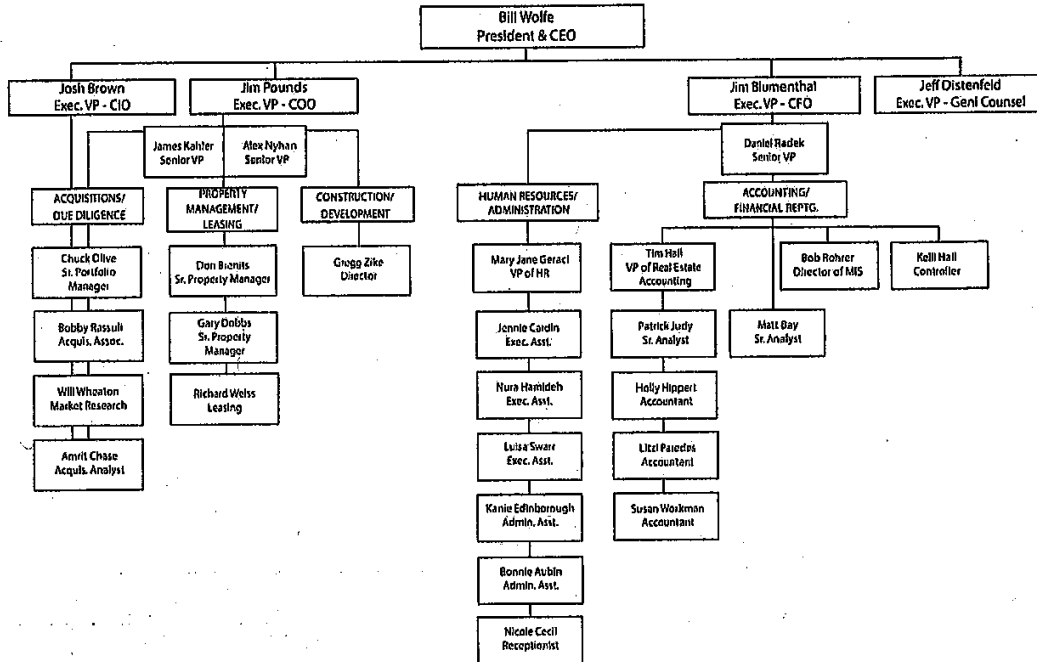


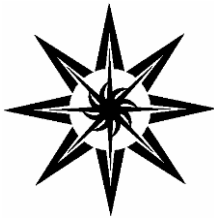
EXHIBIT C

Our People

 William J. Wolfe President and CEO	 James G. Blumenthal Executive Vice President and Chief Financial Officer	 Joshua M. Brown Executive Vice President and Chief Investment Officer	 Jeffrey S. Distenfeld Executive Vice President and General Counsel	 James G. Pounds Executive Vice President and Chief Operating Officer	 P. James Kahler Senior Vice President	 Alex Nyhan Senior Vice President
 Daniel J. Radek Senior Vice President of Finance	 Mary Jane Geraci Vice President of Human Resources	 Timothy J. Hall Vice President of Real Estate Accounting/Financial Rept.	 Stuart D. Halpert Chairman	 Matthew E. Bay Senior Financial Analyst	 Jennifer M. Cardin Executive Assistant	 Nicole Cecil Receptionist
 Amrit Chase Acquisitions Manager	 Gary A. Dobbs Senior Property Manager	 Kelli D. Hall Corporate Controller	 Nura Hamideh Executive Assistant	 Holly Hippert Property Accountant	 Patrick W. Judy Senior Financial Analyst	 Chuck Olive Director of Due Diligence
 Giovanna (Litz) Paredes Portfolio Accountant	 Babak (Bobby) Rassuli Acquisitions Director	 Robert (Bob) Rohrer Director of Management Information Systems	 Luisa Swarr Executive Assistant	 Richard I. Weiss Leasing Executive	 William R. Wheaton Director of Market Research	 Gregory D. Zike Jr. Director of Construction and Development

Owners and Principals

FIRST WASHINGTON REALTY



PUBLIC WORKS DEPARTMENT

Council Committee Meeting Date: November 17, 2014

Council Meeting Date: November 17, 2014

CONSIDER CONSTRUCTION CONTRACT FOR THE PUBLIC WORKS FIBER PROJECT

RECOMMENDATION

Move to approve a construction contract with K&W Underground, Inc., utilizing the Overland Park bid as a reference, for Project Number P5032, the Public Works Fiber Project for \$80,000 which includes \$3,333.55 for contingency.

BACKGROUND

This project will install a City/County owned underground fiber optic connection between Public Works and City Hall. The project has been under consideration for many years and is desirable to provide better service for Public Works activities. Currently all software relies on the current wireless connection between Public Works and City Hall. This connection is susceptible to weather and other factors and routinely does not operate at optimal connection speeds. With more and more software such as Springbrook, Email, Internet, and soon the new Public Works Management software a better more reliable connection is needed.

With Johnson County now providing our IT services it has created the opportunity for us the City to connect directly to Johnson County via the fiber connection. Johnson County is willing to fund \$20,000 of this installation since it will benefit the County when the future fiber ring is constructed in this area. The fiber along Mission Road will be part of that future fiber ring for the County. As part of our installation the fiber line will also connect to Johnson County through the Johnson County Library location on Mission Road.

Potential future cost savings to having this fiber connection to City Hall and to Johnson County-

- The City will be able to disconnect the current \$1,200.00/month 20mb internet connection and move to the County's 100mb connection at no additional charge to the City. The County will become the City's Internet Service Provider.
- The future Public Works Management software will require an Arc GIS Server which would not have to be purchased by the City with a connection to the County at a cost savings- \$15,000 initially plus yearly maintenance.
- The City will be able to discontinue the City's WebSense web filtering software and would be able to use the County's filtering software at a

savings of \$3,750/year.

- The City will be able to disconnect the T1(Phone) line between City Hall and Public Works as a savings of at least \$200.00/month.
- Many other items related to items like firewalls, GIS, REGIS, and Intergraph will be better supported and will yield cost savings as well.
- In summary, it is anticipated a reduced cost of at least \$20,000.00.

Other solutions were looked into for providing a better more reliable connection between City Hall and Public Works but they would not yield all the benefits described above as that fiber would not connect to the County. The City of Shawnee did engage one private fiber agreement and it costs them about \$12,000 per year and most of the fiber Shawnee installs is City owned fiber. We have pursued an agreement with Time Warner but they basically said it was cost prohibitive.

Given that fiber installation is not something Prairie Village has installed in the past we looked to Overland Park and Johnson County for help with this project. Through discussions with them we became aware of a current standard agreement that Overland Park has for fiber installation. Staff proposes using the Overland Park contract with K&W Underground as the basis for the contract. Staff reviewed this possibility with Council in October. Both Overland Park and Johnson County report that K&W Underground is a reputable contractor that will provide a good product to the City. Johnson County itself has utilized the Overland Park contract to install fiber. We met with Johnson County and K&W Underground and conducted a field inspection of Public Works, the County Library, and City Hall to determine the scope of work necessary. K&W Underground determined their cost estimate based on that meeting. Below are cost comparisons for major items from the Overland Park bid and our bid. It is not an exact comparison but they do justify K&W's costs. Given that our project is almost one mile long K&W reduced some unit prices compared to the standard Overland Park Bid.

Item 1- Conduit and Fiber Installation-

Overland Park bid- 3" conduit-	\$12.50/foot	
PV-K&W- 2 inch conduit-	\$9.50/foot	Cost- \$44,032.50

Item 2- Install Fiber-

Overland Park bid- 72ct Fiber	\$2.25/foot	
PV-K&W- 144ct Fiber-	\$1.57/foot	Cost- \$9,317.95

Item 3- Install Service Boxes-

Overland Park bid-	\$1,074 Each	
PV-K&W-	\$1,074 Each	Cost- \$8,592.00

Item 4- Install Terminal Panel-

Overland Park bid- 72ct Fiber-	\$1,850 Each	
PV-K&W- 144ct Fiber-	\$2,800 Each	Cost- \$5,600.00

The above 4 items account for just under \$68,000 of the \$76,666.45 bid price for our fiber installation. The comparisons of cost above justify that K&W is asking fair prices for the installation of the fiber in Prairie Village.

We also became aware that Shawnee utilized Google Fiber contractors to install City owned fiber. Shawnee's costs were \$9.50/foot for conduit installation, the same as K&W is proposing for this project, giving further justification to K&W's costs. It is unknown when Google Fiber will construct in Prairie Village.

In visiting with other area cities that own and operate their fiber lines there are minimal annual maintenance costs such as Kansas One Call.

FUNDING SOURCES

City IT funds- \$40,000(2014 Budget), \$20,000(reallocated from other IT funds)

County funds- \$20,000

Total funds= \$80,000

ATTACHMENTS

1. Construction Agreement with K&W Underground, Inc.

PREPARED BY

Keith Bredehoeft, Public Works Director

November 13, 2014

**CONSTRUCTION CONTRACT
FOR
PROJECT
P5032
PUBLIC WORKS FIBER PROJECT
BETWEEN
THE CITY OF PRAIRIE VILLAGE, KANSAS
AND
K&W UNDERGROUND, INC**

THIS AGREEMENT, is made and entered into this ____ day of _____, 2014, by and between the City of Prairie Village, Kansas, hereinafter termed the "City", and _K&W Underground 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 Eighty Thousand **DOLLARS (\$ 80,000)** for all Work covered by and included in the Contract; payment thereof to be made in cash or its equivalent and in a manner provided in the Contract Documents.

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

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

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

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

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

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

1. **DEFINITIONS:**

1.1 Following words are given these definitions:

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

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

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

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

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

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

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

CONTRACT PRICE shall be the amount identified in the Construction Agreement between

the City and the Contractor as the total amount due the Contractor for total completion of the Work as per the Contract Documents.

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

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

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

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

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

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

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

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

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

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

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

PLANS shall mean and include all drawings which may have been prepared by or for the City or submitted by the Contractor to the City during the progress of the Work, all of which show the character and scope of the work to be performed.

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

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

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

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

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

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

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

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

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

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

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

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

2. ENTIRE AGREEMENT:

- 2.1 The Contract Documents, together with the Contractor's Performance, Maintenance and Statutory bonds for the Work, constitute the entire and exclusive agreement between the City and the Contractor with reference to the Work. Specifically, but without limitation, this Contract supersedes all prior written or oral communications, representations and negotiations, if any, between the City and the Contractor. The Contract may not be amended or modified except by a modification as hereinabove defined. These Contract Documents do not, nor shall they be construed to, create any contractual relationship of any kind between the City and any Subcontractor or remote tier Subcontractor.
- 2.2 The Contract shall be construed in accordance with the laws of the state of Kansas.

3. INTENT AND INTERPRETATION

- 3.1 The intent of the Contract is to require complete, correct and timely execution of the Work. Any Work that may be required, including construction, labor, materials, tools, equipment and transportation, implied or inferred by the Contract Documents, or any one or more of them, as necessary to produce the intended result, shall be provided by the Contractor for the Contract Price.
- 3.2 All limits stated in the Contract Documents are of the essence of the Contract.
- 3.3 The Contract is intended to be an integral whole and shall be interpreted as internally consistent. What is required by any one Contract Document shall be considered as required by the Contract.
- 3.4 The specification herein of any act, failure, refusal, omission, event, occurrence or condition as constituting a material breach of this Contract shall not imply that any other, non-specified act, failure, refusal, omission, event, occurrence or condition shall be deemed not to constitute a material breach of this Contract.
- 3.5 The Contractor shall have a continuing duty to read, carefully study and compare each of the Contract Documents and shall give written notice to the Project Manager of any inconsistency, ambiguity, error or omission, which the Contractor may discover, or should have discovered, with respect to these documents before proceeding with the affected Work. The review, issuance, or the express or implied approval by the City or the Project

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

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

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

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

4. WORK SUPERINTENDENT

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

5. PROJECT MANAGER

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

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

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

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

- 5.15 Any plan or method of work suggested by the Project Manager, or other representatives of the City, to the Contractor, but not specified or required, if adopted or followed by the Contractor in whole or in part, shall be used at the risk and responsibility of the Contractor, and the Project Manager and the City will assume no responsibility therefore.
- 5.16 It is agreed by the Contractor that the City shall be and is hereby authorized to appoint or employ, either directly or through the Project Manager, such City representatives or observers as the City may deem proper, to observe the materials furnished and the work performed under the Project Manual, and to see that the said materials are furnished, and the said work performed, in accordance with the Project Manual therefore. The Contractor shall furnish all reasonable aid and assistance required by the Project Manager, or by the resident representatives for proper observation and examination of the Work and all parts thereof.
- 5.17 The Contractor shall comply with any interpretation of the Project Manual by the Project Manager, or any resident representative or observer so appointed, when the same are consistent with the obligations of the Project Manual. However, should the Contractor object to any interpretation given by any subordinate Project Manager, resident representative or observer, the Contractor may appeal in writing to the City Director of Public Works for a decision.
- 5.18 Resident representatives, observers, and other properly authorized representatives of the City or Project Manager shall be free at all times to perform their duties, and intimidation or attempted intimidation of any one of them by the Contractor or by any of its employees, shall be sufficient reason, if the City so decides, to annul the Contract.
- 5.19 Such observation shall not relieve the Contractor from any obligation to perform said work strictly in accordance with the Project Manual.

6. WORK SCHEDULE:

- 6.1 The Contractor, within ten (10) calendar days after being instructed to do so in a written notice from the City, shall commence work to be done under this Contract.
- 6.2 The rate of progress shall be such that the Work shall have been completed in accordance with the terms of the Contract Documents on or before the completion date for the construction period named in the contract agreement, subject to any extension or extensions of such time made as hereinafter provided.
- 6.3 The Contractor shall be required to furnish the Project Manager with a schedule setting forth in detail (in the critical path method) the sequences proposed to be followed, and giving the dates on which it is expected that portions of the work will be started and completed.
- 6.4 If at any time, in the opinion of the Project Manager or City, proper progress is not being maintained; such changes shall be made in the schedule and resubmitted for consideration.

- 6.5 If the Contractor has not completed Work segments and is within a non-performance penalty period, he/she shall not be allowed to undertake a new Work segment until the Work segment in dispute is completed, unless expressly permitted by the City.
- 6.6 The operation of any tool, equipment, vehicle, instrument, or other noise-producing device is prohibited to start before or continue after the hours of 7 AM and 10 PM, Monday through Friday (except Fridays which shall be until Midnight) and 8 AM and midnight on Weekends (except Sunday which shall be 10 PM). Violation of this requirement is Prima Facie Violation of City Municipal Code 11-202.
- 6.7 No work shall be undertaken on Saturdays, Sundays and Holidays (Christmas, New Years, Martin Luther King's Birthday, President's Day, Memorial Day, Independence Day, Labor Day and Thanksgiving) without the express written approval of the City Project Manager. If it is necessary to perform proper care, maintenance, or protection of work already completed or of equipment used, or in the case of an emergency verbal permission may be obtained through the Project Manager.
- 6.8 Night work may be established by the Contractor, as a regular procedure, with the written permission of the City; such permission, however, may be revoked at any time by the City if the Contractor fails to maintain adequate equipment for the proper prosecution and control of all operations performed as part of the Work.
- 6.9 The Contractor shall provide 24 hours notice prior to commencing any work to the City Project Manager. The Contractor shall communicate immediately any changes in the work schedule to the City Project Manager.

7. DELAYS AND EXTENSIONS OF TIME

- 7.1 In executing the Contract, the Contractor expressly covenants and agrees that, in undertaking the completion of the work within the time herein fixed, he has taken into consideration and made allowances for all of the ordinary delays and hindrances incident to such work, whether growing out of delays in securing materials, workers, weather conditions or otherwise. No charge shall be made by the Contractor for hindrances or delays from any cause during the progress of the Work, or any portion thereof, included in this Contract.
- 7.2 Should the Contractor, however, be delayed in the prosecution and completion of the work by reason of delayed shipment orders, or by any changes, additions, or omissions therein ordered in writing by the City, or by strikes or the abandonment of the work by the men engaged thereon through no fault of the Contractor, or by any act taken by the U.S. Government such as the commandeering of labor or materials, embargoes, etc., which would affect the fabrication or delivery of materials and/or equipment to the work; or by neglect, delay or default of any other contractor of the City, or delays caused by court proceedings; the Contractor shall have no claims for damages or additional compensation or costs for any such cause or delay; but he shall in such cases be entitled to such extension of the time specified for the completion of the work as the City and the Project Manager shall award in writing on account of such delays, provided, however, that claim for such extension of time is made by the Contractor to the City and the Project Manager in writing within one (1) week from the time when any such alleged cause for delay shall occur.

8. ADVERSE WEATHER:

- 8.1 Extensions of time for adverse weather shall be granted only under the conditions as hereinafter provided.
- 8.2 For conditions of weather or conditions at the site, so unusual as not to be reasonably anticipated, as determined by the Project Manager, an average or usual number of inclement days when work cannot proceed are to be anticipated during the construction period and are not to be considered as warranting extension of time.
- 8.3 Adverse Weather is defined as atmospheric conditions or the impact thereof at a definite time and place, which are unfavorable to construction activities such that they prevent work on critical activities for 50 percent or more of the Contractor's scheduled workday.
- 8.4 Unusually Severe Weather is defined as weather, which is more severe than the adverse weather anticipated for the season, location, or activity involved.
- 8.5 Time Extensions for Unusually Severe Weather:
- In order for any request for time extension due to unusually severe weather to be valid, the Contractor must document both of the following conditions:
 - The weather experienced at the Work site during the Contract period is more severe than the adverse weather anticipated for the Work location during any given month.
 - The unusually severe weather actually caused a delay to the completion of the Work. The delay must be beyond the control and without fault or negligence by the Contractor.
- 8.6 The following schedule of monthly-anticipated adverse weather delays will constitute the baseline for monthly weather time evaluations. The Contractor's Progress Schedule must reflect these anticipated adverse weather delays in all weather affected activities:

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

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

- 8.7 Upon receipt of the Notice to Proceed, and continuing throughout the Contract, the Contractor shall record on their daily construction report, the occurrence of adverse weather and resultant impact to normally scheduled work.
- 8.8 The number of actual adverse weather delay days shall include days affected by actual adverse weather (even if adverse weather occurred in the previous month), and shall be calculated chronologically from the first to the last day of each month, and be recorded as full workdays.
- 8.9 If the number of actual adverse weather delay days in a given month exceeds the number

of days anticipated above, the difference shall be multiplied by 7/5 to convert any qualifying workday delays to calendar days. The resulting number of qualifying lost days shall be added to the Contract Time.

- 8.10 The determination that unusually severe weather occurred does not automatically mean an extension of time will be granted. The Contractor must substantiate the unusually severe weather delayed work activities on the critical path of the Progress Schedule.
- 8.11 Full consideration for equivalent fair weather workdays shall be given. If the number of actual adverse weather delays in a given month is less than the number of days anticipated as indicated above, the difference shall be multiplied by 7/5 to convert any workday increases to calendar days. The resulting number of qualifying extra days will be accumulated and subtracted from any future month's days lost due to unusually severe weather.
- 8.12 The net cumulative total of extra days/lost days shall not result in a reduction of Contract Time and the Date of Substantial Completion shall not be changed because of unusually favorable weather.
- 8.13 In converting workdays to calendar days, fractions 0.5 and greater shall be rounded up to the next whole number. Fractions less than 0.5 shall be dropped.
- 8.14 The Contractor shall summarize and report all actual adverse weather delay days for each month to the Project Manager by the tenth (10th) day of the following month. A narrative indicating the impact of adverse weather conditions on the scheduled critical activities shall be included.
- 8.15 Any claim for extension of time due to unusually severe weather shall be submitted to the Project Manager within 7 days of the last day of the commencement of the event giving rise to the delay occurred. Resolution of any claim shall follow the procedures established by the Regulations of the Contract and Special Conditions and as described above.
- 8.16 The Contractor shall include and indicate the monthly-anticipated adverse weather days, listed above, in their Progress Schedule. (Reference Section 3.1.1 for Progress Schedule requirements)
- 8.17 The Contractor shall indicate the approved adverse weather days (whether less or more than the anticipated days) in their monthly Progress Schedule update.

9. PAYMENT PROCEDURE:

- 9.1 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the City no later than the time of payment. The Contractor further warrants that upon submittal on the first day of each month of an Application for Payment, all Work for which payments have been received from the City shall be free and clear of liens, claims, security interest or other encumbrances in favor of the Contractor or any other person or entity whatsoever.
- 9.2 Each application for payment must be submitted with Contractor's waiver for period of construction covered by application. Each progress payment will be submitted with

executed waivers from the subcontractors or sub-contractors and suppliers for the previous period of construction covered by the previous application. The final payment application must be submitted together with or preceded by final or complete waivers from every entity involved with performance of the work covered by the payment request.

- 9.3 The Contractor will submit waivers on forms, and executed in a manner, acceptable to City.
- 9.4 The Contractor shall promptly pay each Subcontractor out of the amount paid to the Contractor because of such Subcontractor's Work the amount to which such Subcontractor is entitled. In the event the City becomes informed that the Contractor has not paid a Subcontractor as herein provided, the City shall have the right, but not the duty, to issue future checks in payment to the Contractor of amounts otherwise due hereunder naming the Contractor and such Subcontractor as joint payees. Such joint check procedure, if employed by the City, shall be deemed payment to the Contractor but shall create no rights in favor of any person or entity beyond the right of the named payees to payment of the check and shall not be deemed to commit the City to repeat the procedure in the future.
- 9.5 The Project Manager will, upon receipt of a written Application for Payment from the Contractor, review the amount of work performed during the preceding period and the value thereof at the unit prices contracted. From the amounts so ascertained, there shall be deducted ten percent (10%) to be retained until after final completion of the entire work to the satisfaction of the City. The Project Manager will submit an estimate each month to the City for payment to the Contractor, except that no amount less than \$500.00 will be submitted unless the total amount of the Contract remaining unpaid is less than \$500.00.
- 9.6 Deductions will be made from progress payments if the Contract includes a provision for a lump sum or a percentage deduction. Lump sum deductions will be that portion of the stated lump sum computed as the ratio that the amount earned bears to the Contract amount. Percentage deductions will be computed at the stated percentage of the amount earned.
- 9.7 No progress payment, nor any use or occupancy of the Work by the City, shall be interpreted to constitute an acceptance of any Work not in strict accordance with this Contract.
- 9.8 The City may decline to make payment, may withhold funds, and, if necessary, may demand the return of some or all of the amounts previously paid to the Contractor, to protect the City from loss because of:
- Defective Work not remedied by the Contractor;
 - Claims of third parties against the City or the City's property;
 - Failure by the Contractor to pay Subcontractors or others in a prompt and proper fashion;
 - Evidence that the balance of the Work cannot be completed in accordance with the Contract for the unpaid balance of the Contract Price;
 - Evidence that the Work will not be completed in the time required for substantial or final completion;
 - Persistent failure to carry out the Work in accordance with the Contract;
 - Damage to the City or a third party to whom the City is, or may be, liable;

- Evidence that the work is not progressing according to agreed upon schedule by both parties.

9.9 In the event that the City makes written demand upon the Contractor for amounts previously paid by the City as contemplated in this subparagraph, the Contractor shall promptly comply with such demand and refund such monies to the City.

9.10 Neither the observation by the City or any of the City's officials, employees, or agents, nor any order by the City for payment of money, nor any payment for, or acceptance of, the whole or any part of the work by the City or Project Manager, nor any extension of time, nor any possession taken by the City or its employees, shall operate as a waiver of any provision of this Contract, or of any power herein reserved to the City, or any right to damages herein provided, nor shall any waiver of any breach in this Contract be held to be a waiver of any other or subsequent breach.

10. COMPLETION AND FINAL PAYMENT

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

10.2 When all of the Work is finally complete and the Contractor is ready for a final inspection, it shall notify the City and the Project Manager thereof in writing. Thereupon, the Project Manager will make final inspection of the Work and, if the Work is complete in accordance with this Contract, the Project Manager will promptly issue a final Certificate for Payment certifying to the City that the Work is complete and the Contractor is entitled to the remainder of the unpaid Contract Price, less any amount withheld pursuant to this Contract. If the Project Manager is unable to issue its final Certificate for Payment and is required to repeat its final inspection of the Work, the Contractor shall bear the cost of such repeat final inspection(s), which cost may be deducted by the City from the Contractor's full payment.

10.3 The Contractor shall not be entitled to any payment unless and until it submits to the Project Manager its affidavit that all payrolls, invoices for materials and equipment, and other liabilities connected with the Work for which the City, or the City's property might be responsible, have been fully paid or otherwise satisfied; releases and waivers of lien from all Subcontractors and Suppliers of the Contractor and of any and all other parties required by the City; and consent of Surety, if any, to final payment. If any third party fails or refuses to provide a release of claim or waiver of lien as required by the City, the Contractor shall furnish a bond satisfactory to the City to discharge any such lien or indemnify the City from liability.

10.4 The City shall make final payment of all sums due the Contractor within thirty days of the later of the Project Manager's execution of a final Certificate for Payment.

10.5 Acceptance of final payment shall constitute a waiver of all claims against the City by the Contractor except for those claims previously made in writing against the City by the Contractor, pending at the time of final payment, and identified in writing by the Contractor as unsettled at the time of its request for final inspection.

11. CLAIMS BY THE CONTRACTOR

- 11.1 All Contractor claims shall be initiated by written notice and claim to the Project Manager. Such written notice and claim must be furnished within seven calendar days after occurrence of the event, or the first appearance of the condition, giving rise to the claim.
- 11.2 The Contractor shall diligently proceed with performance of this Contract whether or not there be such a claim pending and the City shall continue to make payments to the Contractor in accordance with this Contract. The resolution of any claim shall be reflected by a Change Order executed by the City, the Project Manager and the Contractor.
- 11.3 Should concealed and unknown conditions which could not, with reasonable diligence, have been discovered in the performance of the Work (a) below the surface of the ground or (b) in an existing structure differ materially with the conditions indicated by this Contract, or should unknown conditions of an unusual nature differing materially from those ordinarily encountered in the area and generally recognized as inherent in Work of the character provided by this Contract, be encountered, the Contract Price shall be equitably adjusted by the Change Order upon the written notice and claim by either party made within seven (7) days after the first observance of the condition. As a condition precedent to the City having any liability to the Contractor for concealed or unknown conditions, the Contractor must give the City written notice of, and an opportunity to observe, the condition prior to disturbing it. The failure by the Contractor to make the written notice and claim as provided in this Subparagraph shall constitute a waiver by the Contractor of any claim arising out of or relating to such concealed or unknown condition.
- 11.4 If the Contractor wishes to make a claim for an increase in the Contract Price, as a condition precedent to any liability of the City therefore, the Contractor shall give the City written notice of such claim within seven (7) days after the occurrence of the event, or the first appearance of the condition, giving rise to such claim. Such notice shall be given by the Contractor before proceeding to execute any additional or changed Work. The failure by the Contractor to give such notice and to give such notice prior to executing the Work shall constitute a waiver of any claim for additional compensation.
- 11.5 The City reserves the right to increase or decrease quantities, and alter the details of construction including grade and alignment as the Project Manager may consider necessary or desirable, by approved Change Order. Such modifications shall not invalidate the Contract nor release the surety. Unless such alterations and increases or decreases change the total cost of the Work, based on the originally estimated quantities and the unit prices bid, by more than 25 percent, or change the total cost of any major item, based on the originally estimated quantities and the unit price bid, by more than 25 percent, the Contractor shall perform the work altered, increased or decreased, at a negotiated price or prices. (A major item shall mean any bid item, the total cost of which exceeds 12-1/2 percent of the total Contract amount based on the proposed quantity and the contract unit price).
- 11.6 When the alterations cause an increase or decrease in excess of the 25 percent indicated above, either the Contractor or the Project Manager may request an adjustment of the unit price to be paid for the item or items.
- 11.7 If a mutually agreeable adjustment cannot be obtained, the City reserves the right to terminate the Contract as it applies to the items in question and make such arrangements as may be deemed necessary to complete the Work.

- 11.8 In connection with any claim by the Contractor against the City for compensation in excess of the Contract Price, any liability of the City for the Contractor's costs shall be strictly limited to direct costs incurred by the Contractor and shall not include standby costs, indirect costs or consequential damages of the Contractor. The City shall not be liable to the Contractor for claims of third parties.
- 11.9 If the Contractor is delayed in progressing any task which at the time of the delay is then critical or which during the delay becomes critical, as the sole result of any act or neglect to act by the City or someone acting in the City's behalf, or by changes ordered in the Work, unusual delay in transportation, unusually adverse weather conditions not reasonably anticipated, fire or any causes beyond the Contractor's control, then the date for achieving Final Acceptance of the Work shall be extended upon the written notice and claim of the Contractor to the City, for such reasonable time as the City may determine. Any notice and claim for an extension of time by the Contractor shall be made not more than seven calendar days after the occurrence of the event or the first appearance of the condition-giving rise to the claim and shall set forth in detail the Contractor's basis for requiring additional time in which to complete the Work. In the event the delay to the Contractor is a continuing one, only one notice and claim for additional time shall be necessary. If the Contractor fails to make such claim as required in this subparagraph, any claim for an extension of time shall be waived.
- 11.10 The Contractor shall delay or suspend the progress of the work or any part thereof, whenever so required by written order of the City, and for such periods of time as required; provided, that in the event of such delay or delays or of such suspension or suspensions of the progress of the work, or any part thereof, the time for completion of work so suspended or of work so delayed by such suspension or suspensions shall be extended for a period equivalent to the time lost by reason of such suspension or suspensions; but such order of the City or Project Manager shall not otherwise modify or invalidate in any way, any of the provisions of this Contract. In the event that the work shall be stopped by written order of the City, any expense, which, in the sole opinion and judgment of the City, is caused by the City, shall be paid by the City to the Contractor.
- 11.11 In executing the Contract Documents, the Contractor expressly covenants and agrees that, in undertaking to complete the Work within the time herein fixed, it has taken into consideration and made allowances for all hindrances and delays incident to such work, whether growing out of delays in securing materials or workers or otherwise. No charge shall be made by the Contractor for hindrances or delays from any cause during the progress of the work, or any portion thereof, included in this Contract, except as provided herein.
- 11.12 In addition to the Project Manual particular to Mobilization found elsewhere in this document, additional mobilization shall not be compensable for work outside of the designated areas for work deemed essential by the City. A quantity of work equal to as much as 10% of the total Contract may be required to be performed beyond the boundaries of the designated work areas

12. CHANGES IN THE WORK

- 12.1 Changes in the Work within the general scope of this Contract, consisting of additions,

deletions, revisions, or any combination thereof, may be ordered without invalidating this Contract, by Change Order or by Field Order.

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

13. INSURANCE AND HOLD HARMLESS.

- 13.1 The Contractor shall assume full responsibility for the protection of all public and private property, structures, sewers, and utilities, both above and below the ground, along, beneath, above, across or near the site or sites of the work being performed under this Contract, or which are in any manner affected by the prosecution of the Work or the transportation of men/women or materials in connection therewith. Barriers shall be kept placed at all times to protect persons other than those engaged on or about the Work from accident, and the Contractor will be held responsible for all accidents to persons or property resulting from the acts of Contractor or its employees.
- 13.2 To the fullest extent permitted by law, the Contractor shall indemnify, defend, and hold harmless the City, the Project Manager, and their agents and employees from and against all claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from the performance of the Work, provided that any such claim, damage, loss or expense (1) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of property (other than the Work itself) including the loss of use resulting 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 Project Manager shall be a named insured on such policies. Satisfactory certificates of insurance shall be filed with the City prior to starting any construction work on this Contract. The certificates shall state that thirty (30) days written notice will be given to the City before any policy coverage thereby is changed or canceled.
- 13.9 The Contractor shall secure and maintain through the duration of this Contract insurance on an occurrence basis of such types and in such amounts as may be necessary to protect the Contractor and the City and agents of the City against all hazards or risks of loss as hereinafter specified. The form and limits of such insurance, together with the underwriter thereof in each case, shall be approved by the City, but regardless of such approval, it shall be the responsibility of the Contractor to maintain adequate insurance coverage at all times. Failure of the Contractor to maintain adequate coverage shall not relieve it of any contractual responsibility or obligation, including but not limited to, the indemnification obligation.
- 13.10 Satisfactory certificates of insurance shall be filled with the City prior to the Contractor starting any construction work on this Contract. The Certificates shall state that the thirty (30) days written notice will be given to the City before any policy covered thereby is changed or cancelled. Failure by the Contractor to furnish the required insurance within the time specified in the notice of award of the Contract by the City, at the City option, may be the basis for the City exercising its right to terminate the Contract.
- 13.11 The liability limits shall be as stated:
- Worker's Compensation and Employer's Liability: This insurance shall protect the Contractor against all claims under applicable state worker's compensation laws. The Contractor shall also be protected against claims for injury, disease, or death of employees, which, for any reason, may not fall within the provisions of a worker's compensation law. This policy shall include an "all states" endorsement.
 - Automobile Liability.: This insurance shall be written in comprehensive form and shall protect the Contractor against all claims for injuries to members of the public and damage to property of others arising from the use of motor vehicles, and shall cover operation on and off the site of all motor vehicles licensed for highway use, whether they are owned, non-owned, or hired. Unless otherwise specified, Contractor's insurance shall include the following:
 - \$300,000 single limit (on contracts less than \$100,000)
 - \$1,000,000 single limit (on contracts \$100,000 and more)
 - Commercial General Liability. This insurance shall be written in comprehensive form including Products, completed operations and Personal and Advertising injury and shall protect the Contractor against all claims arising from injuries to members of the public or damage to property of others arising out of any act or omission of the Contractor or its

agents, employees, or subcontractors. In addition, this policy shall specifically insure the contractual liability assumed by the Contractor under this Contract entitled "Insurance and Hold Harmless." The property damage liability coverage shall contain no exclusion relative to blasting, explosion, collapse of building, or damage to underground property. Unless otherwise specified, Contractor's insurance shall include the following:

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

- Additional Insurance: Excess Liability coverage or additional insurance covering special hazards may be required on certain projects. Such additional insurance requirements shall be as specified in Instructions to Bidders or Special Conditions.

14. INDEMNITY

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

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

- 14.2 For purposes of this Contract, and without in any way limiting indemnification obligations that may be set forth elsewhere in the Contract, the Contractor hereby agrees to indemnify, defend and hold harmless the City and County from any and all Loss where Loss is caused or incurred or alleged to be caused or incurred in whole or in part as a result of the negligence or other actionable fault of the Contractor, his/her employees, agents, Subcontractors and suppliers.
- 14.3 It is agreed as a specific element of consideration of this Contract that this indemnity shall apply notwithstanding the joint, concurring or contributory or comparative fault or negligence of the City and County or any third party and, further, notwithstanding any theory of law including, but not limited to, a characterization of the City's or County's or any third party's joint, concurring or contributory or comparative fault or negligence as either passive or active in nature.
- 14.4 Nothing in this section shall be deemed to impose liability on the Contractor to indemnify the City or County for Loss when the negligence or other actionable fault the City is the sole cause of Loss.
- 14.5 With respect to the City's or County's rights as set forth herein, the Contractor expressly

waives all statutory defenses, including, but not limited to, those under workers compensation, contribution, comparative fault or similar statutes to the extent said defenses are inconsistent with or would defeat the purpose of this section.

15. SUCCESSORS AND ASSIGNS

- 15.1 The City and Contractor bind themselves, their successors, assigns and legal representatives to the other party hereto and to successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in this Contract.
- 15.2 The Contractor shall not assign or sublet the work, or any part thereof, without the previous written consent of the City, nor shall it assign, by power of attorney or otherwise, any of the money payable under this Contract unless by and with the like written consent of the City. In case the Contractor assigns all, or any part of any moneys due or to become due under this Contract, the instrument of assignment shall contain a clause substantially to the effect that it is agreed that the right of the assignee in and to any moneys due or to become due to the Contractor shall be subject to all prior liens of all persons, firms and corporations for services rendered or materials supplied for the performance of the Work called for in this Contract.
- 15.3 Should any Subcontractor fail to perform in a satisfactory manner, the work undertaken, its subcontract shall be immediately terminated by the Contractor upon notice from the City. Performing in an unsatisfactory manner is defined as consistently having more than 10% of work unacceptable. The Contractor shall be as fully responsible to the City for the acts and omissions of the subcontractors, and of persons either directly or indirectly employed by them, as Contractor is for the acts and omissions of persons directly employed. Nothing contained in this Contract shall create any contractual relations between any Subcontractor and the City, nor shall anything contained in the Contract Documents create any obligation on the part of the City to pay or to see to the payment of any sums due any Subcontractor.
- 15.4 The Contractor shall not award subcontracts which total more than forty-five (45%) of the Contract Price and shall perform within its own organization work amounting to not less than fifty-five percent (55%) of the total Contract Price. Approval by the City of any Subcontractor shall not constitute a waiver of any right of the City to reject defective work, material or equipment not in compliance with the requirements of the Contract Documents. The Contractor shall not make any substitution for any Subcontractor accepted by the City unless the City so agrees in writing.
- 15.5 The Contractor shall not subcontract, sell, transfer, assign or otherwise dispose of the Contract or any portion thereof without previous written consent from the City. In case such consent is given, the Contractor, shall be permitted to subcontract a portion thereof, but shall perform with his/her own organization work amounting to not less than fifty five (55%) of the total Contract Price. No subcontracts, or other transfer of Contract, shall release the Contractor of its liability under the Contract and bonds applicable thereto.
- 15.6 The Contractor shall cause appropriate provisions to be inserted in all subcontracts relative to the Work to bind Subcontractors to the Contractor by the terms of the Contract Documents insofar as applicable to the work of the Subcontractor and to give the Contractor the same power to terminate any Subcontract as the City has to terminate the Contractor under any provisions of the Contract Documents.

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

16. NON-DISCRIMINATION LAWS

- 16.1 The Contractor further agrees that the Contractor shall abide by the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 et seq.) and the applicable provision of the Americans With Disabilities Act (42 U.S.C. 1201 et seq.) as well as all other federal, state and local laws, ordinances and regulations applicable to this Work and furnish any certification required by any federal, state or local governmental agency in connection therewith.
- 16.2 In all solicitations or advertisements for employees, the Contractor shall include the phrase, "equal opportunity employer", or similar phrase to be approved by the Kansas Human Rights Commission (Commission);
- 16.3 If the Contractor fails to comply with the manner in which the Contractor reports to the Commission in accordance with the provisions of K.S.A. 44-1031 and amendments thereto, the Contractor shall be deemed to have breached the present contract and it may be cancelled, terminated or suspended, in whole or in part, by the contracting agency;
- 16.4 If the Contractor is found guilty of a violation of the Kansas Act Against Discrimination under a decision or order of the Commission which has become final, the Contractor shall be deemed to have breached the present Contract and it may be cancelled, terminated or suspended, in whole or in part, by the contracting agency; and
- 16.5 The Contractor shall include the provisions of this section in every subcontract or purchase order so that such provisions will be binding upon such Subcontractor or vendor.
- 16.6 The provisions of this section shall not apply to a contract entered into by a Contractor who employs fewer than four employees during the terms of such contract; or whose contracts with the City cumulatively total \$5,000 or less during the fiscal year of the City.

17. RELATIONS WITH OTHER CONTRACTORS:

- 17.1 The Contractor shall cooperate with all other contractors who may be performing work on

behalf of the City, and workers who may be employed by the City, or any other entity on any work in the vicinity of the Work to be done under this Contract, and the Contractor shall so conduct his/her operations as to interfere to the least possible extent with the work of such contractors or workers. The Contractor shall be responsible for any injury or damage, that may be sustained by other contractors, workers, their work or employees of the City, because of any fault or negligence on the Contractor's part, and shall, at his/her own expense, repair or pay for such injury or damage. If the work of the Contractor is delayed because of any acts or omissions of any other Contractor or Contractors, the Contractor shall have no claim against the City on that account other than for an extension of time.

- 17.2 When two or more Contracts are being executed at one time in such manner that work on one Contract may interfere with that on another, the City shall decide which Contractor shall progress at which time.
- 17.3 Other projects the Contractor may have to coordinate shall be listed in the Special Conditions.
- 17.4 When the territory of one Contract is the necessary or convenient means of access for the transportation or movement of workers, materials, or appliances required for the execution of another Contract, such privileges of access or any other responsible privilege may be granted by the City to the Contractor so desiring, to the extent such may be reasonably necessary.
- 17.5 Upon execution of the Contract, the Contractor shall furnish the City, in writing, the names of persons or entities proposed by the Contractor to act as a Subcontractor on the Work. The City shall promptly reply to the Contractor, in writing, stating any objections the City may have to such proposed Subcontractor. The Contractor shall not enter into a Subcontract with a proposed Subcontractor with reference to whom the City has made timely objection. The Contractor shall not be required to Subcontract with any party to whom the Contractor has objection.

18. RIGHT OF CITY TO TERMINATE

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

and the Contractor shall be compensated as provided herein.

- 18.2 The City, within its sole discretion, may elect to terminate the Contract with the Contractor for convenience upon three (3) days written Notice to Contractor. In the event of such termination, Contractor shall cease immediately all operations and shall be compensated for all work performed as of the date of termination in accordance with the terms of payment in this contract. Contractor shall not be entitled to any anticipatory profits of other costs other than direct costs of demobilization.

19. MISCELLANEOUS:

- 19.1 The Contractor warrants to the City that all labor furnished to progress the Work under the Contract will be competent to perform the tasks undertaken, that the product of such labor will yield only first-class results, that materials and equipment furnished will be of good quality and new unless otherwise permitted by this Contract, and that the Work will be of good quality, free from faults and defects and in strict conformance with the Project Manual. All Work not conforming to these requirements may be considered defective.
- 19.2 The Contractor shall obtain and pay for all permits, fees and licenses necessary or ordinary for the Work. The Contractor shall comply with all lawful requirements, including federal and state laws, City and County laws and ordinances and building codes, applicable to the Work and shall give and maintain copies of all notices required by applicable law pertaining to the Work.
- 19.3 Both the business address of the Contractor given in the Bid or proposal upon which this Contract is founded, and the Contractor's Office near the Work, is hereby designated as the places to which all notices, letters, and other communications to the Contractor may be mailed or delivered. The delivering at either of the above named addresses, or depositing in any mailbox regularly maintained by the Post Office, of any notice, letter or other communication so addressed to the Contractor, and the date of said service shall be the date of such delivery or mailing. Such addresses may be changed at any time by an instrument in writing, executed by the Contractor, presented, and delivered to the Project Manager and to the City. Nothing herein contained shall be deemed to preclude or render inoperative the service of any notice, letter, or communication upon the Contractor personally.
- 19.4 It is mutually agreed by and between the parties to this Contract that all royalties and fees for and in connection with patents, or patent infringement, claims for materials, articles, apparatus, devices or equipment (as distinguished from processes) used in or furnished for the work shall be included in the Contract amount and the Contractor shall satisfy all demands that may be made at any time for such, and the Contractor shall at its cost and expense, defend any and all suits or proceedings that may be instituted at any time against the City for infringement or alleged infringement of any such patents involved in the work, and Contractor shall pay any award of damages.
- 19.5 The right of general administration of the City shall not make the Contractor an agent of the City, and the liability of the Contractor for all damages to persons, firms, and corporations, arising from the Contractor's execution of the Work, shall not be lessened because of such general administration, but as to all such persons, firms, and corporations, and the damages, if any, to them or their property. The Contractor herein is an independent

Contractor in respect to the work.

- 19.6 For a period of time, from the inception of the Contract to three (3) years from the date of final payment under the Contract, the Contractor and subcontractors shall maintain books, accounts, ledgers, invoices, drafts, pages and other records pertaining to the performance of this Contract. At all reasonable times during this period these records shall be available within the State of Kansas at a field or permanent business office for inspection by authorized representatives of the City or of any other agency, which has contributed funds in connection with the Contract or to which the City is obligated to make such inspections available. In addition, this requirement shall be included in all subcontracts entered into in connection with this Contract.
- 19.7 Titles, subheadings used herein, and other Contract Documents are provided only as a matter of convenience and shall have no legal bearing on the interpretation of any provision of the Contract Documents.
- 19.8 No waiver of any breach of this Contract shall be construed to be a waiver of any other subsequent breach.
- 19.9 Should any provision of this Agreement or other Contract Documents be determined to be void, invalid, unenforceable or illegal for whatever reason, such provision(s) shall be null and void; provided, however, that the remaining provisions of this Agreement and/or the other Contract Documents shall be unaffected thereby and shall continue to be valid and enforceable.
- 19.10 The Contractor shall keep fully informed of all existing and current regulations of the City, and County, State, and National Laws, which in any way limit or control the actions or operations of those engaged upon the work, or affecting materials supplied, to or by them. The Contractor shall at all times observe and comply with all ordinances, laws, and regulations, and shall protect and indemnify the City and the City's officers and agents against any claims or liability arising from or based on any violation of the same.
- 19.11 Nothing contained in these Project Manual shall create, or be interpreted to create, privity or any other contractual agreement between the City and any person or entity other than the Contractor.
- 19.12 Duties and obligations imposed by the Contract Documents, rights, and remedies available hereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.
- 19.13 No action or failure to act by the City, Project Manager or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval or acquiescence in a breach hereunder, except as may be specifically agreed in writing.
- 19.14 Contractor specifically acknowledges and confirms that: 1.) he/she has visited the site, made all inspections he deems appropriate and has read and fully understands the Contract Documents, including all obligations and responsibilities undertaken by he as specified herein and in other Contract Documents and knowingly accepts the same; 2.) he/she has furnished copies of all Contract Documents to his/her insurance carrier(s)

and his/her surety(ies); and 3.) his/her insurance carrier(s) and surety(ies) agree to be bound as specified herein, in the Contract Documents and in the insurance policy(ies) and bonds as to liability and surety coverage.

- 19.15 It is specifically agreed between the parties executing this Agreement that the Contract Documents are not intended to create any third party beneficiary relationship nor authorize anyone not a party to this Agreement to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of this Agreement. The duties, obligations and responsibilities of the parties to this Agreement with respect to third parties shall remain as imposed by law.
- 19.16 This agreement is entered into, under and pursuant to, and is to be construed and enforceable in accordance with the laws of the State of Kansas.

WITNESSETH:

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

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

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

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

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

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

IN WITNESS WHEREOF, the City, has caused this Agreement to be executed in its behalf, thereunto duly authorized, and the said Contractor has executed five (5) counterparts of this Contract in the prescribed form and manner, the day and year first above written.

Project: _____

Month Year _____

CITY OF PRAIRIE VILLAGE

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

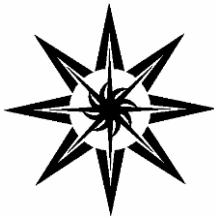
ATTEST:

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: November 17, 2014

DISCUSS RE-BIDDING OF THE 75TH STREET PROJECT FROM STATELINE ROAD TO MISSION ROAD, PROJECT 75ST0001.

RECOMMENDATION

No formal recommendations are required at this time. Once the project is re-bid then formal action will be required.

BACKGROUND

Project 75ST0001, 75th Street- Stateline Road to Mission Road was selected by the Mid-America Regional Council(MARC) to receive Federal Funds in 2011. The Kansas Department of Transportation(KDOT) administers the Federal Funds for local communities in Kansas. This project was initiated by the City and coordinated through KDOT. GBA was hired by the City as the design consultant and the 75th Street Committee provided input into the project design.

Bids were opened for this project by KDOT on October 22, 2014. At the November 3, 2014 City Council Meeting the bids that KDOT received were rejected.

It was requested at the November 3, 2014 meeting to have GBA better explain why their final estimate was significantly lower than the low bid amount and to also obtain more information about re-bidding the project.

GBA will present information that they have learned from discussions with KDOT, Amino Brothers, and O'Donnell and Son's. Areas where GBA's estimate was significantly different from bid prices include earthwork, retaining walls, drainage items, sidewalk/ramps, and curb and gutter.

Items proposed to modify for the re-bidding of the project.

Pavement Repair- Estimated reduction of \$200,000. GBA had shown the full depth pavement repair to be concrete versus asphalt and also assumed 5% of the total pavement area for repair. A significantly lower amount of pavement repair is appropriate. Utilizing asphalt for the repair is adequate and will be less expensive.

Asphalt Overlay thickness- A 3 inch mill and asphalt overlay was designed for this project. With the work WaterOne performed this year we were able to see the pavements condition and we feel the pavement is structurally sound and that a thinner wearing surface of 2 inches is adequate. This will reduce the estimate by about \$100,000.

After discussions with KDOT there are no additional changes that can be made unless significant design changes are made to the scope of the project. Changing the western limit to Windsor will not work as the elevation of the street changes in this area. With the two changes listed above we could get the project through the final KDOT process and

meet a January 2014 letting. Any significant design changes would delay the letting further into 2014 and thus would reduce the construction time period.

It is anticipated that with the two changes mentioned above that the new bid would be less than it previously was but would still be significantly above what was originally planned. If the path above is chosen then the City Council should have the expectation to fund and award the project. Additional funds required would come from other CIP sources discussed on December 3, 2014 or as determined at the time of award. The City will need to bid and award a project to continue the utilization of the 1.6 million in federal funds.

FUNDING SOURCE

CIP Funds and KDOT/Federal Funds

RELATION TO VILLAGE VISION

TR1a. *Ensure that infrastructure improvements meet the needs of all transportation users.*

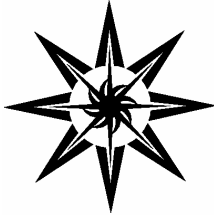
ATTACHMENTS

None

PREPARED BY

Keith Bredehoeft, Public Works Director

November 12, 2014



ADMINISTRATION

Council Committee Meeting Date: November 17, 2014
Council Meeting Date: November 17, 2014

Consider approval of a deferred compensation 457(b) plan document

RECOMMENDED MOTION:

Move for the approval of a deferred compensation 457(b) city plan document and withdraw from the State's 457(b) plan. Also move to designate a Retirement Plan Committee consisting of the City Administrator, HR Manager and Finance Director.

BACKGROUND:

City employees can voluntarily participate in a deferred compensation 457(b) plan. The employee designates the amount to be withdrawn from their paycheck and also directs their funds within the selection of investment funds offered by the provider.

The City currently participates in a 457(b) plan attached to the State of Kansas and operated through the KPERS office. Voya (ING) has been the state's plan provider for 30+ years. The State has selected another provider starting in January 2015.

A majority of city employees prefer to keep their personal 457(b) plans with Voya due to the level of service and familiarity. Staff was able to negotiate with Voya for the fund management rates to remain similar to the state's existing plan. The City offers a match incentive for employees with the matching funds placed in a city sponsored 401a plan. The 401a plan provider is Voya with the funds individually directed by the employee.

The attached 457(b) plan document consists of both the adoption agreement and the basic plan document. The attorney with Lathrop & Gage who reviews the City's police pension plan prepared the documents. The provisions of the 457(b) plan mirror the provisions under the state's plan. The adoption agreement is for a 5 year period.

The plan fees are paid by the employee as part of their fund investments. The city supports the plan with indirect expenses such as administering the payroll process and arranging employee investment counseling sessions.

There is minimal risk associated with the City administering its own plan. The City takes on the fiduciary duty similar to the current 401a plan and Police Pension Plan. The City carries fiduciary insurance for the Police Pension Plan and the other two plans are in the process of being added.

ATTACHMENT:

- Proposed 457(b) Plan Document which consists of the adoption agreement and basic plan document

PREPARED BY:

Quinn Bennion

City Administrator

Date: November 13, 2014

Voya Financial™

**SPECIMEN ADOPTION AGREEMENT FOR
457(b) DEFERRED COMPENSATION PLAN
FOR GOVERNMENTAL EMPLOYERS**

The undersigned Employer adopts the 457(b) Deferred Compensation Plan for Governmental Employers for those Employees who will qualify as Participants hereunder, to be known as the

The City of Prairie Village, Kansas 457(b) Plan
(Enter Plan Name)

It will be effective as of the date specified below. The Employer hereby selects the following Plan specifications:

EMPLOYER INFORMATION (Plan Section 1.11)

Name of Employer: The City of Prairie Village, Kansas

Address: 7700 Mission Road
Prairie Village KS 66208
City State Zip

Telephone Number: (913) 381-6464

Employer Identification Number: 48-6077081

Location of Employer's Principal Office:

state commonwealth district city of Prairie Village and the Plan shall be governed in accordance with retirement plan laws of the City of Prairie Village, Kansas (name of state/commonwealth).

Employer Fiscal Year:

The 12-consecutive month period commencing on January 1 [month and day] and ending on December 31 [month and day].

PLAN INFORMATION

Effective Date:

This Adoption Agreement of the 457(b) Deferred Compensation Plan for Governmental Employers will:

establish a new Plan effective as of January 1, 2015.

constitute an amendment and restatement in its entirety of a previously established 457(b) Plan of the Employer which was effective _____. Except as specifically provided in the Plan, the effective date of this amendment and restatement is _____.

Plan Year (Plan Section 1.21):

The 12-consecutive month period commencing on January 1 [month and day] and ending on December 31 [month and day].

Name of Administrator (Plan Section 1.1):

Employer (Use Employer Address)

Name(s) Retirement Plan Committee

Address 7700 Mission Road

Prairie Village, Kansas 66208
City State Zip

ELIGIBILITY (Plan Section 2.1)

Eligible Individuals for Purposes of Participant Deferral Contributions:

All Employees

All Employees other than the following group or groups of Employees elected below:

- Nonresident aliens with no U.S. source of income
- Employees who normally work less than 20 hours per week
- Students performing services for the Employer whose Compensation is not considered wages under the Federal Insurance Contributions Act ("FICA")
- Collectively bargained employees

NOTE: The group(s) specified must correspond to a group of the same designation that is defined in statutes, ordinances, rules, regulations, personnel manuals or other authority for the state or local jurisdiction of the Employer.

Independent Contractors

For purposes of this section, the term Eligible Individual:

- Will **not** include Independent Contractors
- Will include all Independent Contractors
- Will include all Independent Contractors other than as specified below:

CONTRIBUTIONS AND ALLOCATIONS

Roth 457(b) Contributions (Plan Section 1.24)

Roth 457(b) Contributions will will not be permitted under the Plan.

Deferral of Accumulated Sick Pay, Accumulated Vacation Pay and Back Pay (Plan Section 3.1(b)):

Participant may elect to defer (check all that are applicable) to the Plan:

- accumulated sick pay
- accumulated vacation pay
- back pay

Note: any amounts deferred under Section 3.1(b) of the Plan must be consistent with applicable state and local law, including, but not limited to, the terms of any collective bargaining agreements.

Age 50 Plus Catch-Up Contributions (Plan Section 3.3):

Age 50 Plus Catch-Up Contributions will will not be permitted under the Plan.

Transfers into the Plan (Plan Section 3.7):

Transfers into the Plan from an eligible 457 plan sponsored by another governmental employer will will not be permitted.

Rollovers:

Rollover Contributions will will not be permitted under the Plan (Plan Section 3.8).

The Plan will accept the following types of non-Roth Rollover Contributions:

- 457(b) Rollovers
- Non-457(b) Rollovers

If Roth 457(b) Contributions are permitted the Plan, then the following rollover contributions will be permitted:

- Not Applicable
- Non-457(b) Rollovers
- Roth 457(b) Rollovers
- Roth Non-457(b) Rollovers
- Rollover of In-Plan Roth Non-457(b) Rollovers

Normal Retirement Age (Plan Section 1.16):

For purposes of the Special 457 Catch-Up Deferral Election under Section 3.2, Normal Retirement Age will be:

Option 1: Employer determines Normal Retirement Age

The NRA is a range of age(s) beginning at:

- the earliest retirement age at which an individual could receive unreduced benefits under the Employer's defined benefit pension plan
- Age 65
- Other: _____

NOTE: Age specified can be the earlier of age 65 or, if applicable, date above at which a Participant could receive unreduced benefits from Employer's defined benefit pension Plan.

and ending at:

- Age 70½
- Other: _____

NOTE 1: Normal Retirement Age cannot be later than age 70 ½.

NOTE 2: Beginning and ending ages may be the same age, if elected by the Employer.

Option 2: Participant determines Normal Retirement Age

- Age 70 ½.
- the Normal Retirement Age elected by the Participant that is between:
 - the earlier of the earliest retirement age under the Employer's pension plan at which the Participant immediately could receive unreduced retirement benefits or age 65; and
 - age 70 ½.

NOTE 3: The Employer is not permitted to have more than one Normal Retirement Age for each Participant under all of the plans under Section 457(b) of the Code that it sponsors.

DISTRIBUTIONS

Distribution Options (Plan Section 4.3(c)):

- Joint and survivor annuity
- Lump sum
- Immediate or deferred annuity (including life annuities and installment payment annuities)
- Systematic distribution option permitted under the Investment Product.
- Other: _____

NOTE: Distribution options selected are available to the extent permitted by applicable law and the terms of the Investment Product.

In the event that a Participant does not elect a form of payment at the time that distributions are required to begin in accordance with Section 4.5, any benefits payable to the Participant will be made as follows:

- In the form of an annuity payable over the life expectancy of the Participant that meets the requirements of Code Section 401(a)(9)
- Lump sum
- Other: _____

Death Benefits Payable to Beneficiary (Plan Section 4.3(d)):

Amounts payable to the Beneficiary may be elected by the Beneficiary in the following forms of benefit payment:

- Same distribution options as available to the Participant
- Other: _____

NOTE: Distribution options selected are available to the extent permitted by applicable law and the terms of the Investment Product.

In the event a Beneficiary fails to make an election as to a benefit distribution option, any benefit payable to such Beneficiary will be distributed in accordance with Code Section 401(a)(9).

Rollovers

Distribution of a Participant 457 Rollover Account and a Participant Non-457 Rollover Account (Plan Section 4.1(b)):

Amounts payable under a Participant 457 Rollover Account and a Participant Non-457 Rollover Account will be paid to a Participant:

- Upon attainment of an event as described in Section 4.1
- Upon the request of a Participant
- Other: _____

Unforeseeable Emergency Withdrawals (Plan Section 4.6):

Unforeseeable Emergency Withdrawals will will not be permitted under the Plan.

If Unforeseeable Emergency withdrawals are allowed by the Plan, the amount eligible for such withdrawals will consist of:

- The Participant Account
- The Participant Deferral Account
- The Participant 457 Rollover Account (if amounts are not payable before a Participant attains an event as described in Section 4.1)
- The Participant Non-457 Rollover Account (if amounts are not payable before a Participant attains an event as described in Section 4.1)

A Participant may may not take an Unforeseeable Emergency Withdrawal resulting from the illness or accident of a primary Beneficiary designated by the Participant.

Small Balance Distribution (Plan Section 4.7):

Small balance distributions attributable to a Participant Deferral Account will will not be permitted under the Plan.

Transfer of Amounts for Purchase of Service Credits in Governmental Retirement System (Plan Section 4.9)

Participant will will not be permitted to transfer amounts under the Plan to a governmental retirement system in order to purchase service credits.

Loans to Participants (Plan Section 4.11):

Loans will will not be permitted under the Plan.

Distributions for Health Insurance and Long Term Care (Plan Section 4.12):

Distributions to pay for health insurance and long term care will will not be permitted under the Plan.

CERTIFICATION AND SIGNATURE

The undersigned Employer hereby represents that it is a unit of a State or local government or an agency or instrumentality of one or more units of a State or local government as described in Code Section 414(d).

This Adoption Agreement and the Plan document together constitute the Plan.

IN WITNESS WHEREOF, the Employer hereby causes this Plan to be executed on this _____ day of November, 2014.

EMPLOYER: _____ City of Prairie Village, Kansas _____

By: _____
Ronald L. Shaffer, Mayor

**457(b) DEFERRED COMPENSATION
PLAN FOR GOVERNMENTAL
EMPLOYERS
BASIC PLAN DOCUMENT**

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457(b) DEFERRED COMPENSATION
PLAN FOR GOVERNMENTAL EMPLOYERS
PREAMBLE

The Employer hereby establishes the Code Section 457(b) Deferred Compensation Plan for Governmental Employers (the "Plan").

The Plan is established pursuant to applicable state law and is intended to comply with the provisions of Section 457(b) of the Internal Revenue Code of 1986, as amended, Income Tax Regulations thereunder and applicable law. The Plan consists of the provisions set forth in this basic plan document and the Adoption Agreement, and is applicable to each Eligible Individual.

ARTICLE I
DEFINITIONS

As used in this Plan, the following words and phrases will have the meanings set forth herein unless a different meaning is clearly required by the context.

1.1 "Administrator" means the person(s), committee or organization appointed by the Employer pursuant to Section 5.2 to administer the Plan and perform administrative functions for the Plan as specified by the Employer.

1.2 "Adoption Agreement" means the separate agreement that is executed by the Employer and sets forth the elective provisions of the Plan. The Adoption Agreement is considered a part of the Plan.

1.3 "Age 50 Plus Catch-Up Contribution" means the catch-up contribution for Participants who attain age 50 by the end of the calendar year, as permitted under Code Section 414(v) and pursuant to Section 3.3.

1.4 "Beneficiary" means the individual, individuals or trust designated by the Participant in writing on a form acceptable to the Administrator, and received by the Administrator before the Participant's death, to receive any undistributed amounts under the Participant Account which becomes payable upon the Participant's death. A Beneficiary may designate his own Beneficiary. If a Participant or Beneficiary does not designate a Beneficiary in a form acceptable to the Administrator, then his estate will be deemed to be his Beneficiary. In addition, any Beneficiary designation will meet the requirements of applicable state law.

1.5 "Code" means the Internal Revenue Code of 1986, as now in effect or as hereafter amended. All citations to sections of the Code are to such sections as they may from time to time be amended or renumbered.

1.6 "Compensation" means for an Employee all cash compensation for services to the Employer, including salary, wages, fees, commissions, bonuses, and overtime pay, that is includible in the Employee's gross income for the calendar year, plus amounts that would be cash compensation for services to the Employer includible in the Employee's gross income for the calendar year but for a compensation reduction election under Code Sections 125, 132(f), 401(k), 403(b) or 457(b) (including an election under Article III to defer Compensation under the Plan). For purposes of an Independent Contractor, "Compensation" will mean all amounts payable to a Participant from the Employer as remuneration for services rendered which would be includible in income for federal tax purposes if not deferred under this Plan, subject to the provisions of the current Code.

1.7 “Deferrals” means the amount of Compensation deferred by a Participant to the Plan, comprising of Elective Deferrals and, if elected by the Employer in the Adoption Agreement and the Participant so elects on a Participation Agreement, Roth 457(b) Contributions.

1.8 “Elective Deferrals” means amounts made by the Employer to the Plan on a voluntary pre-tax basis pursuant to a Participation Agreement entered into by a Participant,

1.9 “Eligible Individual” means any Employee who is in one or more of the classifications specified in the Adoption Agreement, and, if elected by the Employer, may include Independent Contractors.

1.10 “Employee” means any common law employee who is employed by the Employer and who performs services for the Employer for which Compensation is payable.

1.11 “Employer” means a state or the District of Columbia, any political subdivision of a state or the District of Columbia, or any agency or instrumentality of a state or the District of Columbia, which satisfies the definition of Code Section 457(e)(1)(A) (together with any other entity required to be aggregated with such governmental employer under Code Sections 414(b), (c), (m) or (o)) and which has adopted this Plan as indicated in the Adoption Agreement.

1.12 “Includible Compensation” means an Employee’s actual wages in box 1 of Form W-2 for the Employer, but increased (up to the dollar maximum) by any compensation reduction election under Code Section 125, 132(f), 402(g)(3) or 457(b). The amount of Includible Compensation is determined without regard to any community property laws. Pursuant to Section 1.457-4(d)(1) of the Income Tax Regulations, Includible Compensation will include any payments made to a Participant who has had a Severance from Employment, provided that the Includible Compensation is paid by the later of 2 ½ months after the Participant’s Severance from Employment or the end of the calendar year that contains the date of such Participant’s Severance from Employment. In addition, pursuant to Section 1.457-4(d)(1) of the Income Tax Regulations, Includible Compensation will include payments made to an individual who does not currently perform services for the Employer by reason of qualified military service (as defined in Code Section 414(u)(5)) to the extent those payments do not exceed the amount the individual would have received if the individual had continued to perform services for the Employer rather than enter qualified military service. Includible Compensation will not include Employee pick-up contributions described in Code Section 414(h)(2).

1.13 “Independent Contractor” means any person to whom Compensation from the Employer is payable for services rendered pursuant to one or more written or oral contracts, if such person is not a common-law employee.

1.14 “In-Plan Roth Rollover” means a rollover contribution to the Plan that consists of a distribution from an Elective Deferral Account, a 457(b) Rollover Account or a non-457(b) Rollover Account under the Plan that the Participant rolls over to the Participant’s In-Plan Roth 457(b) Rollover Account in the Plan, in accordance with Code Section 402A(c)(4).

1.15 “Investment Product” means group or individual annuity contracts or such other investment arrangements issued by or offered through the Provider and used to hold assets of the Plan.

1.16 “Normal Retirement Age” means the age as elected by the Employer in the Adoption Agreement that is used for the Special 457 Catch-up Contribution election under Section 3.2. The Employer is not permitted to have more than one Normal Retirement Age for each Participant under all plans under Code Section 457(b) that it (together with any other entity required to be aggregated with the Employer under Code Section 414(b), (c), (m) or (o)) sponsors.

1.17 "Participant" means any individual who has entered into a Participation Agreement to make Deferrals under the Plan or has previously made Deferrals under the Plan and who has not yet received a distribution of his entire Participant Account under the Plan. As appropriate, a Participant means a Beneficiary or an alternate payee as defined in Code Section 414(p)(8).

1.18 "Participant Account" means the following accounts established for the Participant and maintained by the Administrator for each Participant, including any earnings and losses attributable thereon:

- (a) Elective Deferral Account,
- (b) Roth 457(b) Contributions Account,
- (c) 457(b) Rollover Account,
- (d) Non-457(b) Rollover Account,
- (e) Roth 457(b) Rollover Account,
- (f) Roth Non-457(b) Rollover Account,
- (g) Rollover of In-Plan Roth Non-457(b) Rollover Account; and
- (h) In-Plan Roth 457(b) Rollover Account.

1.19 "Participation Agreement" means an agreement, which meets the requirements of Section 2.4, entered into between an Eligible Individual and the Employer pursuant to which an Eligible Individual agrees to defer Elective Deferrals and/or Roth 457(b) Contributions to the Plan and thus to become a Participant.

1.20 "Plan" means the name of the Plan as indicated in the Adoption Agreement.

1.21 "Plan Year" means the Plan's 12-consecutive month accounting year as elected by the Employer in the Adoption Agreement.

1.22 "Provider" means Voya Retirement Insurance and Annuity Company and/or ReliaStar Life Insurance Company or such other provider entity as the Employer may approve.

1.23 "Rollover Contribution" means, if so elected by the Employer in the Adoption Agreement, contributions made by a Participant (or, if applicable, Eligible Individual) of "eligible rollover distributions" in accordance with Code Section 402(c)(4).

1.24 "Roth 457(b) Contributions" means, if so elected by the Employer in the Adoption Agreement, contributions that are:

(a) made by the Employer to the Plan pursuant to a Participation Agreement entered into by a Participant, which qualifies as a "designated Roth contribution" within the meaning of Code Section 402A;

(b) irrevocably designated by the Participant at the time of the cash or deferred election as a Roth 457(b) Contribution that is being made in lieu of all or a portion of the Elective Deferrals the Participant is otherwise eligible to make under the Plan; and

(c) treated by the Employer as includible in the Participant's income at the time the Participant would have received that amount in cash if the Participant had not made a cash or deferred election.

1.25 "Severance from Employment" means the date on which the Employee dies, retires or otherwise has a severance from employment with the Employer, as determined by the Administrator.

1.26 "Special Section 457 Catch-up Contributions" means the catch-up contribution for a Participant in the three consecutive years prior to the year in which the Participant reaches Normal Retirement Age, as permitted under Code Section 457(b)(3) and pursuant to Section 3.2.

1.27 "Unforeseeable Emergency" means a financial hardship of the Participant or Beneficiary resulting from:

(a) An illness or accident of:

- (1) the Participant or the Beneficiary
- (2) the spouse of the Participant or Beneficiary, or
- (3) the dependent of the Participant or Beneficiary;

(b) Loss of the Participant's or Beneficiary's property due to casualty; or

(c) Similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the Participant or Beneficiary.

In addition, if elected by the Employer in the Adoption Agreement, an Unforeseeable Emergency means a severe financial hardship of the Participant resulting from an illness or accident of a primary Beneficiary designated by the Participant under the Plan.

A determination of an Unforeseeable Emergency will be based on each Participant's and Beneficiary's specific facts and circumstances.

2.8 "Valuation Date" means each business day during the Plan Year or such other valuation date specified by the Investment Provider for a particular investment.

ARTICLE II PARTICIPATION

2.1 Eligibility

Each Eligible Individual will be a Participant in the Plan when he satisfies the eligibility requirements specified by the Employer in the Adoption Agreement and has executed a Participation Agreement.

2.2 Determination of Eligibility and Effective Date of Participation

(a) The Administrator will determine whether an Eligible Individual has satisfied the eligibility requirements specified by the Employer in the Adoption Agreement based upon information furnished by the Employer. Such determination will be conclusive and binding and the criteria for such determination will be applied uniformly to all Participants.

(b) The Participant will provide investment direction for contributions made to an Investment Product on such forms as may be required by the Provider.

2.3 Termination of Eligibility

In the event a Participant will go from a classification of an Eligible Individual to a non-Eligible Individual, such Participant will not be able to make Deferrals to the Plan until he is again reclassified as an Eligible Individual. The Participant Account of such inactive Participant will continue to be allocated any attributable earnings and losses based on the investment direction supplied by the Participant.

2.4 Participation Agreements

(a) In order to participate in the Plan, a Participant must complete a Participation Agreement with the Employer and file such Participation Agreement in a manner and method determined by the Administrator. The Participation Agreement will specify:

- (1) The amount (expressed either as a dollar amount or as a percentage) of the Participant's Compensation which the Participant agrees to make as Deferrals, subject to the limitations of Article III; and
- (2) The date as of which Deferrals pursuant to the Participation Agreement will begin.

(b) A Participant may make Deferrals payable in the calendar month during which the Eligible Individual first becomes a Participant if the Participation Agreement providing for such Deferrals is entered into before the first day of the month in which the Compensation is paid or becomes available.

(c) Notwithstanding subsection (b), a new Employee who is also an Eligible Individual may become a Participant and make Deferrals payable in the calendar month during which he first becomes an Employee if a Participation Agreement providing for the Deferrals is entered into on or before the first day on which he performs services for the Employer.

(d) A Participant may, by amendment of a Participation Agreement or by any manner as the Administrator may prescribe, do any of the following:

- (1) change the specification of the investment for any contributions to a Participant Account under an Investment Product; or
- (2) change prospectively the amount of Deferrals.

An amendment to the Participation Agreement will be effective as early as administratively practicable, but not earlier than the first day of the following calendar month in which the Compensation is paid or made available.

2.5 Information Provided by the Employee

Each Eligible Individual enrolling in the Plan should provide to the Administrator at the time of initial enrollment, and later if there are any changes, any information necessary for the Administrator to administer the Plan, including, without limitation, whether he is a participant in any other eligible plan under Code Section 457(b).

2.6 Contributions Made Promptly

All contributions under the Plan will be transferred to the applicable Investment Product within a period that is not longer than is reasonable for the proper administration of the Participant Accounts. For purposes of this requirement, Deferrals under the Plan by a Participant must be transferred to the Investment Product within 15 business days following the month in which these amounts would otherwise have been paid to the Participant.

2.7 Leave of Absence

Unless an election is otherwise revised, if an Employee is absent from work by leave of absence, Deferrals under the Plan will continue to the extent that Compensation continues.

2.8 Disability

A disabled Participant may elect Deferrals during any portion of the period of his or her disability to the extent that he or she has actual Compensation (not imputed Compensation and not disability benefits) from which to make contributions to the Plan and has not had a Severance from Employment.

ARTICLE III
CONTRIBUTIONS AND LIMITATIONS

3.1 Deferrals

(a) Except as provided in Section 3.2 and 3.3 and subject to any applicable law or under any applicable collective bargaining agreement, the maximum amount of Deferrals which may be made by a Participant in any taxable year will not exceed the lesser of (1) the applicable dollar amount provided under Code Section 457(b)(2) (adjusted for cost of living under Code Section 457(e)(15)) or (2) 100% of the Participant's Includible Compensation.

(b) If elected by the Employer in the Adoption Agreement, a Participant may elect to make Deferrals from accumulated sick pay, accumulated vacation pay and back pay, provided the Participant enters into a Participation Agreement pursuant to Section 2.4 to make such Deferrals before the amounts would otherwise be paid or made available. A Participant who is a former Employee may make Deferrals from accumulated sick pay, vacation pay and back pay, provided that the Participant enters into a Participation Agreement pursuant to Section 2.4 prior to the first day of the calendar month to make such Deferrals before the amounts would otherwise be paid or made available, provided that such amounts are payable within the later of 2 ½ months after the Participant's Severance from Employment or the end of the calendar year that includes the date of the Participant's Severance from Employment.

3.2 Special 457 Catch-Up Contributions

(a) In any one or more of a Participant's last three calendar years ending before the year in which the Participant attains Normal Retirement Age, as defined by the Employer in the Adoption Agreement, the Participant may elect to make Deferrals in an amount not exceeding the lesser of (1) twice the dollar amount permitted as a general deferral under Section 3.1 or (2) the sum of the maximum deferral permitted under Section 3.1 for the current tax year and as much of the applicable deferral limit under Code Section 457(b)(2) in prior years before the current tax year that had not previously been used ("underutilized amount"). For purposes of this Section, a prior year will be taken into account only if such year began after December 31, 1978, and the Participant was eligible to participate in the Plan during all or a portion of the prior year. A Participant may only make this election under this subsection once with respect to any plan under Code Section 457(b) of the Employer.

(b) In determining a Participant's underutilized amount, the Plan will take into consideration:

- (1) Prior to 2002, if a Participant made Deferrals to the Plan and deferrals to any other plan under Code Section 457(b), salary reduction contributions made to plans under Code Section 401(k), plans under Code Section 403(b), simplified employee pension (SARSEP) plans under Code Section 402(h)(1), simple retirement accounts under Code Section 408(p), and amounts deferred under any plan for which a deduction is allowed because of a contribution to an organization described in Code Section 501(c)(18), such deferrals to the other plans will be taken into account in determining a Participant's underutilized amount under Code Section 457(b)(2). In addition, Includible Compensation will be limited to the limitation in effect in the calendar year in which the deferrals were made. If such deferrals cumulatively exceed the then-applicable dollar amount in Code Section 457(b)(2) in the year that such amounts were deferred, then there will be no underutilized amount for that year.
- (2) To the extent that the Employer did not maintain a plan under Code Section 457(b), no underutilized limitation is available to a Participant for that prior year.

- (3) After 2001, only deferrals to plans under Code Section 457(b) will be taken into account for purposes of determining the underutilized amount.
- (4) Age 50 Plus Catch-Up Contributions will not be taken into account for purposes of determining a Participant's underutilized amount.

3.3 Age 50 Plus Catch-Up Contributions

If elected by the Employer in the Adoption Agreement, a Participant who has attained age 50 before the close of the calendar year may elect Age 50 Plus Catch-up Contributions. Such contributions are not subject to the limitations of Code Section 457(b). The maximum dollar amount of the Age 50 Plus Catch-up Contributions for a calendar year adjusted for cost of living under Code Section 414(v)(2)(C).

3.4 Maximum Amount of Catch-Up Contributions

Any catch-up contributions made by a Participant pursuant to Section 3.2 or Section 3.3 may not exceed the greater of (a) the amount that the Participant is eligible to make as Deferrals under Section 3.2 or (b) the amount that the Participant is eligible to make as Deferrals under Section 3.3.

3.5 Participant Covered by More than one 457(b) Plan

If a Participant is or has been a participant in one or more other plans under Code Section 457(b) in the same calendar year, then the Plan and all such other plans will be considered as one plan for purposes of applying the limitations of this Article III. For this purpose, the Administrator will take into account any other such plan of the Employer under Code Section 457(b) and, to the extent the Participant provides the Administrator with sufficient information concerning his participation, any such other plans under Code Section 457(b) in which the individual participated in the same calendar year.

3.6 Excess Deferrals

(a) In the event that the limit on Deferrals is exceeded pursuant to this Article III, the Administrator will direct the Provider as to the proper correction method permissible under applicable law, including calculation of any earnings or losses and the proper tax reporting with respect to such distributions as soon as administratively practicable after the Administrator determines that the amount is an excess deferral.

(b) A Participant who participates in the Plan and another 457(b) plan of another employer will be responsible for complying with the deferral limits of this Article III. In the event of an excess amount, the Participant will notify the Administrator so that the excess may be distributed as soon as practicable after the Administrator determines that the amount is an excess deferral.

3.7 Transfers from Other Plans under Code Section 457(b)

(a) If elected by the Employer in the Adoption Agreement, the Plan will accept transfers of amounts previously deferred under another plan under Code Section 457(b) maintained by another employer as defined in Code Section 457(e)(1)(A).

(b) A transfer under subsection (a) will only be permitted if:

- (1) the transferring plan provides for the transfer of such amounts, and
- (2) the Participant has a benefit equal to the amount immediately after the transfer to least equal to the amount under the Plan immediately before the transfer.

(c) The Administrator may require such documentation from the transferring plan as it deems necessary to effectuate the transfer in accordance with Section 1.457-10(b) of the Income Tax

Regulations and to confirm that the transferring plan is an eligible government plan as defined in Section 1.457-2(f) of the Income Tax Regulations. The amount so transferred will be credited to the appropriate account under the Participant Account and will be held, accounted for, administered and otherwise treated in the same manner as amounts as held in the transferor plan, except that the transferred amounts will not be taken into consideration for purposes of Code Section 457(b)(2) for the year of transfer.

3.8 Rollovers to the Plan

(a) The Employer may elect in the Adoption Agreement to permit an Eligible Individual, whether a Participant at the time, to rollover amounts that are considered eligible rollover distributions as defined in Code Section 402(c)(4) to the Plan from an eligible retirement plan, as defined in Code Section 402(c)(8)(B).

(b) Amounts (other than designated Roth contributions as defined in Code Section 402A) rolled over from another Code Section 457(b) plan maintained by an employer defined in Code Section 457(e)(1)(A) will be allocated to the Participant's 457(b) Rollover Account. Amounts (other than designated Roth contributions as defined in Code Section 402A) rolled over from an eligible retirement plan that is not a Code Section 457(b) plan will be allocated to the Participant's Non-457(b) Rollover Account.

(c) Designated Roth contributions as defined in Code Section 402A rolled over from another Code Section 457(b) plan maintained by an employer as defined in Code Section 457(e)(1)(A) will be allocated to the Participant's Roth 457(b) Rollover Account. Designated Roth contributions as defined in Code Section 402A rolled over from an eligible retirement plan that is not a Code Section 457(b) plan will be allocated to the Participant's Roth Non-457(b) Rollover Account.

(d) Designated Roth contributions relating to in-plan rollovers under Code Section 402A(c)(4) rolled over from an eligible retirement plan that is not a Code Section 457(b) plan will be allocated to the Participant's Rollover of In-Plan Roth Non-457(b) Rollover Account.

(e) Amounts attributable to In-Plan Rollovers will be allocated to an In-Plan Roth 457(b) Rollover Account. In-Plan Roth Rollover Contributions will be subject to the Plan rules related to Roth 457(b) Contributions.

3.9 Investments and Valuation

Subject to Section 5.9, amounts contributed to the Plan will be invested in an Investment Product. Participants will direct the investment of their Participant Accounts among the investment options available under the Investment Product. Contributions will be allocated to a Participant Account in accordance with this Article III and earnings and losses attributable to such contributions will be allocated to such Participant Account. If any provision of an Investment Product agreement is not consistent with the Plan provisions, the terms of the Plan will control.

The Provider shall value, at fair market value, the assets held in each Investment Product established under the Plan whenever deemed necessary or as directed by the Administrator, but at least annually as of the Plan's Anniversary Date. On the basis of such valuation, all Participant Accounts shall be adjusted to reflect the effect income received and accrued, realized and unrealized profits and losses, expenses, allocated forfeitures and all other transactions of the preceding period.

As of each Valuation Date, all income experienced by the assets held by the Plan's Investment Products for the period since the preceding Valuation Date shall be credited to, and all losses and expenses of the Plan for such period shall be charged to, all Participant Accounts. Such credits and charges shall be made in proportion to the value of each respective Participant's Account as of the preceding Valuation Date (after recording all credits and charges which would otherwise be made based on Participant Account balances as of the preceding Valuation Date).

The net income or net loss of the assets held by the Plan's Investment Products, as ascertained by the Provider whose findings shall be conclusive, shall be the profits and income received or accrued less the losses and expenses incurred or paid from the Plan plus any net increase or minus any net decrease in the value of such assets not actually realized and received or incurred and paid from the Plan.

3.10 Protection of Persons Who Serve In a Uniformed Service

(a) An Employee whose employment is interrupted by qualified military service under Code Section 414(u) or who is on a leave of absence for qualified military service under Code Section 414(u) may elect to make additional Deferrals upon resumption of employment with the Employer equal to the maximum Deferrals that the Employee could have elected during that period if the Employee's employment with the Employer had continued (at the same level of Compensation) without the interruption or leave, reduced by the Deferrals, if any, actually made for the Employee during the period of the interruption or leave. Except to the extent provided under Code Section 414(u), this right applies for five years following the resumption of employment (or, if sooner, for a period equal to three times the period of the interruption or leave).

(b) In the case of a Participant who dies while performing qualified military service (as defined in Code Section 414(u)), the Beneficiaries are entitled to any additional benefits (other than Deferrals relating to the period of qualified military service) provided under the Plan had the Participant resumed employment and then had a Severance from Employment on account of death.

ARTICLE IV BENEFIT DISTRIBUTIONS

4.1 Distributions Under the Plan

(a) A Participant Elective Deferral Account, Roth 457(b) Contributions Account or In-Plan Roth 457(b) Rollover Account may not be paid to a Participant (or, if applicable, the Beneficiary) until one of the following events has occurred:

- (1) upon the Participant's Severance from Employment;
- (2) the calendar year in which the Participant attains age 70 ½;
- (3) an Unforeseeable Emergency, within the meaning of and subject to Section 4.6, if elected by the Employer in the Adoption Agreement; or
- (4) the election of a small balance distribution within the meaning of and subject to Section 4.7, if elected by the Employer in the Adoption Agreement.

(b) A Participant may choose to receive a distribution from his 457(b) Rollover Account, Non-457(b) Rollover Account, Roth 457(b) Rollover Account, Rollover of In-Plan Roth Non-457(b) Rollover Account and Roth Non-457(b) Rollover Account at the time elected by the Employer in the Adoption Agreement.

(c) An Independent Contractor will be considered to have a Severance from Employment upon the expiration of all of the contracts under which services are performed for the Employer, if the expiration constitutes a good faith and complete termination of the contractual relationship. An expiration of such contractual relationship will not be considered to be a good faith and complete termination if the Employer anticipates a renewal of such contractual relationship or the Independent Contractor becomes an Employee.

4.2 Distributions from a Roth 457(b) Contributions Account, a Roth 457(b) Rollover Account, a Roth Non-457(b) Rollover Account, a Rollover of In-Plan Roth Non-457(b) Rollover Account and an In-Plan Roth 457(b) Rollover Account, will be tax-free for federal income tax purposes if:

- (1) The distribution meets the requirements of Section 4.1(a);
- (2) The amounts are held for a 5-year holding period, measured from the first year that the initial Roth 457(b) Contribution was made on behalf of the Participant to a Roth 457(b) Contributions Account, and
- (3) The distribution is due to a Participant's attainment of age 59 ½, death, or in the event of the Participant's becoming Disabled.

4.3 Determination of Benefits Payable to a Participant

(a) Upon attainment of a distributable event described in Section 4.1, but in no event later than the requirement to commence minimum distribution payments in accordance with Code Section 401(a)(9) and the Income Tax Regulations thereunder, a Participant may elect a benefit distribution option to which benefits will be paid.

(b) Upon a Participant's application for benefits, the Administrator will direct the distribution of a Participant Account in accordance with this Section 4.2.

(c) A Participant may choose a benefit distribution option as elected by the Employer in the Adoption Agreement. In the event a Participant fails to make an election as to a benefit distribution option, any benefit payable to such Participant will be distributed as elected by the Employer in the Adoption Agreement. The terms of any annuity contract purchased and distributed by the Plan to a Participant will comply with the requirements of the Plan.

4.4 Determination of Benefits Upon Death

(a) Upon the death of a Participant, the Administrator will direct that the deceased Participant's Participant Account, be distributed to the Beneficiary in accordance with the provisions of this Section.

(b) The designation of a Beneficiary will be made on a form satisfactory to the Administrator. A Participant or Beneficiary may at any time revoke his designation of a Beneficiary or change his Beneficiary by filing written notice of such revocation or change with the Administrator. In the event no valid designation of Beneficiary exists at the time of the Participant's or Beneficiary's death, the death benefit will be payable to the Participant's or Beneficiary's estate.

(c) The Administrator may require such proper proof of death and such evidence of the right of any person to receive payment of the value of the Participant Account of a deceased Participant or Beneficiary, as the Administrator may deem appropriate. The Administrator's determination of death and of the right of any person to receive payment will be conclusive.

(d) Death benefits payable to a Beneficiary will be made in a form as selected by the Beneficiary in accordance with the available options as elected by the Employer in the Adoption Agreement. In the event a Beneficiary fails to make an election as to a benefit distribution option, any benefit payable to such Beneficiary will be distributed in accordance with Code Section 401(a)(9). The terms of any annuity contract purchased and distributed by the Plan to a Beneficiary will comply with the requirements of the Plan.

4.5 Minimum Distributions.

(a) All distributions under the Plan will comply with the minimum distribution requirements of Code Section 401(a)(9) and the Income Tax Regulations.

4.6 Unforeseeable Emergency Withdrawals

(a) If elected by the Employer in the Adoption Agreement, a Participant or Beneficiary may request an Unforeseeable Emergency withdrawal subject to the following requirements:

- (1) The request for an Unforeseeable Emergency withdrawal will be determined by the Administrator based on the Participant's or Beneficiary's relevant facts and circumstances.
- (2) The request for an Unforeseeable Emergency may be made only to the extent that such emergency is or may not be relieved through:
 - reimbursement or compensation from insurance or otherwise;
 - liquidation of the Participant's or Beneficiary's assets, to the extent the liquidation of such assets would not itself cause severe financial hardship; or
 - cessation of the Participant's Deferrals to the Plan.
- (3) Distributions due to an Unforeseeable Emergency must be limited to the amount reasonably necessary to satisfy the emergency need (which may include any amounts necessary to pay federal, state, or local income taxes or penalties reasonably anticipated to result from the distribution).

(b) A Participant or Beneficiary may request an Unforeseeable Emergency withdrawal by submitting that request in writing on the Plan's approved form to the Administrator, who will review and approve the request. If the request is denied, a request for review of the determination may be made in writing to such entity as the Administrator may designate, provided that such entity has accepted the designation. If the review of the determination fails to confirm a claim of Unforeseeable Emergency, an appeal may be made to the appellate committee established by the Administrator in writing. If at any time a request of an Unforeseeable Emergency withdrawal is approved, the Employer may thereupon direct the Provider to distribute so much of the Participant Account as is necessary to provide the amount approved to meet the Unforeseeable Emergency, as determined by the Administrator.

(c) Unforeseeable Emergency withdrawals will be made in accordance with the procedures established by the applicable Provider's Investment Products.

4.7 Small Balance Distribution

If elected by the Employer in the Adoption Agreement and upon proper written request, a Participant may elect to receive a small balance distribution, payable in a lump sum, if the Participant's Deferral Account value is \$5,000 or less, and the Participant has not made Deferrals to the Plan for a period of two years before distribution. A Participant may take a small balance distribution under this Section only once while a Participant under the Plan.

4.8 Rollovers From The Plan

(a) Notwithstanding any provision of the Plan to the contrary, a Participant, a surviving spouse who is the designated Beneficiary of the Participant or a spouse or former spouse who is the alternate payee will be permitted to elect to have any eligible rollover distribution as defined in Code Section 402(c)(4) paid directly to an eligible retirement plan as defined in as defined in Code Section 402(c)(8)(B) or to a Roth IRA established under Code Section 408A specified by the Participant. The Participant will, in the time and manner prescribed by the Administrator, specify the amount to be rolled

over and the eligible retirement plan to receive such rollover. Any portion of a distribution which is not rolled over will be distributed directly to the Participant.

(b) A non-spousal Beneficiary may elect to roll over death benefits amounts in accordance with Code Section 402(c)(11) provided that:

- (1) such amounts are rolled over to an inherited IRA via a direct trustee-to-trustee transfer;
- (2) such election is made by December 31 of the year following the year of the Participant's death; and
- (3) the rolled over amounts are eligible rollover distributions as defined in Code Section 402(c)(4).

4.9 Permissive Service Credit Transfers

(a) If a Participant is also a participant in a tax qualified defined benefit governmental plan (as defined in Code Section 414(d)) that provides for the acceptance of plan-to-plan transfers with respect to the Participant, then the Participant may elect to have any portion of his Participant Account transferred to the defined benefit governmental plan in accordance with Code Section 457(e)(17). A transfer under this Section may be made before the Participant has had a Severance from Employment.

(b) A transfer may be made under subsection (a) only if the transfer is either for the purchase of permissive service credit (as defined in Code Section 415(n)(3)(A)) under the receiving defined benefit governmental plan or a repayment to which Code Section 415 does not apply by reason of Code Section 415(k)(3).

4.10 Transfers to Other Plans under Code Section 457(b) Upon Severance From Employment

(a) Upon a Participant's Severance from Employment, a Participant may elect to have all or a portion of the Participant Account transferred to the plan under Code Section 457(b) of an employer defined in Code Section 457(e)(1)(A). Such amounts will be transferred at the Participant's election, provided:

- (1) The plan under Code Section 457(b) to which the Participant's benefit is being transferred provides for the acceptance of such amounts;
- (2) The Participant or Beneficiary has a benefit equal to the amount immediately after the transfer to least equal to the amount under the Plan immediately before the transfer; and
- (3) In the case of a transfer made on behalf of a Participant, such individual has had a Severance from Employment with the Employer and is performing services for the employer maintaining the receiving plan.

(b) Upon the transfer of amounts under subsection (a), the Plan's liability to pay benefits to the Participant or Beneficiary under the Plan will be discharged to the extent of the amount so transferred on behalf of the Participant or Beneficiary. The Administrator may require such documentation from the receiving plan as it deems appropriate or necessary to comply with this Section or effectuate the transfer pursuant to Section 1.457-10(b) of the Income Tax Regulations. If Roth 457(b) Contributions are transferred, the receiving plan must permit Designated Roth contributions as defined in Code Section 402A.

4.11 Loans to Participants

(a) If elected by the Employer in the Adoption Agreement, a Participant may receive a loan from his Elective Deferral Account, 457(b) Rollover Account and non-457(b) Rollover Account. Such

loans may also be subject to the requirements of the Investment Product and as set forth in the loan program created by the Employer.

(b) For purposes of this Section, all plans of the Employer will be considered one plan in accordance with Code Section 72(p) and Income Tax Regulations thereunder, and the balance of all loans under any plan of the Employer under which the Participant participates must be aggregated in determining the maximum loan available under subsection (d).

(c) The Provider may, in accordance with the Administrator's direction, make loans to Participants under the following circumstances: (1) loans will be made available to all Participants on a reasonably equivalent basis; (2) loans will bear a reasonable rate of interest; (3) loans will be adequately secured; and (4) will provide for periodic repayment over a reasonable period of time.

(d) No loan made pursuant to this Section will exceed the lesser of:

- (1) \$50,000 reduced by the excess (if any) of the highest outstanding balance of loans from the Plan to the Participant during the one-year period ending on the day before the date on which such loan is made, over the outstanding balance of loans from the Plan to the Participant on the date on which such loan was made, or
- (2) one-half (1/2) of the Participant Account.

For purposes of this Section, any loan from any other plan maintained by the Employer will be treated as if it were a loan made from the Plan, and the Participant's vested interest under any such other plan will be considered a vested interest under this Plan; provided, however, that the provisions of this paragraph will not be applied so as to allow the amount of a loan to exceed the amount that would otherwise be permitted in the absence of this paragraph.

(e) Loans will provide for level amortization with payments to be made not less frequently than quarterly over a period not to exceed five (5) years. However, loans used to acquire any dwelling unit which, within a reasonable time, is to be used (determined at the time the loan is made) as a principal residence of the Participant will, provide for periodic repayment over a reasonable period to be determined by the Administrator of time that may exceed five (5) years. Notwithstanding the foregoing, in the event a Participant enters the uniformed services of the United States and retains reemployment rights under law, repayments will be suspended and interest will cease to accrue during the period of leave and the period of repayment will be extended by the number of months of leave in the uniformed services. In the event a Participant is on an Employer approved, bona fide leave of absence without pay, loan payments may be suspended (but interest will continue to accrue) for the period of leave but not to exceed one year; however, the loan must be repaid by the original loan repayment date.

(f) An assignment or pledge of any portion of a Participant's interest in the Plan will be treated as a loan under this Section.

(g) Any security interest held by the Plan by reason of an outstanding loan to the Participant will be taken into account in determining the amount of the death benefit or single lump-sum payment.

4.12 Distributions from Governmental Plans for Health and Long Term Care.

If elected by the Employer in the Adoption Agreement and pursuant to Code Section 457(a)(3), annual distributions of up to \$3,000 from the Plan that would otherwise be taxable, are excludable for income tax purposes if the following conditions are satisfied: (1) the distribution is used to pay for qualified health insurance premiums (accident, health insurance or long term care) for an eligible public safety officer, or spouse or dependent of the public safety officer, (2) the public safety officer is separated from service due to disability or attainment of the age which the Participant has the right to retire and receive unreduced

retirement benefits from the Employer's basic pension plan, and (3) the distributions are paid directly to the insurer or to the administrator of a self-insured plan.

ARTICLE V ADMINISTRATION

5.1 Powers and Responsibilities of the Employer

(a) The Employer will have full power to interpret and construe the Plan in a manner consistent with its terms and the provisions of Code Section 457, including the applicable Income Tax Regulations and to establish practices and procedures conforming to those provisions. In all such cases, the Employer's determination will be final and conclusive upon all persons. It is recognized that unusual circumstances may occur and questions may arise that are not specifically covered by any provision of the Plan, and the Employer will have the right to resolve all such questions. Notwithstanding the above, the Employer's power and responsibility under the Plan will not extend to, nor have any control over, those responsibilities and duties of the Provider.

(b) The Employer will be empowered to appoint and remove the Administrator from time to time as it deems necessary for the proper administration of the Plan to assure that the Plan is being operated for the exclusive benefit of the Participants and their Beneficiaries in accordance with the terms of the Plan and the Code.

(c) The Employer will periodically review the performance of any person to whom duties have been delegated or allocated by it under the provisions of this Plan or pursuant to procedures established hereunder. This requirement may be satisfied by formal periodic review by the Employer or by a qualified person specifically designated by the Employer, through day-to-day conduct and evaluation, or through other appropriate ways.

5.2 Designation of Administrative Authority

The Employer may appoint a committee ("Committee") of one or more persons to serve as the Administrator and to discharge the Administrator's responsibilities under the Plan. The Employer may remove a Committee member for any reason by giving such member ten (10) days written notice and may thereafter fill any vacancy thus created. If the Employer does not appoint a Committee to administer the Plan, the Employer will be the Administrator.

5.3 Allocation and Delegation of Responsibilities

If more than one person is appointed as Administrator, the responsibilities of each Administrator may be specified by the Employer and accepted in writing by each Administrator. In the event that the Employer makes no such delegation, the Administrators may allocate the responsibilities among themselves, in which event the Administrators will notify the Employer in writing of such action and specify the responsibilities of each Administrator.

5.4 Powers and Duties of the Administrator

The primary responsibility of the Administrator is to administer the Plan for the benefit of the Participants and their Beneficiaries, subject to the specific terms of the Plan. The Administrator will administer the Plan in accordance with its terms and will have the power and discretion to construe the terms of the Plan and determine all questions arising in connection with the administration, interpretation, and application of the Plan. Any such determination by the Administrator will be conclusive and binding upon all persons. The Administrator may establish procedures, correct any defect, supply any information, or reconcile any inconsistency in such manner and to such extent as will be deemed necessary or advisable to carry out the purpose of the Plan; provided, however, that any procedure, discretionary act, interpretation or construction will be done in a nondiscriminatory manner based upon uniform principles consistently

applied and will be consistent with the intent that the Plan will continue to be deemed a qualified plan under the terms of Code Section 457, and will comply with the terms of all Income Tax Regulations issued pursuant thereto. The Administrator will have all powers necessary or appropriate to accomplish his duties under this Plan. The Administrator will be charged with the duties of the general administration of the Plan, including, but not limited to, the following:

- (a) the discretion to determine all questions relating to the eligibility of Employees and Independent Contractors to participate or remain a Participant hereunder and to receive benefits under the Plan;
- (b) determine the amounts to be contributed to each Participant Account;
- (c) to authorize and direct the Provider with respect to all disbursements to which a Participant is entitled under the Plan;
- (d) to maintain all necessary records for the administration of the Plan;
- (e) to maintain practices and procedures necessary to administer the Plan as are consistent with the terms hereof;
- (f) to determine the type of any Investment Product to be purchased from the Provider; and
- (g) to assist any Participant regarding his rights, benefits, or elections available under the Plan.

5.5 Records and Reports

The Administrator will keep a record of all actions taken and will keep all other books of accounts, records, and other data that may be necessary for proper administration of the Plan and will be responsible for supplying all information and reports to the Internal Revenue Service, Participants, Beneficiaries and others as required by law.

5.6 Appointment of Advisors

The Administrator may appoint/employ such agents, attorneys, actuaries, accountants, auditors, investment counsel, and clerical assistants, and other persons as the Administrator deems necessary or desirable in connection with the administration of this Plan.

5.7 Information from the Employer

To enable the Administrator to perform his functions, the Employer will supply the necessary information to the Administrator on a timely basis regarding the Participants under the Plan, including but not limited to Compensation, date of hire, date of death, Severance from Employment, and such other pertinent facts and data as the Administrator may require. The Administrator may rely upon such information as is supplied by the Employer and will have no duty or responsibility to verify such information.

5.8 Payment of Expenses

All expenses of administration will be paid by the Employer. Such expenses will include any expenses incident to the functioning of the Administrator, including, but not limited to, fees of accountants, counsel, and other specialists and their agents, and other costs of administering the Plan.

5.9 Discontinuance of Provider

Notwithstanding Section 3.9, if any Provider ceases to be eligible to receive Deferrals under the Plan, the Administrator may direct that both existing amounts under Participant Accounts that were invested with such Provider and any future contributions be transferred to the Investment Products of those Providers which are currently approved to receive Deferrals under the Plan.

ARTICLE VI AMENDMENT AND TERMINATION

6.1 Amendment

(a) The Employer will have the right at any time to amend this Plan subject to the limitations of this Section. Any such amendment will become effective as provided therein upon its execution.

(b) No amendment to the Plan will be effective if it authorizes or permits any part of the Investment Product (other than such part as is required to pay taxes and administration expenses) to be used for or diverted to any purpose other than for the exclusive benefit of Participants or Beneficiaries; or causes any reduction in the amount credited to the account of any Participant or Beneficiary; or causes or permits any portion of the Investment Product to revert to or become property of the Employer.

6.2 Termination

(a) The Employer will have the right at any time to terminate the Plan by resolution of its governing board. In addition, the Employer must deliver written notice of discontinuance of the Investment Product to the Provider.

(b) Upon the full termination of the Plan, the Employer will direct the distribution of the assets to Participants and Beneficiaries in a manner which is consistent with and satisfies the provisions of Article IV as soon as administratively practicable after termination of the Plan.

6.3 Transfer of Entire Plan Assets to Another Eligible Plan Within the Same State

Subject to this Section, the Employer may direct the transfer of all assets of the Plan to another plan under Code Section 457(e)(1)(A) and that is located in the same state, provided that the requirements of Code Section 457(b) and Section 1.457(b)-10 (b)(3) of the Income Tax Regulations are satisfied. If Roth 457(b) Contributions are transferred, the receiving plan must permit Designated Roth contributions as defined in Code Section 402A.

ARTICLE VII MISCELLANEOUS

7.1 Assets For Exclusive Benefit Of Participants And Beneficiaries

All amounts in the Participant Accounts under this Plan, all property and rights which may be purchased with such amounts and all income attributable to such amounts, property or rights will be held in trust (or a custodial account or annuity contract described in Code Section 401(f)) for the exclusive benefit of Participants and their Beneficiaries. All such amounts will not be subject to the claims of the Employer's general creditors.

7.2 Participant Rights

This Plan will not be deemed to constitute a contract between the Employer and any Participant or to be a consideration or an inducement for the employment of any Participant, Employee, or Independent Contractor. Nothing contained in this Plan will be deemed to give any Participant, Employee, or

Independent Contractor the right to be retained in the service of the Employer or to interfere with the right of the Employer to discharge any Participant, Employee or Independent Contractor at any time regardless of the effect which such discharge will have upon him as a Participant in this Plan.

7.3 Alienation

Subject to applicable state law (and Code Section 401(g) if the Investment Product consists of an annuity contract) and except as provided in Section 7.4, no benefit which will be payable to any person (including a Participant or his Beneficiary) will be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, or charge, and any attempt to anticipate, alienate, sell, transfer, assign, pledge, encumber, or charge the same will be void; and no such benefit will in any manner be liable for, or subject to, the debts, contracts, liabilities, engagements, or torts of any such person, nor will be subject to attachment or legal process for or against such person, and the same will not be recognized except to such extent as may be required by law.

7.4 Recognition of Approved Domestic Relations Orders

Notwithstanding Section 7.3, if a judgment, decree or order (including approval of a property settlement agreement) that relates to the provision of child support, alimony payments, or the marital property rights of a spouse or former spouse, child, or other dependent of a Participant is made pursuant to the domestic relations law of any State ("domestic relations order") and Code Section 414(p), then the amount of the Participant Account will be paid in the manner and to the person or persons so directed in the domestic relations order. Such payment will be made without regard to whether the Participant is eligible for a distribution of benefits under the Plan. The Administrator will establish reasonable procedures for determining the status of any such decree or order and for effectuating distribution pursuant to the domestic relations order.

7.5 IRS Levy

Notwithstanding Section 7.3, if a Participant or Beneficiary is entitled to a distribution in accordance with Section 5, the Administrator may pay from a Participant's or Beneficiary's Account the amount that the Administrator finds is lawfully demanded under a levy issued by the Internal Revenue Service with respect to that Participant or Beneficiary or is sought to be collected by the United States Government under a judgment resulting from an unpaid tax assessment against the Participant or Beneficiary.

7.6 Distribution for Minor Beneficiary or Incompetent

If a Participant or Beneficiary entitled to receive any benefits hereunder is a minor or is adjudged to be legally incapable of giving valid receipt and discharge for such benefits, or is deemed so by the Administrator, benefits will be paid to such person as the Administrator may designate for the benefit of such Participant or Beneficiary. Such payments shall be considered a payment to such Participant or Beneficiary and shall, to the extent made, be deemed a complete discharge of any liability for such payments under the Plan.

7.7 Mistaken Contributions

If any contribution (or any portion of a contribution) is made to the Plan by a good faith mistake of fact, then within one year after the payment of the contribution, and upon receipt in good order of a proper request approved by the Administrator, the amount of the mistaken contribution (adjusted for any income or loss in value, if any, allocable thereto) will be returned directly to the Participant or, to the extent required or permitted by the Administrator, to the Employer.

7.8 Procedure When Distributee Cannot Be Located

The Administrator shall make all reasonable attempts to determine the identity and address of a Participant or Beneficiary entitled to benefits under the Plan. For this purpose, a reasonable attempt means (a) the mailing by certified mail of a notice to the last known address shown on the Employer's or the Administrator's records, (b) notification sent to the Social Security Administration or the Pension Benefit Guaranty Corporation (under their program to identify payees under retirement plans), and (c) the payee has not responded within 6 months. If the Administrator is unable to locate such a person entitled to benefits hereunder, or if there has been no claim made for such benefits, the funding vehicle shall continue to hold the benefits due such person.

7.9 Governing Law

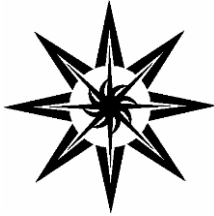
The Plan will be construed, administered and enforced according to the Code and the laws of the state in which the Employer has its principal place of business.

7.10 Headings

Headings of the Plan have been inserted for convenience of reference only and are to be ignored in any construction of the provisions hereof.

7.11 Gender

Pronouns used in the Plan in the masculine or feminine gender include both genders unless the context clearly indicates otherwise.



Consider Policy Allowing for Remote Attendance at City Council Meetings

Recommended Motion:

Move that City Council approve Council Policy #29 regarding remote participation.

Background:

At the August 18, 2014 City Council meeting, Councilmember Nelson requested that the City Council consider allowing remote participation for City Council meetings. Currently, the City has no policy to allow for remote participation in the event a councilmember is unable to physically attend, but is otherwise able to take part in deliberations and decision-making. A work group was formed consisting of Councilmembers Jori Nelson, Steve Noll, and Andrew Wang. The work group met on September 30 to discuss components of a proposed policy and research conducted by Councilmember Nelson.

The attached policy has been drafted to allow for remote participation during the City Council meetings by members of the Council. This draft policy also seeks to establish a set of rules for city staff and the Governing Body when pursuing the use of remote participation. The city does have adequate technology in place to allow for one Councilmember at a time to participate remotely. Research is being conducted on a conference bridge feature should more than one councilmember choose to participate remotely during the same meeting.

Summary of Policy:

- Remote participation is intended for council members who cannot physically attend meetings for reasons of physical illness, injury or disability, personal emergencies, military service, or geographic distance.
- Remote participation will only be used for City Council meetings.
- The Mayor or chair of the meeting is not allowed to participate remotely.
- All council members will be subject to a limit of two City Council meetings per year in which remote participation can be used.

Attachment:

Council Policy #29 on remote participation

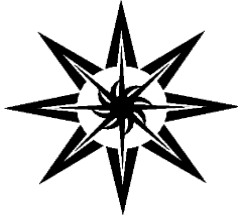
Comparison of area city's remote participation policies compiled by city staff

Prepared By:

Quinn Bennion

City Administrator

Date: November 11, 2014



City Council Policy #29: Remote Participation for City Council Meetings

Effective Date:

Approved By:

I. PURPOSE

To establish a policy allowing for and regulating remote attendance for City Council members who are not physically present at City Council meetings so they may participate in the decision process for matters of high importance to the City. Council members are strongly encouraged to physically attend meetings whenever possible.

II. RESPONSIBILITY

The City Administrator is responsible for administering the policy and making information related to remote participation available.

III. DEFINITIONS

“Remote Participation” is defined as the participation of a council member who is not physically present.

IV. POLICY

- A. To be eligible to participate in a city council meeting remotely, a council member should give 24 hours’ notice to the City Administrator or his or her designee.
- B. Remote participation is intended for council members who cannot physically attend meetings for reasons of physical illness, injury or disability, personal emergencies, military service, or geographic distance.
- C. The remote participation policy is subject to the following restrictions:
 1. Remote participation will only be used for City Council meetings. Remote participation will not be used for executive sessions, training, council retreats, workshops, field demonstrations, committee meetings, or committee of the whole meetings.
 2. A quorum, not including any remote participant(s), must be physically present for remote participation to occur. The Mayor or chair of the meeting is not allowed to participate remotely.
 3. Remote participation will not be used for any meeting that takes place outside of the Council Chamber at Prairie Village City Hall.
 4. All council members will be subject to a limit of two City Council meetings per year in which remote participation is accepted for attendance. Any meeting in which a council member utilizes the remote participation policy, whether attended in whole or in part via remote participation, will count toward the two-meeting-per-year limit specified above.
- D. A council member utilizing remote participation must be capable of fully participating in the meeting, must be able to adequately communicate with all other members of the Governing Body, city staff, or other parties present at the meeting, and should

- make all reasonable effort to be fully aware of all discussions, votes, activities, presentations, and any other conveyances of information occurring at said meeting.
- E. In the event that full participation requires the use of documents, briefs, visual presentation of information, or any information conveyed via physical media, city staff will make reasonable efforts to assist in providing council members utilizing remote participation with the information, via physical or electronic means.

V. PROCEDURES

- A. Upon request for remote attendance by a council member, and if qualifications for remote participation are met, the City Administrator will direct city staff to make accommodations for the possibility of remote attendance.
- B. Remote participants are permitted to use any method that allows them to be heard by those physically present at the meeting, and to hear all activities and discussion of the meeting clearly. Visual methods are permitted but not required.
- C. The names of any remote participant(s) will be stated during roll call and remote participation will be explicitly noted for the record. The entrance, exit, or re-entrance of the meeting by any remote participants will also be noted in the meeting minutes.
- D. The remote participant will verify at the beginning of the meeting his or her identity and confirm that he or she is able to fully participate and is not unduly influenced by others, and that his or her participation will be full and absent distraction.
- E. Should the remote participant experience technical difficulties, discussion will be suspended until the remote participant is again able to be fully present. Should technical difficulties occur, the mayor will retain authority to discontinue any remote participation and continue the meeting.
- F. In general, delays collectively lasting longer than fifteen minutes will result in discontinuation of remote participation and termination of any remote connection, at the Mayor's discretion.

Area Cities Remote Participation Information

City	Contact	Remote Attendance allowed? Yes/No, Notes
Fairway	Abbie Aldridge, Admin Clerk	Yes; Allows phone-ins
Leawood		Yes; Allowed in city code; See link below; Section 1-115 http://www.leawood.org/pdf/code/Chapter%201%20Article%201WEB.pdf
Lenexa	David Bryant, City Clerk	No; Phone link-ups do not constitute attendance
Merriam	Juli Pinnick, City Clerk	Yes; Provision in governing body rules allows for remote attendance; any councilmember using provision is questioned by City Attorney at start
Mission	Glen Cole, Intern	Yes; City recently approved remote participation policy
Mission Hills	Courtney Christensen, City Admin.	Yes; Allows phone-ins; no policy or ordinance
Olathe	Tracy Howell, City Clerk	Yes; Generally yes but no remote attendance for executive session No formal policy adopted. Also used for inclement weather
Overland Park	Elizabeth, City Clerk's Office	No; Has happened at one point under extenuating circumstances
Roeland Park	Joe Blankenship, Admin Asst.	Yes; Allows phone-ins
Shawnee	Katie Killen, Asst. City Manager	No; Has not been allowed in the past

Completed by Eric Schumacher, Management Intern, September 2014

Memorandum

To: Mayor, City Council, & Department Managers
Fr: Quinn Bennion, City Administrator
Da: November 17, 2014
RE: Updated priority list

BACKGROUND

City Council and city staff are currently involved with a number of significant initiatives. The projects are beyond the day to day operations.

The priorities were reviewed at the January 25, 2014, work session. The initiatives were originally refined during a Council retreat / work session in February and April 2010 and further discussed each year at the Council retreat or Council committee. The next council retreat is planned for late January 2015. A significant number of the items have been accomplished as a result of efforts by Council and staff during 2010, 2011, 2012 and 2013.

The attached summary provides an update of each project's status. Changes from the last version are noted with ~~strike through~~ and **bold**.

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, 2013 & 2014

Prepared By:
Quinn Bennion
City Administrator

Prairie Village – Nov. 2014

	Current projects / initiatives	Status Nov. 2014	Council Action Schedule
1	75 th St. project (maintenance and/or streetscape)	Design firm selected, \$1.6M grant received, design started in 2012. Committee formed. Original KDOT bids recd in Oct. 2014 were rejected.	Nov. 2014 – review project scope. Rebid in Jan. 2015
2	Determine and develop economic development strategies and incentives	CID approved in Sept. 2010. Ongoing. Need to discuss more ideas & strategy for the Econ Dev fund.	
3	Upgrade involvement with the Homes Association Committee	Completed website integration option. Ongoing.	Recommended to dissolve in Jan 2015
4	More effective use of social networking to communicate with residents	Ongoing	
5	Reestablish / strengthen the Island Committee & develop plan for island statutory maintenance	Island Committee formed. Audit / inventory being conducted.	
6	Address potential Emerald Ash Borer infestation	Currently in progress. Tree Board assessed public trees. Implemented first year plan and budget.	
7	Promote homeownership, review rental licensing program and property maintenance ordinance	Added at Feb. 2, 2013 work session. In progress. Desire for more aggressive code inspections. Part-time code officer added April 2014 & new software implemented.	Ongoing.
8	Pool assessment study	Added at Feb. 2, 2013 work session. Assessment completed. To be incorporated into the CIP.	Completed.
9	Comprehensive review of committees, role and structure	Added at Feb. 2 nd , 2013 work session. Committee established and has met multiple occasions.	Policy and ordinance changes in Dec 2014 for a Jan 2015 effective date.
10	Explore the purchase of the city's street light and/or traffic signal system	Added at Feb. 2 nd , 2013 work session. Several mtgs w/ KCPL in 2014. To be researched / discussed further.	
11	Research and review KP&F plan	Police Pension Board will evaluate.	
12	Review of workers comp insurance coverage. Explore municipal pools.	Added at the Mar. 18th, 2013 budget work session. Insurance Comm. reviewed KERIT proposal & stayed with traditional model.	Not pursued.

13	Explore the use of alternative fuel vehicles	Added at the Mar. 2013 budget work session. Research started in 2013.	
14	Explore the advantages of leasing vehicles vs. purchase	Added at the Mar. 2013 budget work session. Research started in 2013.	
15	Explore other alternatives to the City owned fuel tanks	Added at the Mar. 2013 budget work session. Research started in 2013.	
16	Convert construction inspections to city staff	Added at the Mar. 2013 budget work session. Approved August 2014.	Completed.
17	Review current SUP and CUP guidelines	Requested by Council summer 2013. Information presented to Council in July 2014.	Completed.
18	Consider adding a waiting period to reapply for a rezoning application	Requested by Council Fall 2013. Approved by Council.	Completed.
19	Review of current zoning code regarding RV storage	Requested by Council – Dec 2013. Work group established.	Ordinance to be reviewed Nov & Dec 2014.
20	Review and update the City Code book	Look into code revision services. Added Jan. 2014 work session.	
21	Efforts to secure additional parkland	Ongoing.	
22	Initiate a bike/ped master plan	Started in July 2014. Applied for grant. Ongoing.	
23	Conduct cost recovery study & review of city fees	Added in budget discussions in June 2014. Study initiated.	Review by Council in Dec. 2014.
24	Switch IT providers to JoCo IT	Reviewed, approved. Implemented in Sept. 2014	Completed
25	Review antenna facility replacement regs & parking requirements	Reviewed & discussed by Council in Oct. 2014. Parking changes approved, antenna ordinance not approved.	Completed
26	Establish a Prairie Village Teen Council	Added in Aug 2014. Implemented Nov. 2014.	Completed. Ongoing.
27	Research & discuss recording/filming of meetings	Discussed by work group and City Council in Oct. 2014. Not approved.	
28	Pedestrian crossings	Education/enforcement/evaluation of signage for optimum compliance	
29	Establish policy for remote attendance at City Council mtgs.	Work group established. Reviewed and discussed options. Draft policy created.	Nov. 17 th mtg. First review.
30	Engage with owner of Meadowbrook property re: their future plans	Club closed end of Oct. 2014. Staff has contact with ownership group.	

31	Research curb-side textile recycling program	Reviewed and discussed by Env. Comm. & Municipal Foundation.	Dec. 1st Council mtg
32	Restrictions for one-time use plastic bags	Research being conducted by Environ. Comm. Presented to Council Nov. 2014. Added to list.	
33	Review animal control ordinance	Reviewed in Oct. 2014. Research conducted about bee keeping.	Dec. 1st Council mtg

Prairie Village - Nov. 2014

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

1. Organize Ward meetings - **Ward 1 held meeting summer 2014**
2. Establish or reenergize dormant homes associations where they do not currently exist
3. Develop form based codes and comprehensive plan amendments
4. Research the possibility of initiating a transportation program for seniors and special needs residents
5. Program to encourage neighborhood block parties
6. Review and update City policies
7. Proactively pursue plans and funding for alternative modes of travel: trails, bike lanes and transit. Encourage bike friendly environment.
8. Proactive approach for regional transit related topics
9. Consider developing small business program: business incubator. Look into JCCC programs
10. Cultivate an environment that celebrates diversity
- 11. Ordinances related to public antenna networks**

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

1. Develop a plan/process for former school site - Mission Valley Middle School RFP rec'd, vendor selected, process halted in early 2012
2. Multipurpose Room major enhancements (furniture only in 2013)
3. City Hall /PD entry and patio design project - Removed from 2012 budget, **added to 5 year CIP plan**
4. Explore a more proactive approach to the location of wireless tower facilities in PV and on city property
5. Organize the Tour de Prairie Village bike race / fundraiser
6. Explore the reestablishment of the Prairie Village Development Council
7. Community Center Feasibility study - 360 Design completed the report in late 2012. Council determined to not pursue design or partnership at this time.
8. Develop a plan for parks plan funding and more park/green space (Parks Master Plan) Discussed by Finance, Council and Parks & Rec Committees in Spring 2013. Sales tax initiative not pursued in 2012.
9. Develop comprehensive plan amendments (Meadowbrook property). Discussed during Feb. 19th, 2013 committee. Not pursued.
10. Review of necessity of pet licenses / enumeration. Added at Feb. 2nd, 2013 work session. Removed Jan. 25, 2014, work session.
11. Explore contracted street maintenance services to in-house using part-time labor Added at the Mar. 2013 budget work session. Not recommended by staff at this time. Removed Jan. 25, 2014 work session.
- 12. Discussion about sidewalk snow removal - ordinance and fee schedule. Added at the Feb. 19th, 2013 committee meeting. PW examined costs for the**

City to provide removal on priority sidewalks. Discussed as part of the 2015 budget, but not added.

13. Review of workers comp insurance coverage. Explore municipal pools. Insurance Comm. reviewed for the third time in four years in April 2014. Discussed KERIT proposal & stayed with traditional model. Not pursued.
14. Research & discuss recording/filming of meetings. Discussed by work group and City Council in Oct. 2014. Not approved.

Prairie Village – Nov. 2014

	Completed projects / initiatives	Status Nov. 2014
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	Partial completion 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
31c	Implementation of PVnotify non-emergency communications-Joined with NotifyJoCo in late 2012. Implementation in 2013.	Completed in 2013
32c	Selection of document imaging software and conversion Vendor selected & installation in 2012. Online search is complete and being implemented.	Completed in 2013
33c	Review of city employee retirement plans. Added at Feb. 2 work session. Information provided and discussed at the Council Committee on Feb. 19 th . KP&F will be further explored.	Committee discussed on Feb. 19 th . No further action taken.
34c	Community Center Feasibility study – RFP and process. 360 Design completed the report in late 2012. Council determined to not pursue at this time.	Council discussed Mar. 4 th , 2013. No further action taken.
35c	Selection process for a Asst. to the City Administrator	Completed April 2013
36c	Selection process for a Public Works Director with the assistance of Mercer Group.	Completed Nov. 2013
37c	Selection process for a Assistant City Administrator	Completed Nov. 2013
38c	Develop CID annual report. Staff completed 2012 report and is developing the 2013 report.	2012 report completed in 2013.
39c	Pool assessment study	Assessment completed. Incorporated into the CIP.
40c	Convert construction inspections to city staff	Approved August 2014.
41c	Review current SUP and CUP guidelines	Requested by Council summer 2013. Information presented to Council in July 2014.
42c	Consider adding a waiting period to reapply for a rezoning application	Requested by Council Fall 2013. Approved.
43c	Switch IT providers to JoCo IT	Reviewed, approved. Implemented in

		Sept. 2014
44c	Selection process for a Asst. to the City Administrator	Completed Sept. 2014
45c	Review antenna facility replacement regs & parking requirements	Reviewed & discussed by Council in Oct. 2014. Parking changes approved. Antenna ordinance not approved.
46c	Establish a Prairie Village Teen Council	Added in Aug 2014. Implemented Nov. 2014.
47c	Access control project – replace doors and lock system	Initiated early 2014. Completed Nov. 2014.

**COUNCIL MEETING AGENDA
CITY OF PRAIRIE VILLAGE
Council Chambers
November 17, 2014
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 - November 3, 2014
- 2. Approve Claims Ordinance 2923
- 3. Approve the recommendations of the UCS Grant Review Committee contained in the 2015 Human Service Fund Recommendation Report and a contribution to UCS of \$6,825 from the 2015 Parks & Community Programs Budget
- 4. Approve the recommendations of the Drug and Alcoholism Council of Johnson County contained in the United Community Services Fund Recommendations Report and approve a contribution to UCS of \$24,000 from the 2015 Parks & Community Programs Budget.
- 5. Ratify the Mayor's appointment of David Hassett to the JazzFest Committee
- 6. Approve the Interlocal Agreement between the City of Prairie Village and Johnson County Park & Recreation District for the use of City facilities for 50+ programming in 2015.
- 7. Approve the purchase of a Ford Escape from Olathe Ford for \$23,104.00.
- 8. Approve the agreement between the City of Prairie Village and Blue Valley Public Safety in the amount of \$3,648.00
- 9. Authorize staff go out to bid for the following City services: HVAC Services, Ice Maker Services, Pest Control Services, Portable Toilet Services and Materials Testing Services

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

Council Committee of the Whole

COU2014-46 Consider construction contract for the Public Works fiber project
COU2014-47 Discuss re-bidding of the 75th Street project from State Line Road to Mission Road, Project 75ST0001
COU2014-48 Consider approval of a deferred compensation 457(b) plan document

- VIII. STAFF REPORTS
- IX. OLD BUSINESS
- X. NEW BUSINESS
- XI. ANNOUNCEMENTS
- XII. ADJOURNMENT

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

If you are unable to attend this meeting, comments may be received by e-mail at cityclerk@pvkansas.com

CONSENT AGENDA

CITY OF PRAIRIE VILLAGE, KS

November 17, 2014

**CITY COUNCIL
CITY OF PRAIRIE VILLAGE
November 4, 2014**

The City Council of Prairie Village, Kansas, met in regular session on Monday, November 4, 2014 at 7:30 p.m. in the Council Chambers at the Municipal Building, 7700 Mission Road, Prairie Village, Kansas.

ROLL CALL

Mayor Ron Shaffer called the meeting to order and roll call was taken with the following Council members present: Ashley Weaver, Jori Nelson, Ruth Hopkins, Steve Noll, Eric Mikkelson, Andrew Wang, Laura Wassmer, Brooke Morehead, Dan Runion, David Morrison, Ted Odell and Terrence Gallagher.

Also present were: Wes Jordan, Chief of Police; Keith Bredehoeft, Director of Public Works; Katie Logan, City Attorney; Quinn Bennion, City Administrator; Kate Gunja, Assistant City Administrator; Nolan Sunderman, Assistant to the City Administrator; Lisa Santa Maria, Finance Director; and Joyce Hagen Mundy, City Clerk.

Mayor Shaffer led those present in the Pledge of Allegiance and welcomed the new Teen Council Members who were sworn in at the earlier Council Committee of the Whole meeting.

PRESENTATION

Mayor Shaffer called upon Courtney McFadden, former Council representative from Ward 5 for a presentation of a proclamation and gift in appreciation for her service this past year. Mrs. McFadden stated it had been an honor and pleasure working with

everyone and that she hoped to work with the Council in the future on whatever endeavors may lie ahead.

PUBLIC PARTICIPATION

John Anderson, 4402 West 67th Terrace, congratulated the City Council on following through with the implementation of the Teen Council Program as a means to get more community involvement. He went on to challenge the teen council members to get more involved and to get others more involved.

Jerry Mancuso, 7901 El Monte, stated that a month ago he requested a variance or 6 feet for the construction of a porte cochère. The variance was not granted but continued by the Board and he feels that Bob Lindeblad abused his power as a Board Member resulting in the Board delaying action on the application. He shared his negative views of Mr. Lindeblad and suggested he should have recused himself from the meeting. He noted that neighbors on his street had attended the meeting in support of the variance. He felt the City could do a better job in the selection of Planning Commission members.

Mr. Mancuso also noted that he had previously applied for a variance which was later withdrawn and was charged several hundred dollars for the staff review by the city's planning consultant. He noted he was billed \$146 per hour for Mr. Williamson's services and questioned why Prairie Village did not have an in-house planner. He felt the charges were excessive.

Mayor Shaffer recognized five Rockhurst High School Students attending the meeting for their government class.

With no one else present to address the City Council public participation was closed at 7:45.

CONSENT AGENDA

Ashley Weaver moved the approval of the Consent Agenda for Monday, November 4, 2014.

1. Approve Regular Council Meeting Minutes - October 20, 2014

A roll call vote was taken with the following members voting “aye”: Weaver, Nelson, Hopkins, Noll, Mikkelson, Wang, Wassmer, Morehead, Runion, Morrison, Odell and Gallagher.

MAYOR'S REPORT

Mayor Shaffer reported he represented the City at several events during the past two weeks including the Prairie Hills Annual Picnic and Pumpkin Carving contest (which was won by a member of the visiting Ukrainian delegation), the MARC Board meeting, he met with the delegation from Ukraine visiting Prairie Village last week and attended the 100th anniversary of Union Station.

COMMITTEE REPORTS

Council Committee of the Whole

Consider the Award and Funding of the 75th Street Project 75ST0001: State Line Road to Mission Road

On behalf of the Council Committee of the Whole, Council President Ashley Weaver moved the City Council reject all bids received for Project 75ST0001: 75th Street - State Line Road to Mission Road. The motion was seconded by Laura Wassmer and passed unanimously.

Eric Mikkelson noted that even though the bids were being rejected, the City still wants to go forward with the project and will be looking at ways to get additional funding or reduce costs. Keith Bredehoeft stated he planned to meet with KDOT officials later in the week and will bring additional information back to the Council.

Environment/Recycle Committee

Ruth Hopkins stated that over the past several months the Environment/Recycle Committee has been researching a possible ban on plastic bags in Prairie Village. In addition to research from other cities, they have sought input from residents on the issue through surveys. This is a committee initiative and Mrs. Hopkins stated the committee would like feedback from the Council on the issue before proceeding further.

Ben Claypool, 8015 Juniper and member of the committee, noted this is a movement going on throughout the country. Their next step would be to meet with local retailers regarding their concerns, needs and questions.

Andrew Wang asked what kind of plastic bags would be included in the ban. Mr. Claypool responded the ban would be on "single use plastic bags". The ultimate goal of the project is to get individuals to use containers/bags that are reusable and more sustainable.

Eric Mikkelson asked if the ban would be on the use by retailers or everyone and if criminal charges would be made for violations. Mr. Claypool responded the ban would be at the point of sale for retailers. Mr. Mikkelson asked about doggie bags found in public parks. Ms. Wassmer noted those are biodegradable.

Quinn Bennion advised the Council that there are currently several council and staff initiatives in place with some of them backlogged. He asked Council to provide direction and priorities to staff if another initiative is added. Ms Wassmer responded that

would be part of a larger discussion, possibly in January when all items could be reviewed and prioritized.

Jori Nelson noted the committee will be doing much of the work. This is a long term project and will not come before Council for several months. Mr. Claypool stated there is no set timetable. The committee will start with the retailers that have the highest volume usage of plastic bags.

Mayor Shaffer asked if the committee envisioned plans for smaller businesses. Mr. Claypool responded that has not been determined. He noted that in some places enforcement for smaller companies is delayed or waived. The eventual goal would be the adoption of an ordinance to ban use of single use plastic bags by retailers.

Andrew Wang encouraged the committee to get residents involved and supports the committee moving forward to the extent that it does not consume significant staff time outside normal meetings.

Ted Odell stated that overall he liked the idea but urged the committee to be careful in requiring retailers to do certain things. He asked if this was being considered elsewhere. Mr. Claypool responded the Kansas City area is pursuing it. Roeland Park came very close to implementing a program, but has not taken it forward for a vote. The City of Overland Park has expressed an interest, but currently only Prairie Village is pursuing action. Laura Wassmer added that in Boulder, Colorado individuals are charged 10 cents for a plastic bag. Jori Nelson stated the State of California has a ban on plastic bags.

Terrence Gallagher applauded the committee for its initiative, but agreed with Mr. Wang that the initiative should not be placed on staff's plate at this time. He encouraged the committee to also talk with small businesses.

David Morrison expressed support for the committee's initiative.

Ruth Hopkins confirmed that consensus of the Council was for the committee to proceed with their research.

Council Committee on Committees

Brooke Morehead stated that a draft letter has been prepared to be sent out to the committee members of the committees being dissolved that will be mailed in mid-November the first of the year. Ms. Nelson asked why the letter was not being mailed now. Nolan Sunderman changes are effective January 1st and the letter has been backlogged by the staff vacancies.

Mrs. Morehead noted the Committee would be meeting with the Municipal Foundation next week to present the proposed restructuring of the Foundation.

STAFF REPORTS

Public Safety

- Chief Jordan provided additional information on the bank robbery at Bank of America last week and the actions of Officer Brian Wolf in making the successful arrest.
- The Police Department provided a tour for the visiting Ukrainian delegation last week.

Public Works

- Keith Bredehoeft reported that with the abrupt change of weather some of the water lines for the fountains froze before they could be closed off.
- Bill Billings continues to work with residents regarding the Emerald Ash Borer Program.
- Public Works also provided a tour of its facilities for the visiting Ukrainian delegation.

Administration

- Nolan Sunderman announced the visitation by the Ukrainian Delegation went very well and thanked the Mayor and staff for their cooperation and assistance during the visit. The delegation was also able to have a presentation by the Chamber. Mayor Shaffer noted the individuals in the visiting delegation represented an impressive group of present and future leaders.
- Kate Gunja announced the position of Court Administrator has been reposted and she hopes to have the position filled by the end of the year.

- Lisa Santa Maria noted the 2015 budget books were placed on the dais for Council members. She thanked the Police Department Office Manager Jennifer Wright for her assistance in assembling the final document.
- The City received an award of merit for its 2013 CAFR.
- The City received the final Mill Levy rate from the County of 19.493. It is typical to see an adjustment in the rate as the appraisal process is not complete until October.
- Mrs. Santa Maria encouraged Council members to turn in any requests for reimbursement this month.
- Quinn Bennion stated the Google implementation schedule for Prairie Village is still unknown.

OLD BUSINESS

There was no Old Business to come before the City Council.

NEW BUSINESS

Councilman David Morrison expressed his pleasure to be back on the City Council representing Ward 5. He acknowledged he made an error in judgment two years ago and promised that it will not happen again. He vowed to remain in this rightful seat for the remainder of his term. He then commented on contributions made to Mayor Shaffer’s campaign fund from a number of individuals and companies that do business with the City of Prairie Village. He felt these reflected a “cesspool of corruption for personal gain by the Mayor” whereas his actions were of a humanitarian nature.

ANNOUNCEMENTS

Committee meetings scheduled for the next two weeks include:

Board of Zoning Appeals	11/04/2014	6:30 p.m.
Planning Commission	11/04/2014	7:00 p.m.
Tree Board	11/05/2014	6:00 p.m.
Sister City Committee	11/10/2014	7:00 p.m.
JazzFest Committee	11/11/2014	7:00 p.m.
Park & Recreation Committee	11/12/2014	7:00 p.m.
Council Committee of the Whole	11/17/2014	6:00 p.m.
City Council	11/17/2014	7:30 p.m.

=====

The Prairie Village Arts Council is pleased to present a mixed media exhibit by Jhulan Mukharji and Ada Koch in the R. G. Endres Gallery during the month of November. The artist reception will be Friday, November 12, from 6:00 - 7:30 p.m.

Save the Date for the Northeast Johnson County Chamber of Commerce 2014 Annual Gala on Saturday, November 22, 2014 at the Overland Park Marriott.

Save the date for the Mayor's Holiday Tree Lighting on Thursday, December 4, 2014 from 6 p.m. to 7 p.m.

Save the date for the annual Gingerbread House decorating parties on Sunday, December 7, 2014 at 1:30 p.m. OR 3:00 p.m.

Remember to Vote in the General Election tomorrow.

EXECUTIVE SESSION

Ashley Weaver moved pursuant to KSA 75-4319 (b) (6) that the Governing Body, recess into Executive Session in the Multi-Purpose Room for a period not to exceed 10 minutes for the purpose of discussing possible acquisition of property. Present will be the Mayor, City Council, City Administrator, Assistant to the City Administrator and City Attorney. The motion was seconded by Andrew Wang and passed unanimously.

Mayor Shaffer reconvened the meeting at 8:40 p.m.

ADJOURNMENT

With no further business to come before the City Council the meeting was adjourned at 8:45 p.m.

Joyce Hagen Mundy
City Clerk

CITY TREASURER'S WARRANT REGISTER

DATE WARRANTS ISSUED:

Warrant Register Page No. 1

November 17, 2014

Copy of Ordinance
2923

Ordinance Page No. _____

An Ordinance Making Appropriate for the Payment of Certain Claims.

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

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

NAME	WARRANT NUMBER	AMOUNT	TOTAL
EXPENDITURES:			
Accounts Payable			
8463	10/3/2014	6,897.15	
8464-8539	10/10/2014	923,355.64	
8540	10/17/2014	412.04	
8541-8546	10/21/2014	76,642.75	
8547-8623	10/24/2014	471,948.27	
8624-8627	10/27/2014	2,600.00	
8628-8632	10/31/2014	10,743.85	
Payroll Expenditures			
10/1/2014		250,020.44	
10/17/2014		245,638.87	
10/31/2014		245,785.92	
Electronic Payments			
Electronic Pmnts	10/1/2014	559.53	
Electronic Pmnts	10/3/2014	13,922.42	
Electronic Pmnts	10/6/2014	345.14	
Electronic Pmnts	10/7/2014	48.85	
Electronic Pmnts	10/9/2014	20,387.67	
Electronic Pmnts	10/17/2014	566.38	
Electronic Pmnts	10/21/2014	1,565.30	
Electronic Pmnts	10/24/2014	1,715.28	
TOTAL EXPENDITURES:			2,273,155.50
Voided Checks	Check #	(Amount)	
Staples Business Advantage	8535	(363.04)	
TOTAL VOIDED CHECKS:			(363.04)
GRAND TOTAL CLAIMS ORDINANCE			2,272,792.46

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

Passed this 17th day of November 2014.

Signed or Approved this 17th day of November 2014.

(SEAL)

ATTEST: _____

City Treasurer

Mayor

ATTEST: _____

Finance Director



ADMINISTRATION DEPARTMENT

Council Meeting Date: November 17, 2014
Consent Agenda

Consent Agenda: Consider the 2014 contribution allocation recommended by United Community Services for Human Service Fund grants in 2015

RECOMMENDATION

Staff recommends the City Council approve the recommendations of the UCS Grant Review Committee contained in the 2015 Human Service Fund Recommendation Report and a contribution to UCS of \$6,825 from the 2015 Parks & Community Programs Budget.

BACKGROUND

For the past several years, the City has contributed to the United Community Services (UCS) Human Service Fund. This fund helps support local non-profit agencies. The 2015 budget has designated \$6,825 for this contribution. The UCS grant review committee and the UCS Board of Directors reviewed grant applications from a variety of agencies. Information about the agencies they interviewed and the UCS funding recommendation is attached.

If approved, the City's contribution to UCS will be pooled with funds from other cities in Johnson County and distributed to the agencies listed in the 2015 Human Service Fund Recommendation Report.

FUNDING SOURCE

\$6,825 is budgeted for 2015.
01-06-41-6034-025

ATTACHMENTS

2015 Human Service Fund Recommendation Report

PREPARED BY

Meghan Bum
Public Information Officer/Deputy City Clerk

November 12, 2014



United Community Services of Johnson County

Board Members

Jill Quigley, President
Jennifer Bruning
Doug Davidson
Mary D. Estrada
Michael D. Hockley
Thomas Robinett, Jr.
Matthew Scholfield
Henry Sewing
Hon. Ron Shaffer
Paul Snider
Maury Thompson
Rebecca Tilden
Eric Wade
Thomas Wertz
Rev. David Whetter
Eugene R. Wilson
Marc S. Wilson

Council of Advisors

Gary Anderson
Mary Birch
Dick Bond
David Cook, PhD
Ben Craig
Hon. Peggy Dunn
Hon. Ed Eilert
Jeffrey O. Ellis
SuEllen Fried
Ellen Hanson
Terrie Huntington
Betty Keim
Audrey Langworthy
Rabbi Mark Levin
Janis McMillen, PhD
Carol Sader
Joseph Sopcich, PhD
Brad Stratton
Charlie Sunderland
Elaine Tatham, PhD
Stephen Tatum
Tom Trigg, PhD
David Warm
Ron Wimmer, PhD
Hannes Zacharias

Executive Director

Karen Wulfsuhle

October 3, 2014

To: Quinn Bennion
From: ^{KW} Karen Wulfsuhle, Executive Director
RE: 2015 Human Service Fund Recommendation Report

The United Community Services Board of Directors has prepared its recommendation for allocation of the 2015 Human Service Fund. The enclosed report is submitted for Prairie Village's action. To receive an electronic version of the document, please contact Marya Schott, maryas@ucsjoco.org.

The Human Service Fund agreement gives participating jurisdictions the authority and responsibility for determining allocations from this fund. **The governing body is requested to take action to approve or modify the recommendation and notify UCS no later than December 31, 2014.** After that date, the recommendation will stand as presented.

If you would like a representative from UCS to attend a Council meeting, or if you have any questions about the recommendation or process, please contact me at (913) 438-4764. We appreciate your support of this county-wide partnership. Thank you.

Enclosure: 2015 Human Service Fund Recommendation Report



United Community Services of Johnson County

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Elaine Tatham, PhD
Stephen Tatum
Tom Trigg, PhD
David Warm
Ron Wimmer, PhD
Hannes Zacharias

Executive Director

Karen Wulfkuhle

2015 HUMAN SERVICE FUND RECOMMENDATIONS REPORT

Human service programs are a vital component of quality of life. United Community Services (UCS) commends city and County government leaders for recognizing the important role of local government in supporting human service programs. Thank you for your support of the **Human Service Fund** in 2015.

Together, Johnson County Government and 15 cities committed \$290,100 for program allocations. (See appendix A for list of participating jurisdictions.) These contributions impact Johnson County residents who will be served through 13 programs recommended for 2015 Human Service Fund grants. This is the final year of a three-year funding cycle. There are no changes in funding recommendations from 2014. Jurisdictions were not asked for an increase in their support and new applications were not accepted for consideration in 2015.

The Human Service Fund offers local governments a cost-efficient, accountable mechanism to support an array of services that help residents of every city and township who are facing difficult circumstances. Funding is awarded to local nonprofit agencies to support programs that meet basic needs of low-income residents, provide work supports or access to health care, or prevent and respond to personal safety through prevention efforts. (See appendix B for funding priorities.)

Through these programs, thousands of individuals and their families benefit. But, these programs benefit more than just the individual and their family; the entire community, including local government, benefits. Without a strong human service infrastructure to address issues such as unemployment, lack of child care, homelessness, child abuse and neglect, domestic violence, and untreated medical conditions, our community will experience higher crime rates and lower tax revenue, a decline in the standard of living and weakened economic health of our entire community.

Funding recommendations are submitted to cities and County Government for review and action by December 31, 2014.

2015 Human Service Fund Recommendations

Applicant	2013 Grant	2014 Grant	2015 Recommendation	Program Description
CASA of Johnson & Wyandotte Counties	\$20,000	\$20,000	\$20,000	Court-ordered intervention by trained volunteers for children determined by judge to be "Child in Need of Care" due to abuse or neglect. Volunteers focus on the child and submit reports to judge.
Catholic Charities of NE Kansas	\$67,500	\$67,500	\$67,500	Emergency assistance and case management to meet basic needs of low-income families and help them work towards self-sufficiency.
El Centro	\$17,400	\$17,400	\$17,400	Provides safety net services for low-income, under-insured individuals and families, including emergency assistance (utilities) and assistance with access to healthcare.
The Family Conservancy	\$5,000	\$5,000	\$5,000	Individual Development Accounts (IDAs) (incentive-based savings) and financial education program that assist low-income residents in acquiring long-term appreciable assets.
Harvesters	\$5,000	\$7,500	\$7,500	BackSnack program provides a backpack of food for low-income school children to take home over the weekend.
Head Start of Shawnee Mission	\$8,500	\$8,500	\$8,500	Human Service Fund scholarships for child care fees for Head Start families during financial hardship, which allows low-income parents to maintain either full-time education or employment.
Health Partnership Clinic	\$40,500	\$45,300	\$45,300	Health and dental care, through a medical home model, for uninsured low-income Johnson County residents.
Johnson County Interfaith Hospitality Network (IHN)	\$9,000	\$9,000	\$9,000	Case management for homeless single females and homeless families with children who receive shelter, meals, and transportation assistance from IHN.
Kansas Children's Service League	\$7,000	\$7,000	\$7,000	Home-based education and family support for new parents whose children are at-risk for child abuse and neglect.
KidsTLC (formerly TLC for Children & Families)	\$15,400	\$15,400	\$15,400	Street Outreach Services Program serves runaway and homeless youth, with goal of getting them safe housing. Addresses youths' immediate needs; related services and case management are available.
SAFEHOME	\$15,000	\$18,000	\$18,000	Economic Empowerment Program promotes economic self-reliance for victims of domestic violence who are living in shelter and for women in agency's outreach programs.
Salvation Army Family Lodge (Olathe)	\$15,000	\$15,000	\$15,000	Emergency and transitional housing for homeless and near homeless families in Johnson County, including related services and case management.
Sunflower House	\$32,500	\$32,500	\$32,500	Personal safety and prevention programs for children and youth. Prevention and education programs for child care professionals and caregivers, including mandated reporting.
Total Allocated	\$257,800	\$268,100	\$268,100	The 2014 federal poverty level for a family of three is \$19,790.

2015 Human Service Fund Recommendations Report

CASA of Johnson and Wyandotte Counties

\$20,000
Recommendation

Funding is recommended for the Children in Need of Care (CINC) program, a court-ordered program that serves children a judge has determined to be a "Child in Need of Care." CASA is court-ordered to a CINC case because of conflicting case information, extreme neglect or abuse, or concerns about implementation of services. A trained CASA volunteer advocate focuses on the child's situation and gathers information from the child, family, social worker, attorney, and teacher, then with the CASA supervisor, identifies needed assessments or treatment for the child. CASA's report is submitted to the judge who uses it to make more informed decisions regarding the child's future.

Outcomes Projected: Program outcomes include children who do not experience additional abuse or neglect, have a stable adult presence in their lives, and remain in safe and permanent homes. CASA anticipates serving 295 Johnson County children during 2015.

Catholic Charities of Northeast Kansas

\$67,500
Recommendation

Funding is recommended for the Emergency Assistance and Supportive Housing program which operates out of two centers in Johnson County. The program provides assistance and strengths-based case management, without regard to religious affiliation, to families living at or below 150% of federal poverty guidelines. Emergency Assistance services include those that meet residents' basic needs such as food, clothing and shelter, as well as financial assistance with prescription medication and medical supplies, utilities, child care, and transportation. Strengths-based case management helps families identify the strengths they possess and set achievable goals with an action plan toward economic stability.

Outcomes Projected: During 2015 the agency anticipates serving 25,000 Johnson County residents with assistance that includes food and/or financial support to maintain housing and utilities. Outcomes for clients who receive financial assistance include that 70% will undergo a case manager-led financial assessment, and 60% of clients who complete the assessment will attend financial literacy education services.

El Centro, Inc.

\$17,400
Recommendation

Funding is recommended for El Centro's Family Services Center – Comprehensive Safety Net Services - which serves low-income, under-insured and uninsured Johnson County individuals and families. Services include emergency assistance (utility and housing assistance, domestic violence counseling), asset building (tax assistance, financial literacy education), and help accessing health services (health care case management and patient navigation, translation and interpretation).

Outcomes Projected: The agency expects to serve 1,040 Johnson County residents during 2015. Program outcomes include that clients' basic needs are met and healthcare access is improved.

The Family Conservancy

\$5,000
Recommendation

Funding is recommended for Family Asset Building which provides Individual Development Accounts (IDAs) to assist low-income residents (at or below 200% of federal poverty level) in acquiring long-term appreciable assets, such as first homes, small businesses and post-secondary education. IDAs are matched savings accounts. In order to access IDAs, participants must attend financial education classes and training specific to their savings goals. Individual support is also provided.

Outcomes Projected: IDAs and the assets they help to produce increase family stability and decrease the use of fringe financial institutions. During 2015 the agency expects to serve 67 Johnson County residents (adults and children), 75% of whom will save at least \$30/month and complete a minimum of 10 hours of financial education.

Harvesters

\$7,500
Recommendation

Funding is recommended to support Harvesters BackSnack program which is provided within Johnson County schools. Through this program a backpack filled with food is provided to low-income children who take it home for the weekend, when school meals are not available. Harvesters purchases food for the backpacks and links schools to a community partner, and transports the food kits to the partner. Community partners clean backpacks, place food kits in backpacks and distribute backpacks to schools every week. School staff identify children in greatest need of food assistance. Currently Harvesters collaborates with 49 schools and 27 community partners in Johnson County.

Outcomes Projected: In 2015 the agency plans to serve 2,260 Johnson County children and distribute 74,580 backpacks. Outcomes include positive effects on children's grades, behavior and health.

Head Start of Shawnee Mission

\$8,500
Recommendation

Funding is recommended for Head Start of Shawnee Mission's Wrap Around Care program which serves children of low-income families (100% of federal poverty level) who are either working or in school. Wrap Around Care provides extended day care (before and after hour care) for families in the preschool program. Human Service Fund scholarships pay Wrap Around Care fees for enrolled families having financial difficulties. Crisis assistance is provided to families in need of short-term help with housing and food.

Outcomes Projected: Children maintain enrollment in the program while parents continue to work or go to school, which results in stability and continuity of care for the child when the family faces financial hardship. Children will show gains in 11 developmental domains. Head Start projects serving 134 Johnson County children during 2015 with the Wrap Around Care program.

Health Partnership Clinic of Johnson County

Funding is recommended for primary and preventative medical care, and dental and behavioral health services which are provided at Health Partnership Clinic's offices in Olathe and Overland Park for low-income and uninsured residents. Approximately 15 volunteer doctors, dentists, specialists and clerical staff work with 50 paid staff. Health Partnership Clinic utilizes a medical home model which emphasizes prevention and health maintenance while providing a broad scope of services including care for patients with chronic diseases. Specialty care is provided through a network of providers and a local pharmacy chain provides access to affordable prescription drugs.

\$45,300
Recommendation

Outcomes Projected: Anticipated program outcomes include increased access to a medical and dental home for low-income and uninsured residents, patients achieve better health outcomes, and patients utilize the Health Partnership Clinic (HPC) as their ongoing source of care (i.e. a medical home). During 2015 HPC anticipates serving 10,580 Johnson County residents through 32,200 patient visits or encounters.

Johnson County Interfaith Hospitality Network (JoCoIHN)

JoCoIHN provides shelter, meals, transportation and case management for homeless families and single unaccompanied females. Area congregations provide shelter and meals on a rotating schedule while JoCoIHN staff helps families regain self-sufficiency and independence. Human Service Funds are used to provide strengths-based case management which includes assistance with transportation, referrals to other community resources, assistance with budgeting and money management, and assistance with job and housing searches. JoCoIHN partners with 35 faith congregations.

\$9,000
Recommendation

Outcomes Projected: During 2015 the agency expects to serve 40 Johnson County residents with 2,500 days of shelter and case management. Those completing the program will increase their economic resources and many will move into homes of their own upon program completion.

Kansas Children's Service League

Funding is recommended for Healthy Families Johnson County, a child abuse prevention program which provides intensive home-based education and family support services to parents who are experiencing extreme stress and are "at-risk" for child abuse and neglect. Participants receive routine at-home visits, case management, referrals to community resources and services, child development and parent education, and linkage to health care services.

\$7,000
Recommendation

Outcomes Projected: Outcomes include families who do not have any substantiated child abuse and neglect, children who have health insurance, and children who are current on immunizations and have a developmental screen in the last six months (or are already receiving services for developmental delays). The program expects to serve 22 Johnson County families (approximately 66 individuals) during 2015. Compared to previous years, fewer families are expected to be served during 2015 due to loss of federal and state government funding for prevention programs in Johnson County.

KidsTLC
\$15,400
Recommendation

Funding is recommended for KidsTLC Street Outreach Program (SOS) which serves runaway and homeless youth between the ages of 12 and 21. The overarching goal of the program is to get homeless and runaway youth into safe and stable housing. In addition, the young peoples' immediate needs for food and hygiene items are met; youth are educated about sexual abuse, sexual exploitation and domestic violence; and, case management services are available.

Outcomes Projected: During 2015 the organization estimates serving 45 Johnson County youth through this program. Program outcomes are prevention of sexual abuse or exploitation of young people living on the streets or in unstable housing, and keeping youth safe and helping them leave the streets and achieve permanency.

SAFEHOME
\$18,000
Recommendation

SAFEHOME provides shelter and other assistance for victims of domestic violence. Funding is recommended to support SAFEHOME's Economic Empowerment Program. Through education, support, and referrals to community agencies, this program assists women in taking control of their finances and moving towards financial independence. The program also includes housing advocacy to help women find safe, affordable housing. Clients participating in SAFEHOME'S outreach/transitional living programs also have access to financial literacy classes.

Outcomes Projected: Program participant outcomes include securing employment, enrolling in job training or education programs, and achieving budgeting/credit goals. The agency projects this program will serve 225 Johnson County residents during 2015, an increase from previous years due to increased number of victims being served by SAFEHOME.

**The Salvation Army
Olathe**
\$15,000
Recommendation

Funding is recommended to assist homeless families in Johnson County with food and temporary shelter at the Johnson County Family Lodge (a homeless shelter) in Olathe. Families are given a private room for the duration of their stay which averages 90 days. Residents meet weekly with a case manager who utilizes the strengths-based case management model, keep a budget, and work on debt recovery and completing a GED, if needed. Services offered at the Lodge include a financial literacy class, Love and Logic (parenting class), and therapy provided by a volunteer licensed therapist.

Outcomes Projected: In addition to providing safe shelter, outcomes include that families implement a new life skill, complete a debt reduction plan prior to leaving the Lodge, and develop a plan for support systems upon leaving shelter. The Family Lodge anticipates serving 175 Johnson County residents during 2015.

Sunflower House
\$32,500
Recommendation

Funding is recommended to support the Personal Safety Education Program, a child abuse prevention education program. The program includes: 1) *Happy Bear*, an interactive play for children ages four through seven enrolled in public and private early childhood centers and elementary schools; 2) *Let's Talk About Personal Safety* delivered in elementary schools (third through fifth grade), which includes lessons on personal safety (unwelcome touching), bullying, and internet and cell phone safety; 3) *Lets' Cyber-Chat About Personal Safety*, an internet safety program delivered in partnership with the FBI Cyber Crimes Unit to middle-school students; and, 4) prevention and education programs for child care professionals and caregivers, which includes how to recognize signs of possible child abuse and how to appropriately report abuse.

Outcomes Projected: Children are knowledgeable of strategies to recognize, resist and report abuse; youth increase their knowledge of online safety and indicate they will report unwanted communication, and can identify how to report it; and, mandated reporters and caring adults are trained to identify and report child abuse and neglect. The agency anticipates reaching 15,000 Johnson County residents during 2015.

APPENDIX A**2015 HUMAN SERVICE FUND
PARTICIPATING JURISDICTIONS**

JURISDICTION	CONTRIBUTION
Johnson County	\$110,250
De Soto	\$1,665
Edgerton	\$1,500
Gardner	\$4,500
Leawood	\$10,500
Lenexa	\$15,400
Merriam	\$2,250
Mission	\$6,395
Olathe	\$36,000
Overland Park	\$68,830
Prairie Village	\$6,825
Roeland Park	\$3,530
Shawnee	\$19,610
Spring Hill	\$1,495
Westwood	\$1,150
Westwood Hills	<u>\$200</u>
Total 2015 from County Government & Cities	\$290,100
UCS Administration	<u>\$22,000</u>
Total Available to Allocate	\$268,100

APPENDIX B

2015 HUMAN SERVICE FUND GUIDELINES & REVIEW COMMITTEE

The HSF provides grants to nonprofit agencies to support human service safety net programs that serve Johnson County residents. Due to the size of the fund, not all elements of the safety net are included in the Program Area Priorities. Components of the safety net that are supported by the HSF are basic need aid, work and income supports, health care, and personal safety.

2015 FUNDING PRIORITIES

Programs funded by the HSF offer county-wide benefit by avoiding, deferring, or preventing costs that otherwise might be incurred by local government, or that fill a gap which results in county-wide benefit. Priority is given to programs with limited opportunities to access funds directly from state or federal government, including through contractual arrangements. Funded programs must deliver measurable outcomes which benefit county residents and, in the long-term, benefit local governments.

Program Area Priorities:

- Meeting the basic needs of low-income individuals/families. Services may include emergency aid, short and long-term housing/shelter, and food/nutrition.
- Providing help to achieve economic self-reliance through income and work supports. Services may include job training, employment services, and child care assistance.
- Providing access to health care for those who otherwise lack access. Health care may include primary care for acute and chronic conditions.
- Preventing and responding to personal safety. Services may include prevention targeted to those at-risk of child abuse and/or family violence, and aid for victims of child abuse and/or family violence.

2015 ELIGIBILITY CRITERIA

Applicants for HSF must meet all of the following eligibility criteria:

- Current §501(c)(3) designation and in good standing in Kansas or Missouri as a nonprofit corporation, i.e. may not be an entity of city or county government.
- Applicant receives a 2014 Human Service Fund grant (no new applicants).
- Agency must provide an independent certified audit of the previous year's financial records; or, if total agency revenues were less than \$250,000, an independent review of financial statements prepared by a Certified Public Accountant. The audit or review must have been completed within nine (9) months of the close of the fiscal year.
- The program serves primarily Johnson County, Kansas residents, targeting those with limited ability to purchase services. Programs that do not meet these criteria may still be eligible if they provide services to Johnson County residents that would otherwise not be available to them.
- The program clearly defines and measures outcomes for participants.
- The program clearly articulates long-term benefit to local governments.
- The applicant complies with UCS Human Service Fund Agency Standards.

- Applicants must affirm that the agency does not discriminate on the basis of age, sex, ethnicity, disability, race, color, ancestry, political affiliation, religion, sexual orientation, mental health disability or national origin.

2015 HUMAN SERVICE FUND GRANT REVIEW COMMITTEE

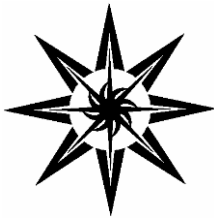
UCS Board Members

- Thomas Wertz, Community Volunteer, *Committee Chair*
- Jennifer Bruning, Community Volunteer
- Michael Hockley, Spencer Fane Britt & Browne LLP
- Rev. David Whetter, Salem Lutheran Church

Community Representative

- Anita Roman-Garcia, Reser's Fine Foods

Staff support: Marya Schott, UCS Community Initiatives Director



ADMINISTRATION DEPARTMENT

Council Meeting Date: November 17, 2014
Consent Agenda

Consent Agenda: Consider the 2015 contribution allocation recommended by the Drug and Alcoholism Council of Johnson County for the 2015 Alcohol Tax Funds

RECOMMENDATION

Staff recommends the City Council approve the recommendations of the Drug and Alcoholism Council of Johnson County contained in the United Community Services Fund Recommendations Report and approve a contribution to UCS of \$24,000 from the 2015 Parks & Community Programs Budget.

BACKGROUND

State Statutes require that one-third of the revenue derived from a state excise tax on liquor sold by the drink be used for alcohol or drug prevention or rehabilitation programs. The Drug and Alcoholism Council of Johnson County formed a grant review process that provides a structured and accountable system that allows organizations, through one application, access to funds from multiple jurisdictions.

The Council makes recommendations to cities for the expenditure of their funds. The City has ultimate authority and responsibility for determining the allocation of the City's portion of the Alcohol Tax Fund. Information about the agencies requesting funds and the funding recommendation for the City of Prairie Village is attached.

FUNDING SOURCE

The allocation of funds will be made from the City's allocation of the Special Alcohol Tax Fund. The 2015 budget includes \$24,000 in Community Programs.

ATTACHMENTS

Recommended distribution of Alcohol Tax Funds for Prairie Village
2015 Alcohol Tax Fund Recommendation Report

PREPARED BY

Meghan Boom
Public Information Officer/Deputy City Clerk

November 12, 2014



United Community Services of Johnson County

Date: November 7, 2014
To: Quinn Bennion, City Administrator, Prairie Village
From: Karen Wulfkuhle, Executive Director *KW*
Re: Allocation of 2015 Alcohol Tax Fund

Board Members

Jill Quigley, President
Jennifer Bruning
Doug Davidson
Mary D. Estrada
Michael D. Hockley
Thomas Robinett, Jr.
Matthew Scholfield
Henry Sewing
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Audrey Langworthy
Rabbi Mark Levin
Janis McMillen, PhD
Carol Sader
Joseph Sopcich, PhD
Brad Stratton
Charlie Sunderland
Elaine Tatham, PhD
Stephen Tatum
Tom Trigg, PhD
David Warm
Ron Wimmer, PhD
Hannes Zacharias

Executive Director

Karen Wulfkuhle

2015 Recommendation Report

The Drug & Alcoholism Council of Johnson County (DAC), a project of United Community Services, has prepared and approved the recommendations for allocation of 2015 Alcohol Tax Funds (ATF). The enclosed report is submitted for the City of Prairie Village's consideration. The DAC is an advisor to the City of Prairie Village on the expenditure of these funds. To receive an electronic version of the document, please contact Marya Schott, maryas@ucsioco.org.

The city has the ultimate authority and responsibility for determining the allocation of its portion of the Alcohol Tax Fund. Therefore, the DAC requests **the city confirm its acceptance of these recommendations and the city's funding distributions as stated on the distribution chart**. UCS, the DAC and ATF grant recipients understand that distribution of city funds may be altered should Kansas tax policy change, or revenues are not received by the City as expected. **Enclosed is a verification statement which we request be signed and returned to UCS by December 19, 2014**. If the ATF Recommendations Report will be considered during a city council or committee meeting, and you would like a representative of the DAC present then, please notify Marya Schott.

Distribution of Funds

For the purposes of making the recommendations, the DAC pools alcohol tax funds from all participating jurisdictions (Johnson County Government, Gardner, Leawood, Lenexa, Merriam, Mission, Olathe, Overland Park, Prairie Village, and Shawnee). Each jurisdiction, however, is responsible for distributing its own funds. A distribution chart for your jurisdiction is enclosed. Funding distribution is determined as follows:

- 1) funds for school district programs are allocated proportionally only from the jurisdictions served by particular school districts;
- 2) UCS/DAC administrative cost of 5.6% is prorated among all jurisdictions; and
- 3) remaining programs are funded proportionally by all jurisdictions.

Thank you for your continued support of this allocation process, which targets public resources to address substance abuse education, prevention, intervention, detoxification, and treatment needs for Johnson County residents. Please contact me or Marya Schott if you have additional questions.

Enclosures: 2015 Alcohol Tax Fund Recommendations Report
Alcohol Tax Fund Distribution Chart
2015 Alcohol Tax Fund Recommendations Verification
2015 Grantee List

cc: Lisa Santa Maria

2015 ATF Distribution

PRAIRIE VILLAGE: \$24,000

UCS administration	\$1,308
Shawnee Mission School District	\$819
Prefered Family Healthcare	\$1,584
Friends of Recovery	\$621
The Family Conservancy	\$536
Heartland Regional Alcohol & Drug Assessment Center	\$1,817
Gillis Center	\$932
Jo. Co. Mental Health Center Adolescent Center for Treatment	\$3,938
Johnson County Mental Health Center Adult Detoxification Unit	\$4,172
Johnson County Mental Health Center Adult Dual Diagnosis	\$1,165
Johnson County Mental Health Center Regional Prevention Center	\$1,581
Johnson County Court Services	\$1,416
Marillac	\$466
First Call	\$342
SAFEHOME	\$435
Johnson County Dept. of Corrections	\$197
KidsTLC	\$621
Mirror, Inc.	\$2,050
Total	\$24,000

Source: United Community Services of Johnson County 913-438-4764



United Community Services of Johnson County

2015 ALCOHOL TAX FUND

REVISED RECOMMENDATIONS REPORT* DRUG and ALCOHOLISM COUNCIL OF JOHNSON COUNTY

Participating jurisdictions: Johnson County, Gardner, Leawood, Lenexa, Merriam, Mission, Olathe, Overland Park, Prairie Village and Shawnee

- Board Members**
 Jill Quigley, President
 Jennifer Bruning
 Doug Davidson
 Mary D. Estrada
 Michael D. Hockley
 Thomas Robinett, Jr.
 Matthew Scholfield
 Henry Sewing
 Hon. Ron Shaffer
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 Eric Wade
 Thomas Wertz
 Rev. David Whetter
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- Council of Advisors**
 Gary Anderson
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 Ron Wimmer, PhD
 Hannes Zacharias

- Executive Director**
 Karen Wulfkuhle

The purpose of the grant review process conducted by the Drug & Alcoholism Council of Johnson County (DAC) is to direct local Alcohol Tax Funds (ATF) to alcohol and drug prevention, education, intervention, detoxification, treatment, and recovery programs that serve Johnson County residents. The entire community benefits when substance abuse is prevented and/or effectively treated. A continuum of services from education through treatment and recovery significantly lowers drug and alcohol use, which in turn lowers healthcare costs, reduces crime, and child abuse and neglect, and increases productivity in employment - thus lowering associated public costs.

Alcohol Tax Funds are derived from a state excise tax on liquor sold by the drink. Part of the revenue generated is returned to the jurisdiction (city or county) in which it was collected, with the stipulation that a specified portion be used for programs “whose principal purpose is alcoholism and drug abuse prevention or treatment of persons who are alcoholics or drug abusers, or are in danger of becoming alcoholics or drug abusers” (KSA 79-41a04 1997).

The DAC’s grant review process provides a structured and accountable system that allows organizations, through one annual application, access to funds from multiple jurisdictions. The Board of County Commissioners and city councils have ultimate authority and responsibility for determining which organizations receive funds from their respective jurisdictions based upon the recommendations in this report. **Jurisdictions are asked to accept the recommendations by December 19, 2014.**

Together, Johnson County Government and nine cities committed \$1,720,025 for 2015 ATF (listed on page 10). Twenty-two applications totaled \$1,695,632 in funding requests. After studying applications, meeting with applicants and deliberating, the DAC developed funding recommendations. This Report reflects those recommendations and is organized in two sections: Education, Prevention and Intervention; and, Treatment and Recovery.

For additional information on the process or the programs, contact Marya Schott, UCS Community Initiatives Director, 913.438.4764, maryas@ucsjoco.org.

*Revised November 12, 2014 to include description of Dept. of Corrections’ program.



2015 Alcohol Tax Fund Grant Recommendations						
Grant History and 2015 Request and Recommendations						
<i>*In 2015, First Call, Gillis, and SAFEHOME were moved from Treatment & Recovery to Education, Prevention & Intervention.</i>						
Applicant	2011 Allocation	2012 Allocation	2013 Allocation	2014 Allocation	2015 Request	2015 Recommendation
EDUCATION, PREVENTION and INTERVENTION						
Blue Valley	\$26,500	\$49,100	\$56,550	\$65,450	\$59,895	\$59,895
De Soto	\$26,000	\$24,000	\$24,000	\$20,745	\$25,020	\$24,020
Gardner Edgerton	\$28,500	\$25,265	\$24,635	\$26,385	\$37,210	\$32,210
Olathe	\$37,380	\$42,860	\$48,960	\$33,455	\$33,455	\$33,455
Shawnee Mission	\$52,317	\$43,691	\$50,000	\$50,000	\$50,000	\$50,000
Spring Hill	\$8,500	\$26,490	\$16,495	\$22,495	\$18,495	\$18,495
Family Conservancy	\$31,302	\$31,300	\$33,900	\$33,900	\$34,500	\$34,500
First Call*	\$20,000	\$17,000	\$17,000	\$21,000	\$25,000	\$22,000
Gillis Center*	\$50,790	\$51,111	\$55,000	\$55,000	\$60,000	\$60,000
JoCo Court Services	\$53,960	\$55,209	\$57,878	\$63,389	\$91,147	\$91,147
JoCo Library	\$9,500	\$8,000	\$0	\$0	0	0
JoCoMH RPC	\$87,119	\$87,119	\$95,000	\$97,295	\$106,000	\$101,722
SAFEHOME*	\$17,771	\$17,771	\$18,197	\$21,578	\$28,000	\$28,000
Section Subtotal	\$449,639	\$478,916	\$497,615	\$510,692	\$568,722	\$555,494
TREATMENT and RECOVERY						
Associated Youth Services			\$7,260	\$0	\$0	0
Friends of Recovery	\$29,811	\$30,000	\$30,000	\$30,000	\$40,000	\$40,000
Heartland RADAC	\$59,623	\$85,000	\$85,000	\$117,000	\$117,000	\$117,000
JoCo Dept. Corrections	\$19,874	\$25,925	\$18,500	\$0	\$12,710	\$12,710
JoCoMH Adolescent Center for Treatment	\$149,807	\$149,807	\$183,235	\$219,510	\$253,510	\$253,510
JoCoMH Adult Detox. Unit	\$268,581	\$268,581	\$268,581	\$268,581	\$268,581	\$268,581
JoCoMH Adult Dual Diagnosis Outpatient Prog.	\$61,000	\$61,000	\$75,000	\$75,000	\$75,000	\$75,000
KidsTLC	\$45,000	\$35,000	\$40,000	\$38,000	\$40,000	\$40,000
Marillac	\$33,396	\$33,396	\$33,396	\$33,396	\$33,396	\$30,000
Mirror, Inc.			\$90,000	\$90,000	\$174,713	\$132,000
Preferred Family Healthcare (Cypress Rec.)	\$94,500	\$96,418	\$92,000	\$92,000	\$112,000	\$102,000
Salvation Army	\$50,000	\$47,000	\$13,001	\$15,500	0	0
Section Subtotal	\$811,592	\$832,127	935,973	\$978,987	\$1,126,910	\$1,070,801
Section Totals	\$1,261,231	\$1,311,043	\$1,433,588	\$1,489,679	\$1,695,632	\$1,626,295
UCS Administration	\$84,000	\$84,000	\$88,300	\$90,100		\$93,730
Grand Total	\$1,345,231	\$1,395,043	\$1,521,888	\$1,579,779		\$1,720,025

2015 ALCOHOL TAX FUND GRANT RECOMMENDATIONS

Education, Prevention and Intervention

Alcohol Tax Funds (ATF) support numerous programs offered by the six public school districts and programs delivered by six community-based organizations. In general school-based programs help to prevent and reduce substance abuse. Additionally, programs lower risk factors associated with substance abuse, such as disruptive behavior and truancy. Community-based programs help lower the rates of substance abuse, which translate to lower mental and physical healthcare costs, and less expense for law enforcement and the criminal justice system. Funding recommendations are based upon a review of each proposal (see Appendix A for criteria) and take into consideration the type of programming, outcome achievement and accountability.

School District Programs

Each school district offers a unique mix of programs to its students and parents, and each district has a mix of funding to support these programs. As a result, the programs supported by ATF and the amount of ATF dollars recommended differ for each district.

Blue Valley School District

Request: \$59,895

Recommendation: \$59,895

The DAC recommends Blue Valley School District be awarded \$59,895 to support funding for 15 Building Drug and Alcohol Coordinators and a district coordinator, substitutes during coordinators' meetings, Sobriety Support Groups, AlcoholEdu (an evidence-based on-line program implemented in all high schools and the Academy), stipends for Reconnecting Youth instructors and materials, funds for a substitute teacher to provide time for new teachers to be trained on Project Alert (implemented in middle schools), and funds for teachers to continue their work on writing pre/post tests for Project Alert and making revisions to Project Alert as recommended by University of Kansas consultant. The DAC encourages the district to share its revisions to Project Alert with other Johnson County school districts. During 2015 the district anticipates serving approximately 13,425 adults/parents and youth/students through ATF supported programs.

De Soto School District

Request: \$25,020

Recommendation: \$24,020

The DAC recommends the De Soto School District be awarded \$24,020 to support implementation of three evidence-based programs - Too Good for Drugs (elementary students), Reconnecting Youth (high-risk middle and high school students), and AlcoholEdu (high school); high school prevention clubs; a driving under the influence of alcohol/drugs simulation for high school students; and, a parent/town hall meeting which includes information about substance abuse trends and prevention. Additionally, the DAC recommends funding to support the district's coordinator for substance abuse programming. During 2015 the district anticipates serving approximately 9,580 adults/parents and youth/students through ATF supported programs.

Gardner Edgerton School District**Request: \$37,210****Recommendation: \$32,210**

The DAC recommends Gardner Edgerton School District be awarded \$32,210 to support its implementation of the evidence-based programs - Too Good for Drugs (K-12) and AlcoholEdu (high school) - and character education/Too Good for Violence (elementary school), as well as support of Drug Free clubs (activities and building sponsors). Funding will also be used to support student participation in the Youth Leadership Summit, training for school staff in Youth Mental Health First Aid, and educational programming/materials which help build students' protective factors and adults' parenting skills (for parents: Love and Logic and Parent Information Night). During 2015 the district anticipates serving between 6,300 and 7,000 adults and youth through ATF supported programs.

Olathe School District**Request: \$33,455****Recommendation: \$33,455**

The DAC recommends the Olathe School District be awarded \$33,455 to support the implementation of Project Alert (an evidence-based program delivered in middle school), sobriety support groups (high school), student substance abuse assessments, Life Skills (middle school), parent education through Guiding Good Choices (parents of students ages 9-13 who are identified by school), and AlcoholEdu (9th grade in one high school). During 2015 the district anticipates serving approximately 5,109 adults and students through ATF supported programs.

Shawnee Mission School District**Request: \$50,000****Recommendation: \$50,000**

The DAC recommends the Shawnee Mission School District be awarded \$50,000 to support implementation of AlcoholEdu (three high schools) and continued support of the district's Drug Free clubs which use the Too Good for Drugs program. The DAC commends the school district for implementing an evidence-based substance abuse prevention program in its after school clubs, however this reaches only the students who choose to participate in the after school program. During 2015 the district anticipates serving approximately 3,156 adults/parents and youth/students through ATF supported programs.

Spring Hill School District**Request: \$18,495****Recommendation: \$18,495**

The DAC recommends the Spring Hill School District be awarded \$18,495 to support four evidence-based programs: Project Alert (middle school), Al's Pals: Kids Making Health Choices (kindergarten), AlcoholEdu (high school), and Peer Assistance Leadership (high school); and, Students Against Destructive Decisions (high school). During 2015 the district anticipates serving 2,625 students through ATF supported programs.

Community Based Programs

The Family Conservancy

Request: \$34,500

Recommendation: \$34,500

The DAC recommends the Family Conservancy be awarded \$34,500 to implement The Incredible Years curriculum (an evidence-based program which targets high-risk children ages 2-8 years-old and their parents), and substance abuse education and screening for all Johnson County clients served within the agency's counseling programs. The Family Conservancy offers The Incredible Years free of charge to families. During 2015, the agency anticipates serving 345 Johnson County residents.

First Call Alcohol/Drug Prevention & Recovery

Request: \$25,000

Recommendation: \$22,000

The DAC recommends that First Call be awarded \$22,000 to deliver Family Prevention Services in Johnson County. These services include the following: 1) *How to Cope* program which is provided to any interested adult in Johnson County (classes are located at Church of the Resurrection); 2) *Caring for Kids* program which is provided during the summer to children and youth at Johnson County Mental Health Center Adolescent Center for Treatment (ACT); 3) Olathe School District students – sobriety groups, Life Skills 101 (uses an evidence-based program and focuses on alcohol/drug use prevention/education, family systems, anger management and communication), Students Invest in Success (an open student forum that utilizes the Say It Straight curriculum and elements of other evidence-based programs); and, 4) direct services to Johnson County residents who comprise nine percent of First Call's clients. Direct services include: 1) community-based alcohol, drug and tobacco prevention activities for children, youth and adults; 2) assessment and referral to treatment, and Motivational Enhancement for those on waiting lists for treatment; 3) the crisis call hotline; 4) professional development classes; and, 4) Family Services classes (prevention services) located at First Call.

During 2015 the organization anticipates serving 605 Johnson County participants through *How to Cope*, *Caring for Kids*, and Olathe School District; and, 1,800 through direct services.

Gillis Center

Request: \$60,000

Recommendation: \$60,000

The DAC recommends that Gillis be awarded \$60,000 for the implementation of Functional Family Therapy, an evidence-based in-home family intervention program to address a variety of problems facing at-risk youth and their families. During 2015, Gillis will use ATF grant monies to serve approximately 57 Johnson County youth and their family members whose problems are related to substance abuse. In Johnson County, the Juvenile Intake and Assessment Center, Court Services and the Johnson County Department of Corrections are the primary referral sources to Functional Family Therapy, although youth referred from schools and parents are eligible for Functional Family Therapy provided the referral meets program criteria. In 2009 Gillis acquired Intensive Family Counseling, a nonprofit located in Roeland Park which received ATF support from 2004 through 2009 for Functional Family Therapy.

Johnson County Court Services, Juvenile Drug Court**Request: \$91,147****Recommendation: \$91,147**

The DAC recommends that Johnson County Court Services be awarded \$91,147, an increase in funding from 2014 and 2013, to accommodate a sizeable increase in the number of youth served in the Juvenile Drug Court and Minor in Possession of Alcohol (MIP) programs. Specifically, ATF will support the salary and benefits for 1.5 FTE Court Service Officers who supervise clients in the Juvenile Drug Court and MIP programs. The Juvenile Drug Court targets first-time offenders applying for diversion who present with serious drug and/or alcohol issues. The MIP program is a non-Court resolution of a police report when a juvenile has been in possession of alcohol. Both programs increase youths' motivation to remain drug/alcohol free. Recidivism rates for juveniles who complete the Drug Court program are considerable lower than juvenile offenders who do not complete the program. During 2015 Court Services anticipates serving 400 Johnson County youth in these programs.

Johnson County Mental Health Center, Regional Prevention Center (RPC)**Request: \$106,000****Recommendation: \$101,722**

The DAC recommends the Regional Prevention Center be awarded \$101,722 to support a range of direct prevention services and supports to residents and organizations in Johnson County. ATF funds will support 1.5 FTE to provide prevention services which include 1) Responsible Beverage Service Training, 2) Lock Your Meds Campaign/Prescription Drug Take Back, 3) Youth Leadership Summit, 4) Strengthening Families, and 5) substance abuse prevention presentations. The RPC's primary funding source is Kansas Department for Aging and Disability Services (KDADS). ATF supports the RPC's expansion of services beyond the parameters of KDADS and other funding. Services funded by ATF assist the RPC in supporting the community in areas of concern such as prescription drug abuse, and in addressing risk factors which include retail and social access, along with parental attitudes and acceptance toward problem behaviors. During 2015 the RPC anticipates serving 8,300 Johnson County residents.

SAFEHOME**Request: \$28,000****Recommendation: \$28,000**

The DAC recommends SAFEHOME be awarded \$28,000 to continue its substance abuse assessment and referral program. This program includes an onsite substance abuse assessment of every new resident in this domestic violence shelter, an in-depth substance abuse interview when applicable, recommendations of intervention or treatment and help with connections to those services, a quarterly support group, and Twelve Step Facilitation Therapy on an individual basis. The organization anticipates serving 90 Johnson County participants during 2015.

Note regarding continuing program services: **The Johnson County Library** received ATF support from 2001 through 2012 for its Changing Lives Through Literature Program. The program has continued since 2012 with ATF funding that the library has carried over from previous years, and it will continue during 2015. The library will provide semi-annual reports on outcomes and service statistics. During 2015 the Johnson County Library anticipates serving 18 participants.

Treatment and Recovery

Alcohol Tax Funds are recommended to support ten treatment and recovery programs delivered by community-based organizations and departments of County government. In general, treatment programs help to reduce substance abuse, lead to positive individual change and productivity, reduce mental and physical healthcare costs, improve public safety, and reduce law enforcement and court costs. Funding recommendations are based upon a review of each proposal and take into consideration the type of programming, outcome achievement and accountability.

Friends of Recovery Association

Request: \$40,000

Recommendation: \$40,000

The DAC recommends that Friends of Recovery (FORA) be awarded \$40,000 to continue reintegration programming and case management for individuals living in Oxford Houses. Oxford Houses target individuals who often have limited resources, and are seeking a supportive environment within which to recover from substance abuse. Peer mentors help facilitate a series of workshops designed for trauma recovery and empowerment based upon Seeking Safety, a present-focused treatment for clients with a history of trauma and substance abuse which was designed for flexible use. Friends of Recovery operates 25 Oxford Houses in Johnson County. During 2015 FORA anticipates opening one more house in Johnson County and serving approximately 319 Johnson County participants. The DAC appreciates that FORA continues to partner with Johnson County Forensic Assertive Community Treatment Program to offer short term housing to individuals recently released from incarceration. Through this partnership, individuals are provided with shelter, as well as help as they seek employment and apply for standard admission to Oxford House.

Heartland Regional Alcohol & Drug Assessment Center (RADAC)

Request: \$117,000

Recommendation: \$117,000

The DAC recommends that Heartland RADAC be awarded \$117,000 to support its recovery coaching, intensive case management and care coordination for Johnson County individuals with co-occurring substance use disorders and mental health issues who are homeless or at-risk of homelessness, and need treatment or treatment-related services. Recovery coaching helps clients engage in the recovery community and is provided in conjunction with case management and care coordination services. Heartland RADAC's ATF supported services fill a gap in the continuum of services for this population that is otherwise unfunded. Heartland RADAC anticipates serving 110 Johnson County clients during 2015.

Johnson County Department of Corrections

Request: \$12,710

Recommendation: \$12,710

The DAC recommends the Department of Corrections be awarded \$12,710 to support *Adult Residential and Intensive Supervision Treatment Voucher Assistance, and Adult Residential Treatment Readiness Programs*. Through vouchers, ATF will support treatment costs associated with adult and youth offenders who face financial barriers to obtaining substance abuse treatment. Vouchers will be provided to approximately 20 clients in the Adult Residential Center, 20 adults who are under Intensive Supervision, and five youth who are juvenile

intensive supervision clients. Treatment services at the Adult Residential Center are provided by a licensed clinician through a competitive contract process. Treatment services for clients under intensive supervision are provided under a contract with the district court and its agreement with licensed clinicians. ATF will also support a new initiative at the Adult Residential Center (ARC) which according to Corrections, incorporates “treatment readiness in addition to cognitive skills.” This initiative will utilize the “Courage to Change” curriculum which includes interactive journaling, and focuses on readiness to change, and risk related to criminal personality. Corrections anticipates serving 320 Johnson County clients during 2015.

Johnson County Mental Health Center, Adolescent Center for Treatment (ACT)

Request: \$253,510

Recommendation: \$253,510

The DAC recommends that the Johnson County Mental Health Center's Adolescent Center for Treatment be awarded \$253,510 to deliver an adolescent residential treatment program for youth ages 12-18. The ACT is the only specialized youth residential substance abuse treatment program available in the state of Kansas. The majority of residential patients are court-ordered; some are from the foster care system. Continuing care outpatient groups are available for treatment graduates. ACT offers a sliding fee scale to ensure that no clients are turned away due to financial reasons. During 2015 ACT anticipates serving 74 Johnson County youth in the residential program.

Johnson County Mental Health Center, Adult Detoxification Unit (ADU)

Request: \$268,581

Recommendation: \$268,581

The DAC recommends that the Johnson County Mental Health Center's Adult Detoxification Unit be awarded \$268,581 to provide a social detoxification center delivered at no cost to adult Kansas residents 24 hours a day, seven days a week. Admissions primarily come through hospitals and law enforcement. The ADU is the only social detoxification program located in Johnson County and is a cost-effective alternative to hospital emergency rooms or incarceration. During 2015 the Mental Health Center ADU anticipates serving 460 clients from Johnson County.

Johnson County Mental Health Center, Dual Diagnosis Adult Outpatient Program

Request: \$75,000

Recommendation: \$75,000

The DAC recommends that the Johnson County Mental Health Center's Dual Diagnosis Adult Outpatient Program be awarded \$75,000 to offer integrated outpatient treatment to adults who have co-occurring substance use disorders and mental health disorders. These persons are often very difficult to treat and require staff with both mental health licensure and substance abuse credentialing to deliver treatment planning and services. The program uses a sliding fee scale to assure access for low-income residents. No one is turned away for inability to pay fees. First implemented in September 2008, an increasing number of clients continue to be served each year, growing from 247 clients in 2009, to a projected service delivery in 2015 of 528 Johnson County residents.

KidsTLC**Request: \$40,000****Recommendation: \$40,000**

KidsTLC is licensed by the State of Kansas as a Psychiatric Residential Treatment Facility (PRTF). The DAC recommends that KidsTLC be awarded \$40,000 to support substance abuse screening/assessment, evaluation, prevention/education, and clinical treatment for youth ages 12-18 who reside within the agency's PRTF. Clinical treatment is provided to youth who are dually diagnosed with substance use disorder and mental health issues. Seeking Safety is utilized in treatment. Seeking Safety is an evidence-based present-focused treatment for clients with a history of trauma and substance abuse which was designed for flexible use. Relapse prevention sessions are provided to PRTF residents who are in recovery, and are also provided through KidsTLC outpatient clinic. During 2015 the agency projects serving 62 Johnson County youth.

Marillac**Request: \$33,396****Recommendation: \$30,000**

Marillac serves children and adolescents ages 6-17 years who have emotional and behavioral disorders. Marillac is licensed by the State of Kansas as a Psychiatric Residential Treatment Facility (PRTF), holds a psychiatric hospital license, and is certified to provide substance use disorder services. The DAC recommends Marillac be awarded \$30,000 to provide substance abuse prevention services to all Johnson County children and adolescents in their inpatient (PRTF/Hospital), day treatment (partial hospitalization), and outpatient programs; and, to provide substance abuse assessment and treatment services for all Johnson County clients in Marillac's programs who are in need of such services. Marillac anticipates serving nearly 200 Johnson County youth during 2015.

Mirror, Inc.**Request: \$174,713****Recommendation: \$132,000**

The DAC recommends that Mirror, Inc. be awarded \$132,000 in support of its residential treatment component for clients with co-occurring disorders (co-occurring disorder of substance use disorder and mental illness). Mirror received ATF support for the first time in 2013. It is a statewide organization which provides residential addiction services in three communities, and has provided substance abuse services in Johnson County for sixteen years. Located in Shawnee, this program addresses the needs of clients who fall below 200 percent of poverty and cannot access services in a timely manner due to limited state block grant funding. Mirror is the only residential program located in Johnson County that serves this population. If ATF was awarded at the organization's full request, Mirror stated that during 2015, 48 Johnson County residents with co-occurring disorders would be served.

Preferred Family Healthcare, Inc.**Request: \$112,000****Recommendation: \$102,000**

The DAC recommends that Preferred Family Healthcare (PFH) be awarded \$102,000 for its delivery of outpatient substance abuse treatment services in Olathe to Johnson County residents with limited or no resources to pay for services (e.g. uninsured, indigent and low income residents). Prior to September 2012 when Cypress Recovery merged with Preferred

Family Healthcare, ATF support was provided to Cypress Recovery for these services. During the first six months of 2014, 75 percent of the consumers served by PFH in Olathe received services on a sliding fee scale (e.g. fees based upon income and family size), and of those 38 percent paid no fees at all. Preferred Family Healthcare is a Johnson County Court approved provider for substance abuse services, and states it will maintain a fee policy that assures no one is turned away due to inability to pay fees. ATF support in 2015 is contingent upon Preferred Family Healthcare maintaining this fee policy. During 2015, Preferred Family Healthcare projects serving 680 Johnson County residents.

**2015 Alcohol Tax Fund
Participating Jurisdictions**

Jurisdictions	Contribution
Johnson County Government	\$111,342
City of Gardner	\$32,000
City of Leawood	\$250,000
City of Lenexa	\$128,375
City of Merriam	\$20,000
City of Mission	\$35,000
City of Olathe	\$202,176
City of Overland Park	\$835,500
City of Prairie Village	\$24,000
City of Shawnee	\$81,632
Total Alcohol Tax Fund	\$1,720,025

APPENDIX A
DRUG & ALCOHOLISM COUNCIL of JOHNSON COUNTY FUNDING PRIORITIES

ATF Funding Priorities 2014, 2015, 2016

Numbering of priorities does not indicate one is more important than another.

By legislative mandate, ATF dollars must be used to fund substance abuse prevention, intervention and/or treatment. For the purpose of this application, these services are *generally* defined as follows:

- Education and Prevention programs are designed to provide information and skill building to prevent problems with, or addiction to, alcohol and/or drugs.
- Intervention programs are designed to interrupt alcohol and/or drug use that has become problematic either personally or legally.
- Substance Abuse Treatment programs are licensed by the State of Kansas to provide substance abuse treatment services, and are designed to assist clients with stopping use of alcohol and drugs and avoiding relapse.

Overall priority is given to:

1. Programs that provide services to meet a defined community need (defined through indicator data, Communities That Care[®] survey results, and/or outcome measurements of implemented programming).
2. Programs that address barriers to services such as accessibility, language, culture, and homelessness.
3. Programs that demonstrate an awareness of the role of trauma in prevention and treatment of substance use.
4. Programs that utilize evidence-based programs or promising practices, such as Treatment Improvement Protocols (TIPS), and those that include quality assurance practices to maintain fidelity.
5. Programs that document the impact of their services through measurable outcomes, and that use outcome information to improve and/or enhance future service delivery.

Priority for Education and Prevention Programs include:

1. Strategies that focus on young adolescents in order to delay onset of first use of substances.
2. Programs that focus on youth binge drinking.
3. Programs that target use of gateway drugs and address new trends in drug use across all age groups.
4. Strategies and services that involve community and families parents/guardians/significant others.
5. Programs that utilize *Risk and Protective Factors* strategies.

Priority for Treatment and Intervention Programs include:

1. Programs that offer affordable and accessible services to underserved individuals who are ineligible for, or have limited access to, Federal Block Grant subsidies, Medicaid, or private insurance to assist with substance abuse treatment costs.
2. Programs that include treatment strategies which have been proven effective in serving individuals with co-occurring substance use and mental health disorders.
3. Programs that involve families/parents/guardians/significant others in substance abuse treatment and aftercare.
4. Programs that collaborate with other organizations, the legal system, and/or community-based recovery services during and after treatment in order to sustain recovery and provide linkage to natural community supports.

Applications are evaluated according to these criteria:

- Community Need
 - How the program addresses a clearly-stated community need, or opportunity to address a community need.
 - Does the program coordinate with other community services to maximize the impact of available resources and meet needs of population?
 - How the program benefits local jurisdictions.
 - The purpose of proposed program or services is consistent with ATF funding priorities.
- Responsiveness of Proposed Program Activities: A detailed description of program activities proposed for funding, including a clear exposition of:
 - the targeted population, strategies for reaching the target population, and access to services (e.g. are barriers to activities/services reduced or eliminated). If applying for substance abuse prevention and education programming for youth, how program addresses Communities That Care® (CTC) risk and protective factors of target population.
 - services/activities that are responsive to needs of population.
 - the evidence base for the effectiveness of the prevention or treatment program or services with the targeted population.
 - the ability to accommodate for cultural differences within the population.
- Measurable Outcomes
 - The program includes clear and measurable outcomes, and includes a plan for related data collection in order to evaluate success in achieving those outcomes. Outcome data reflecting on abstinence, housing, employment, criminal activity, access to and/or retention in services are strongly preferred.
 - The program demonstrates clear linkage between program activities and outcomes.
 - The program provides reasonable evidence of the achievement of previously identified outcome(s).
 - Reasonable levels of service are provided for resources expended.

- Organizational Capacity and Funding
 - The organization is stable (financial position, legal issues, etc.)
 - The program has attracted sufficient community resources from public, private, and volunteer sources, to produce proposed outcomes.
 - The program budget is realistic and reasonable in light of the proposed activities.
 - The application demonstrates that ATF funding is critical to achieving the stated outcomes.
 - The application and program comply with grant conditions.
- Qualifications, Licensing and Accreditation
 - If applicable, the agency is licensed/accredited.
 - Employees are qualified to provide services (accredited/licensed, if applicable).

APPENDIX B

2014 DRUG and ALCOHOLISM COUNCIL of JOHNSON COUNTY

*Lee Jost, Chair, Pastor, Christ the Servant Evangelical Covenant Church, Johnson County Board of County Commissioners Representative**

*Roxann Kerr Lindsey, Vice-Chair, CBIZ, Grant Review Sub-committee Chair**

*Marcy Knight, Secretary, Attorney, City of Shawnee Representative**

Mary Moss, Immediate Past-Chair, Overland Park Court Services, City of Overland Park Rep.

*Jeanna Allen, Choices, LLC**

*Wendy Biggs, M.D., University of Kansas Medical Center **

*Chief Michael Daniels, Merriam Police Department, City of Merriam Representative**

*John Elder, Olathe Prosecutor's Office, City of Olathe Representative **

*Ryan Erker, Erker Law, Grant Review Sub-committee Chair**

*Jennifer Granger, Kansas Bureau of Investigation**

*Nikki Green, Shawnee Mission Medical Center**

*Risé Haneberg, Johnson County Government * ♦*

Joe Karlin, Rochdale Group, Lenexa City Council Member, City of Lenexa Representative

*Sgt. Lee Krout, Gardner Police Department, City of Gardner Representative**

*Cathy Lawless, Community Volunteer, City of Leawood Representative**

*Annette Maassen-Spates, Johnson County Community College**

*Captain Rick Newson, Johnson County Sheriff's Office **

*Marie Ramirez, Blue Cross Blue Shield of Kansas City, City of Prairie Village Representative **

*Debbie Rulo, Johnson County Community College**

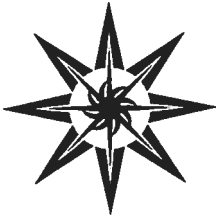
*Sara Sautter, Community Volunteer**

*Samantha Shannon, Office of Johnson County District Attorney **

* Denotes Grant Review Committee member

♦ Denotes Non-Voting Ex-Officio member

Staff Support:
Marya Schott, UCS Community Initiatives Director



MAYOR

**Council Meeting Date: November 17, 2014
CONSENT AGENDA**

Consider Appointment to the JazzFest Committee

RECOMMENDATION

Mayor Shaffer requests Council ratification of the appointment of David Hassett to the Prairie Village JazzFest Committee.

BACKGROUND

David has been a volunteer at the past two festivals and wants to become more involved in the committee.

ATTACHMENTS

Volunteer Application

PREPARED BY

Joyce Hagen Mundy
City Clerk

Date: November 12, 2014



City of Prairie Village

APPLICATION TO VOLUNTEER

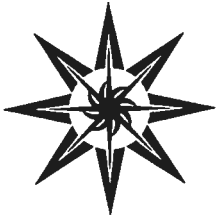
Please complete this form and return it to the City Clerk's Office, 7700 Mission Road, Prairie Village, Kansas 66208. If you have any questions, please contact the City Clerk's Office at 913-381-6464 or send an e-mail to cityclerk@pvkansas.com.

Name David Hassett Spouse's Name Amanda
Address 2310 W. 85th Ter Zip 66206 Ward _____
Telephone: Home 913-538-6238 Work 703-728-7543 Fax _____
E-mail DHASETT1@GMAIL.COM Other Number(s): _____
Business Affiliation N/A
Business Address _____
What Committee(s) interests you? Jazz Fest

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

I HAVE PARTICIPATED IN THE PAST TWO FESTIVALS AS A VOLUNTEER AND
WOULD LIKE TO BECOME MORE INVOLVED.

Thank you for your interest in serving our community.



CITY CLERK DEPARTMENT

Council Meeting Date: November 17, 2014
CONSENT AGENDA

Consider Approval of 50 Plus Facility Use Agreement

RECOMMENDATION

Recommend the Governing Body approve the Interlocal Agreement between the City of Prairie Village and Johnson County Park & Recreation District for the use of City facilities for 50+ programming in 2015.

BACKGROUND

For the past several years Johnson County Park & Recreation District and the City of Prairie Village have entered into an interlocal agreement making it possible for the District to provide 50+ programming in city facilities. The terms of the agreement, which renews annually, have not changed.

RELATION TO VILLAGE VISION

LG2A Build on intermunicipal cooperative activities, agreements and planning initiatives

ATTACHMENTS

1. Interlocal Agreement.

PREPARED BY

Joyce Hagen Mundy
City Clerk

Date: November 12, 2014

2015 CITY OF PRAIRIE VILLAGE 50 PLUS FACILITY USE AGREEMENT

THIS AGREEMENT, made and entered into this ____ day of November, 2014 by and between the City of Prairie Village, Kansas, hereinafter referred to as the "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 has facilities available for such programs; and

WHEREAS, a coordinated approach to the provision of recreational and cultural services to the population is most effective and efficient; 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 _____, 2014; 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 November, 2014.

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. The JCPRD shall have access to and the use of city facilities for the term, times and use as hereinafter mutually agreed upon.
2. Duration of Agreement and Termination - This agreement shall be in effect from **January 1, 2015** through the period ending **January 1, 2016**, 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 recreational and cultural programs and to define responsibilities for the operation, finances, publicity, facility maintenance, and other matters pertaining to the programs.
5. Financing - Except as may be otherwise provided herein, JCPRD shall provide all funding and personnel necessary to manage the 50 Plus programming.

6. Acquisition Holding, and Disposal of Property - The city facilities 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 City. Any equipment used in the city facilities will either be owned by the City or JCPRD as listed in Appendix A. 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 in this agreement. The JCPRD will be responsible for the set up of the facility.
7. Administration of Agreement - The 50 Plus program at the Prairie Village City facilities shall be administered by JCPRD.

8. Responsibilities

JCPRD

- a. Shall provide all support supplies needed to maintain the programs to include office supplies, printing, etc., the cost to be the responsibility of JCPRD.
- b. Shall provide all necessary personnel to establish and maintain quality programs.
- c. Shall permit only persons qualified to conduct programs, to instruct, lead or supervise the classes. It is the responsibility of JCPRD to ensure that the instructors are qualified.
- d. Shall provide an annual report to the City Administrator which will include the number of programs, the number of people served, residency of persons served, an inventory of equipment, the class fee structure.
- e. Shall be responsible for moving tables and chairs to accommodate the programs conducted by JCPRD. JCPRD shall also be responsible for replacing the tables and chairs in the positions required, if such placement does not occur a \$25 maintenance fee will be charged.

The City:

- a. Shall provide access to the Community Center and Municipal Building facilities during days and times agreed upon by the City and JCPRD for programs. The City may choose to provide access at other dates and times provided that such approval is in writing and agreeable to both parties.
 - b. Shall furnish tables and chairs.
 - c. May provide access to kitchen facilities as required for special events, said access to be during non-lunch hours.
9. Indemnification - In case any action in court is brought against the City or City's representative, or any officer or agent, for the failure, omission, or neglect of JCPRD or its officers, agents or employees to perform any of the covenants, acts, matters, or things by this Agreement undertaken, or for injury or damage caused, in whole or in part, by the alleged negligence or other actionable

fault of JCPRD, its officers, agents and employees, the JCPRD shall indemnify and save harmless the City and City’s representative and its officers and agents, from all losses, damages, costs, expenses, judgments, or decrees, or portions thereof, arising out of such action and which arise from and are proximately caused by the negligent or other actionable fault of JCPRD, its officers, agents or employees, provided, however, nothing in this Agreement shall constitute a waiver by JCPRD of any defense JCPRD may have against a third party under 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 or any participants in the program for any injuries or damages sustained while participating in any of the programs or for any damage incurred to JCPRD or participants in its programs upon the premises by fire, theft, casualty, acts of God, civil disaster, and 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 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 insurances:

General Aggregate	\$2,000,000
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.

- 12. Miscellaneous Provisions By the terms of this agreement, the 50 Plus program is a program of JCPRD; provided, however, since the City is providing the facilities for the programs, every effort shall be made by both agencies to inform the participants and the public that the programs are made possible through the joint efforts of JCPRD and 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 representative 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 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 corporation, in whole or part, except with the express written consent of the City.
- 17. Placing Agreement in Force - The City shall cause three copies of this agreement to be executed and each party hereto shall receive a duly executed copy of this agreement for its official records.

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 above written.

DATE: _____

CITY OF PRAIRIE VILLAGE, KANSAS

 Ronald L. Shaffer, Mayor

ATTEST:

 Joyce Hagen Mundy, City Clerk

 Catherine P. Logan, City Attorney

DATE: _____

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

 R. Eric Hughes, Chair

ATTEST:

 Paul Snider, Secretary

APPROVED AS TO FORM:

 Ernest C. Ballweg, JCPRD Legal Counsel

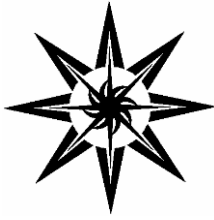
APPENDIX

This appendix lists the equipment referenced on page 2 paragraph 6 of the Facility Use Agreement between the City of Prairie Village and Johnson County, Kansas for the use of the Prairie Village Community Center:

The following equipment is solely the property of the City of Prairie Village

Description

- Garbage Disposal - in-sink Erator (Pro-Series)
- Tile Wall Mural
- Television/VCR Unit – installed on ceiling
RCAVG4240 (donated to the City)
- Piano (donated to City by Unitarian-Universalist Fellowship)
- Dover Grey Folding Tables
5 - 30 x 96
- Blue Padded Chairs - 45



PUBLIC WORKS DEPARTMENT

Council Meeting Date: November 17, 2014

CONSIDER PURCHASE OF A FORD ESCAPE FOR THE NEW CONSTRUCTION INSPECTOR FTE.

RECOMMENDATION

Staff recommends the City Council approve the purchase of a Ford Escape from Olathe Ford for \$23,104.00.

BACKGROUND

In July 2014 Council approved a new Construction Inspection FTE. This position will be funded with funds that would be previously be utilized for hiring consultants to perform this service. The approval of this position also included the funding of a new vehicle. Public Works plans to hire the new Construction Inspector this winter and the new vehicle needs to be purchased now so it is available when the new employee begins work.

Staff proposes to purchase this Ford Escape using the MACPP-Metropolitan Joint Vehicle Bid through the Mid-America Regional Council.

Ford Escape Purchase (MARC BID)-	\$23,104.00
---	--------------------

FUNDING SOURCE

The 2014 and 2015 CIP budget will be utilized for the purchase of this item.

RELATION TO VILLAGE VISION

TR3a. Ensure the quality of the transportation network with regular maintenance as well as efficient responses to seasonal issues such as snow removal.

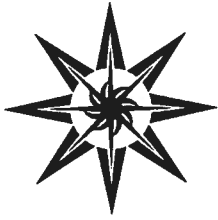
ATTACHMENTS

None

PREPARED BY

Keith Bredehoeft, Public Works Director

November 12, 2014



CITY CLERK DEPARTMENT

Council Meeting Date: November 17, 2014
CONSENT AGENDA

Consider Renewal of Blue Valley Public Safety Contract for the City's Outdoor Warning Siren System Maintenance in 2015

RECOMMENDATION

Recommend the City Council approve the agreement between the City of Prairie Village and Blue Valley Public Safety in the amount of \$3,648.00.

BACKGROUND

Blue Valley Public Safety has maintained the siren system for the City's outdoor warning each year since 1984. The maintenance cost is the same as 2013 and there have been no changes in the terms and conditions from previous years. The City has a good working relationship with Blue Valley Public Safety and the agreement has been approved by the City Attorney.

ATTACHMENTS

Maintenance Agreement

PREPARED BY

Joyce Hagen Mundy
City Clerk

November 12, 2014



Complete Solutions
Blue Valley Public Safety Inc.

509 JAMES ROLLO DRIVE ♦ PO BOX 363
GRAIN VALLEY, MO 64029
(816) 847-7502

MAINTENANCE AGREEMENT

PO # _____

Maintenance Period: 01-01-15 thru 12-31-15

Payment Period: Annual

Customer Address		Billing Address		
Prairie Village Police Department ATTN: Jennifer Wright, Ex. Asst. 7710 Mission Road Prairie Village, KS 66208				
Phone	Attention of			
Qty.	Model and Description	Unit per Month	Month Total	Annual
4	M/N 2001 Sirens	16.00	64.00	
6	M/N FCTD/DCFCTB Radio Controls	18.00	108.00	
24	Batteries	5.50	132.00	
	Monthly Total:		304.00	
	ANNUAL TOTAL:			\$ 3,648.00
2	UNDER WARRANTY: M/N Eclipse-8 Sirens thru 6/16			

BLUE VALLEY PUBLIC SAFETY

Dee A. Wieduwilt

Dee A. Wieduwilt, Office Manager

Date: 11/11/2014 12:45:00 PM

CUSTOMER

City of Prairie Village, KS

By: _____

Date: _____

TERMS AND CONDITIONS

This Maintenance Agreement (this Agreement) is between Blue Valley Public Safety ("BLUE VALLEY") and the ("CUSTOMER") as indicated on the reverse side of this Agreement.

In consideration of the mutual agreements herein contained, BLUE VALLEY and the CUSTOMER agree as follows:

1. Subject to the terms and provisions of the Agreement, BLUE VALLEY hereby agrees to maintain and service for equipment (the "EQUIPMENT") described on the reverse side of this Agreement beginning and ending on the dates indicated.

2. CUSTOMER hereby agrees to pay BLUE VALLEY the total of monthly charge(s) set forth on the reverse side for the one-year term of this Agreement. In addition, CUSTOMER shall pay for any sales, use, excise or other taxes, if any, which may be imposed upon the furnishing of parts, components or service pursuant to this Agreement.

3. The services to be performed by BLUE VALLEY hereunder shall consist of repair or replacement of the EQUIPMENT and parts and components thereof which have malfunctioned or become inoperative in normal wear and usage. This Agreement does not extend to repair or replacement of the EQUIPMENT or parts or components thereof which have malfunctioned or become inoperative for any other reason, including, but not limited to, misuse, abuse, vehicular accident, fire, natural disaster, explosion or other casualty, or modification or alteration by any party other than BLUE VALLEY.

4. BLUE VALLEY'S obligation to service the EQUIPMENT pursuant to this Agreement shall consist of its obligation of repair or replacement hereinabove set forth. In the event of any breach of such obligation by BLUE VALLEY, CUSTOMER'S sole remedy shall be to terminate this Agreement and receive from BLUE VALLEY the lesser of: (i) the actual and reasonable cost of such repair or replacement by another party; or (ii) the monthly charges theretofore paid by CUSTOMER in respect of such of the EQUIPMENT for which breach is claimed by CUSTOMER. In no event shall BLUE VALLEY be responsible for consequential damages or other damages, such as, but not limited to, loss of profits, cost of purchasing or renting replacement equipment, or loss of use of the EQUIPMENT or vehicles in which the EQUIPMENT shall be installed. This limitation on the liability of BLUE VALLEY shall not extend to any claim for damages arising out of injury to person or property directly and proximately caused by the EQUIPMENT.

5. BLUE VALLEY shall be under no obligation to provide services at any site other than the site, designated pursuant to this Agreement. In the event that BLUE VALLEY should nonetheless perform service at any other site at the request of CUSTOMER, then CUSTOMER shall be responsible for providing a safe and suitable working site, and shall be responsible for all additional costs and expenses incurred by BLUE VALLEY in performing services at such site, including, but not limited to, transportation costs, temporary equipment rentals, employee overtime, and additional labor costs resulting from utilization of local union workmen to conform with any agreements or other requirements affecting such work site.

6. Any item of the EQUIPMENT which is not new or which has not been subject to a Maintenance service agreement with BLUE VALLEY immediately prior to this Agreement shall be inspected by BLUE VALLEY at CUSTOMER'S request and restored to operative condition at the expense of CUSTOMER. In the event BLUE VALLEY is unable to restore the EQUIPMENT to operative condition, then effective upon the date of notice of such fact to CUSTOMER, this Agreement shall be terminated as to such EQUIPMENT and the charges hereunder equitably reduced. Such termination shall have no effect as to any other EQUIPMENT hereinabove specified, and in addition, CUSTOMER shall pay its reasonable charges for parts and labor expended in its attempt to restore such EQUIPMENT to operative condition.

7. BLUE VALLEY warrants that parts, components and services furnished pursuant to this Agreement shall be commercially free from defects of material and workmanship at the time EQUIPMENT is returned to CUSTOMER. Any claim for breach of this warranty shall be ineffective unless written notice thereof shall be given to BLUE VALLEY within the period of one year from the date hereof. THIS WARRANTY IS EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES OF MERCHANTABILITY, FITNESS FOR PURPOSE AND OF ANY OTHER TYPE, WHETHER EXPRESS OR IMPLIED.

8. BLUE VALLEY shall use reasonable diligence to perform its obligations hereunder on a commercially timely basis but subject to delays or failures resulting from fire, war, labor disputes, acts of God, governmental regulations, commercial shortages, component or material unavailability, and other causes beyond its reasonable control. Performance by BLUE VALLEY is further conditioned upon complete information or instructions being furnished by CUSTOMER regarding inoperative or malfunctioning conditions of the EQUIPMENT and possible causes thereof.

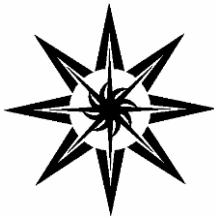
9. CUSTOMER represents and warrants that: (i) CUSTOMER owns the EQUIPMENT or has full right of possession and use thereof throughout the term of this Agreement; (ii) CUSTOMER has full power and authority to enter into this Agreement; and (iii) the performance of this Agreement by BLUE VALLEY as hereinabove set forth will not violate any contracts or arrangements to which CUSTOMER is a party or which may be binding upon CUSTOMER.

10. This Agreement may terminate by either party hereto in whole or in part as to less than all items of the EQUIPMENT upon giving to other party sixty (60) days advance written notice of its intent to terminate; except that (i) BLUE VALLEY shall complete all services herein required of it with respect to EQUIPMENT therefore delivered to BLUE VALLEY and shall return same to CUSTOMER; (ii) CUSTOMER shall pay for all charges or other costs accruing prior to the effective date of termination or with respect to EQUIPMENT thereafter returned to CUSTOMER by BLUE VALLEY; and (iii) BLUE VALLEY shall return to CUSTOMER all payments made by CUSTOMER applicable to terminated maintenance service to have been rendered by BLUE VALLEY subsequent to the effective date of termination.

11. This Agreement constitutes the only agreement between BLUE VALLEY and CUSTOMER respecting the subject matter hereof and supersedes all prior agreements or understandings, whether written or oral. This Agreement may not be amended or modified except in writing signed by BLUE VALLEY and CUSTOMER. Neither party may assign any rights hereunder without the prior written consent of the other. This Agreement shall be solely for the benefit of BLUE VALLEY and CUSTOMER and no other party shall have any rights hereunder.

12. *SPECIAL PROVISIONS

_____ 96 _____ Hours response time.



CITY CLERKS DEPARTMENT

Council Meeting Date: November 17, 2014
CONSENT AGENDA

Consider Authorization to Bid Expiring Service Contracts

RECOMMENDATION

Staff recommends the City Council authorize staff go out to bid for the following city services: HVAC Services, Ice Maker Services, Pest Control Services, Portable Toilet Services and Materials Testing Services

BACKGROUND

In late 2010, several services and commodity contracts expired and were taken out to bid. During the procurement process, two of the contracts were pulled from the council consent agenda and awarded to the incumbent providers. It was noted that in some situations the relationship with the service provider is as important as the cost of the service.

The Finance Committee reviewed the procurement and recommended the additional step be added to the process. That prior to going out to bid, the expiring contract services would be presented to the City Council for a review of the merits of bidding the service or renewing the service with the incumbent provider without the bid process. If the Council approves renewing the contract with the incumbent provider, the incumbent provider must be willing to accept the terms of the expiring contract including the established annual price increase. If the incumbent provider is not willing to extend the terms of the existing contract, the service will be bid.

These services are bid for a three year period. The existing providers of expiring contracts are as follows:

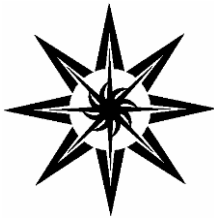
HVAC Services	O'Dell Service Company, Inc.
Ice Maker Services	Ice Masters, Inc.
Pest Control Services	Lawrence Pest Control
Portable Toilets	Best Portable Toilets
Materials Testing Services	Kaw Valley Engineering

City staff strongly recommends reconsidering the process of preapproving incumbent bids.

PREPARED BY

Joyce Hagen Mundy, City Clerk

November 17, 2014



PUBLIC WORKS DEPARTMENT

Council Committee Meeting Date: November 17, 2014

Council Meeting Date: November 17, 2014

CONSIDER CONSTRUCTION CONTRACT FOR THE PUBLIC WORKS FIBER PROJECT

RECOMMENDATION

Move to approve a construction contract with K&W Underground, Inc., utilizing the Overland Park bid as a reference, for Project Number P5032, the Public Works Fiber Project for \$80,000 which includes \$3,333.55 for contingency.

BACKGROUND

This project will install a City/County owned underground fiber optic connection between Public Works and City Hall. The project has been under consideration for many years and is desirable to provide better service for Public Works activities. Currently all software relies on the current wireless connection between Public Works and City Hall. This connection is susceptible to weather and other factors and routinely does not operate at optimal connection speeds. With more and more software such as Springbrook, Email, Internet, and soon the new Public Works Management software a better more reliable connection is needed.

With Johnson County now providing our IT services it has created the opportunity for us the City to connect directly to Johnson County via the fiber connection. Johnson County is willing to fund \$20,000 of this installation since it will benefit the County when the future fiber ring is constructed in this area. The fiber along Mission Road will be part of that future fiber ring for the County. As part of our installation the fiber line will also connect to Johnson County through the Johnson County Library location on Mission Road.

Potential future cost savings to having this fiber connection to City Hall and to Johnson County-

- The City will be able to disconnect the current \$1,200.00/month 20mb internet connection and move to the County's 100mb connection at no additional charge to the City. The County will become the City's Internet Service Provider.
- The future Public Works Management software will require an Arc GIS Server which would not have to be purchased by the City with a connection to the County at a cost savings- \$15,000 initially plus yearly maintenance.
- The City will be able to discontinue the City's WebSense web filtering software and would be able to use the County's filtering software at a

savings of \$3,750/year.

- The City will be able to disconnect the T1(Phone) line between City Hall and Public Works as a savings of at least \$200.00/month.
- Many other items related to items like firewalls, GIS, REGIS, and Intergraph will be better supported and will yield cost savings as well.
- In summary, it is anticipated a reduced cost of at least \$20,000.00.

Other solutions were looked into for providing a better more reliable connection between City Hall and Public Works but they would not yield all the benefits described above as that fiber would not connect to the County. The City of Shawnee did engage one private fiber agreement and it costs them about \$12,000 per year and most of the fiber Shawnee installs is City owned fiber. We have pursued an agreement with Time Warner but they basically said it was cost prohibitive.

Given that fiber installation is not something Prairie Village has installed in the past we looked to Overland Park and Johnson County for help with this project. Through discussions with them we became aware of a current standard agreement that Overland Park has for fiber installation. Staff proposes using the Overland Park contract with K&W Underground as the basis for the contract. Staff reviewed this possibility with Council in October. Both Overland Park and Johnson County report that K&W Underground is a reputable contractor that will provide a good product to the City. Johnson County itself has utilized the Overland Park contract to install fiber. We met with Johnson County and K&W Underground and conducted a field inspection of Public Works, the County Library, and City Hall to determine the scope of work necessary. K&W Underground determined their cost estimate based on that meeting. Below are cost comparisons for major items from the Overland Park bid and our bid. It is not an exact comparison but they do justify K&W's costs. Given that our project is almost one mile long K&W reduced some unit prices compared to the standard Overland Park Bid.

Item 1- Conduit and Fiber Installation-

Overland Park bid- 3" conduit-	\$12.50/foot	
PV-K&W- 2 inch conduit-	\$9.50/foot	Cost- \$44,032.50

Item 2- Install Fiber-

Overland Park bid- 72ct Fiber	\$2.25/foot	
PV-K&W- 144ct Fiber-	\$1.57/foot	Cost- \$9,317.95

Item 3- Install Service Boxes-

Overland Park bid-	\$1,074 Each	
PV-K&W-	\$1,074 Each	Cost- \$8,592.00

Item 4- Install Terminal Panel-

Overland Park bid- 72ct Fiber-	\$1,850 Each	
PV-K&W- 144ct Fiber-	\$2,800 Each	Cost- \$5,600.00

The above 4 items account for just under \$68,000 of the \$76,666.45 bid price for our fiber installation. The comparisons of cost above justify that K&W is asking fair prices for the installation of the fiber in Prairie Village.

We also became aware that Shawnee utilized Google Fiber contractors to install City owned fiber. Shawnee's costs were \$9.50/foot for conduit installation, the same as K&W is proposing for this project, giving further justification to K&W's costs. It is unknown when Google Fiber will construct in Prairie Village.

In visiting with other area cities that own and operate their fiber lines there are minimal annual maintenance costs such as Kansas One Call.

FUNDING SOURCES

City IT funds- \$40,000(2014 Budget), \$20,000(reallocated from other IT funds)

County funds- \$20,000

Total funds= \$80,000

ATTACHMENTS

1. Construction Agreement with K&W Underground, Inc.

PREPARED BY

Keith Bredehoeft, Public Works Director

November 13, 2014

**CONSTRUCTION CONTRACT
FOR
PROJECT
P5032
PUBLIC WORKS FIBER PROJECT
BETWEEN
THE CITY OF PRAIRIE VILLAGE, KANSAS
AND
K&W UNDERGROUND, INC**

THIS AGREEMENT, is made and entered into this ____ day of _____, 2014, by and between the City of Prairie Village, Kansas, hereinafter termed the “City”, and _K&W Underground 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 Eighty Thousand **DOLLARS (\$ 80,000)** for all Work covered by and included in the Contract; payment thereof to be made in cash or its equivalent and in a manner provided in the Contract Documents.

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

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

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

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

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

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

1. **DEFINITIONS:**

1.1 Following words are given these definitions:

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

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

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

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

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

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

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

CONTRACT PRICE shall be the amount identified in the Construction Agreement between

the City and the Contractor as the total amount due the Contractor for total completion of the Work as per the Contract Documents.

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

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

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

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

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

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

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

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

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

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

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

PLANS shall mean and include all drawings which may have been prepared by or for the City or submitted by the Contractor to the City during the progress of the Work, all of which show the character and scope of the work to be performed.

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

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

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

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

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

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

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

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

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

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

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

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

2. ENTIRE AGREEMENT:

- 2.1 The Contract Documents, together with the Contractor's Performance, Maintenance and Statutory bonds for the Work, constitute the entire and exclusive agreement between the City and the Contractor with reference to the Work. Specifically, but without limitation, this Contract supersedes all prior written or oral communications, representations and negotiations, if any, between the City and the Contractor. The Contract may not be amended or modified except by a modification as hereinabove defined. These Contract Documents do not, nor shall they be construed to, create any contractual relationship of any kind between the City and any Subcontractor or remote tier Subcontractor.
- 2.2 The Contract shall be construed in accordance with the laws of the state of Kansas.

3. INTENT AND INTERPRETATION

- 3.1 The intent of the Contract is to require complete, correct and timely execution of the Work. Any Work that may be required, including construction, labor, materials, tools, equipment and transportation, implied or inferred by the Contract Documents, or any one or more of them, as necessary to produce the intended result, shall be provided by the Contractor for the Contract Price.
- 3.2 All limits stated in the Contract Documents are of the essence of the Contract.
- 3.3 The Contract is intended to be an integral whole and shall be interpreted as internally consistent. What is required by any one Contract Document shall be considered as required by the Contract.
- 3.4 The specification herein of any act, failure, refusal, omission, event, occurrence or condition as constituting a material breach of this Contract shall not imply that any other, non-specified act, failure, refusal, omission, event, occurrence or condition shall be deemed not to constitute a material breach of this Contract.
- 3.5 The Contractor shall have a continuing duty to read, carefully study and compare each of the Contract Documents and shall give written notice to the Project Manager of any inconsistency, ambiguity, error or omission, which the Contractor may discover, or should have discovered, with respect to these documents before proceeding with the affected Work. The review, issuance, or the express or implied approval by the City or the Project

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

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

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

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

4. WORK SUPERINTENDENT

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

5. PROJECT MANAGER

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

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

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

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

- 5.15 Any plan or method of work suggested by the Project Manager, or other representatives of the City, to the Contractor, but not specified or required, if adopted or followed by the Contractor in whole or in part, shall be used at the risk and responsibility of the Contractor, and the Project Manager and the City will assume no responsibility therefore.
- 5.16 It is agreed by the Contractor that the City shall be and is hereby authorized to appoint or employ, either directly or through the Project Manager, such City representatives or observers as the City may deem proper, to observe the materials furnished and the work performed under the Project Manual, and to see that the said materials are furnished, and the said work performed, in accordance with the Project Manual therefore. The Contractor shall furnish all reasonable aid and assistance required by the Project Manager, or by the resident representatives for proper observation and examination of the Work and all parts thereof.
- 5.17 The Contractor shall comply with any interpretation of the Project Manual by the Project Manager, or any resident representative or observer so appointed, when the same are consistent with the obligations of the Project Manual. However, should the Contractor object to any interpretation given by any subordinate Project Manager, resident representative or observer, the Contractor may appeal in writing to the City Director of Public Works for a decision.
- 5.18 Resident representatives, observers, and other properly authorized representatives of the City or Project Manager shall be free at all times to perform their duties, and intimidation or attempted intimidation of any one of them by the Contractor or by any of its employees, shall be sufficient reason, if the City so decides, to annul the Contract.
- 5.19 Such observation shall not relieve the Contractor from any obligation to perform said work strictly in accordance with the Project Manual.

6. WORK SCHEDULE:

- 6.1 The Contractor, within ten (10) calendar days after being instructed to do so in a written notice from the City, shall commence work to be done under this Contract.
- 6.2 The rate of progress shall be such that the Work shall have been completed in accordance with the terms of the Contract Documents on or before the completion date for the construction period named in the contract agreement, subject to any extension or extensions of such time made as hereinafter provided.
- 6.3 The Contractor shall be required to furnish the Project Manager with a schedule setting forth in detail (in the critical path method) the sequences proposed to be followed, and giving the dates on which it is expected that portions of the work will be started and completed.
- 6.4 If at any time, in the opinion of the Project Manager or City, proper progress is not being maintained; such changes shall be made in the schedule and resubmitted for consideration.

- 6.5 If the Contractor has not completed Work segments and is within a non-performance penalty period, he/she shall not be allowed to undertake a new Work segment until the Work segment in dispute is completed, unless expressly permitted by the City.
- 6.6 The operation of any tool, equipment, vehicle, instrument, or other noise-producing device is prohibited to start before or continue after the hours of 7 AM and 10 PM, Monday through Friday (except Fridays which shall be until Midnight) and 8 AM and midnight on Weekends (except Sunday which shall be 10 PM). Violation of this requirement is Prima Facie Violation of City Municipal Code 11-202.
- 6.7 No work shall be undertaken on Saturdays, Sundays and Holidays (Christmas, New Years, Martin Luther King's Birthday, President's Day, Memorial Day, Independence Day, Labor Day and Thanksgiving) without the express written approval of the City Project Manager. If it is necessary to perform proper care, maintenance, or protection of work already completed or of equipment used, or in the case of an emergency verbal permission may be obtained through the Project Manager.
- 6.8 Night work may be established by the Contractor, as a regular procedure, with the written permission of the City; such permission, however, may be revoked at any time by the City if the Contractor fails to maintain adequate equipment for the proper prosecution and control of all operations performed as part of the Work.
- 6.9 The Contractor shall provide 24 hours notice prior to commencing any work to the City Project Manager. The Contractor shall communicate immediately any changes in the work schedule to the City Project Manager.

7. DELAYS AND EXTENSIONS OF TIME

- 7.1 In executing the Contract, the Contractor expressly covenants and agrees that, in undertaking the completion of the work within the time herein fixed, he has taken into consideration and made allowances for all of the ordinary delays and hindrances incident to such work, whether growing out of delays in securing materials, workers, weather conditions or otherwise. No charge shall be made by the Contractor for hindrances or delays from any cause during the progress of the Work, or any portion thereof, included in this Contract.
- 7.2 Should the Contractor, however, be delayed in the prosecution and completion of the work by reason of delayed shipment orders, or by any changes, additions, or omissions therein ordered in writing by the City, or by strikes or the abandonment of the work by the men engaged thereon through no fault of the Contractor, or by any act taken by the U.S. Government such as the commandeering of labor or materials, embargoes, etc., which would affect the fabrication or delivery of materials and/or equipment to the work; or by neglect, delay or default of any other contractor of the City, or delays caused by court proceedings; the Contractor shall have no claims for damages or additional compensation or costs for any such cause or delay; but he shall in such cases be entitled to such extension of the time specified for the completion of the work as the City and the Project Manager shall award in writing on account of such delays, provided, however, that claim for such extension of time is made by the Contractor to the City and the Project Manager in writing within one (1) week from the time when any such alleged cause for delay shall occur.

8. ADVERSE WEATHER:

- 8.1 Extensions of time for adverse weather shall be granted only under the conditions as hereinafter provided.
- 8.2 For conditions of weather or conditions at the site, so unusual as not to be reasonably anticipated, as determined by the Project Manager, an average or usual number of inclement days when work cannot proceed are to be anticipated during the construction period and are not to be considered as warranting extension of time.
- 8.3 Adverse Weather is defined as atmospheric conditions or the impact thereof at a definite time and place, which are unfavorable to construction activities such that they prevent work on critical activities for 50 percent or more of the Contractor's scheduled workday.
- 8.4 Unusually Severe Weather is defined as weather, which is more severe than the adverse weather anticipated for the season, location, or activity involved.
- 8.5 Time Extensions for Unusually Severe Weather:
- In order for any request for time extension due to unusually severe weather to be valid, the Contractor must document both of the following conditions:
 - The weather experienced at the Work site during the Contract period is more severe than the adverse weather anticipated for the Work location during any given month.
 - The unusually severe weather actually caused a delay to the completion of the Work. The delay must be beyond the control and without fault or negligence by the Contractor.
- 8.6 The following schedule of monthly-anticipated adverse weather delays will constitute the baseline for monthly weather time evaluations. The Contractor's Progress Schedule must reflect these anticipated adverse weather delays in all weather affected activities:

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

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

- 8.7 Upon receipt of the Notice to Proceed, and continuing throughout the Contract, the Contractor shall record on their daily construction report, the occurrence of adverse weather and resultant impact to normally scheduled work.
- 8.8 The number of actual adverse weather delay days shall include days affected by actual adverse weather (even if adverse weather occurred in the previous month), and shall be calculated chronologically from the first to the last day of each month, and be recorded as full workdays.
- 8.9 If the number of actual adverse weather delay days in a given month exceeds the number

of days anticipated above, the difference shall be multiplied by 7/5 to convert any qualifying workday delays to calendar days. The resulting number of qualifying lost days shall be added to the Contract Time.

- 8.10 The determination that unusually severe weather occurred does not automatically mean an extension of time will be granted. The Contractor must substantiate the unusually severe weather delayed work activities on the critical path of the Progress Schedule.
- 8.11 Full consideration for equivalent fair weather workdays shall be given. If the number of actual adverse weather delays in a given month is less than the number of days anticipated as indicated above, the difference shall be multiplied by 7/5 to convert any workday increases to calendar days. The resulting number of qualifying extra days will be accumulated and subtracted from any future month's days lost due to unusually severe weather.
- 8.12 The net cumulative total of extra days/lost days shall not result in a reduction of Contract Time and the Date of Substantial Completion shall not be changed because of unusually favorable weather.
- 8.13 In converting workdays to calendar days, fractions 0.5 and greater shall be rounded up to the next whole number. Fractions less than 0.5 shall be dropped.
- 8.14 The Contractor shall summarize and report all actual adverse weather delay days for each month to the Project Manager by the tenth (10th) day of the following month. A narrative indicating the impact of adverse weather conditions on the scheduled critical activities shall be included.
- 8.15 Any claim for extension of time due to unusually severe weather shall be submitted to the Project Manager within 7 days of the last day of the commencement of the event giving rise to the delay occurred. Resolution of any claim shall follow the procedures established by the Regulations of the Contract and Special Conditions and as described above.
- 8.16 The Contractor shall include and indicate the monthly-anticipated adverse weather days, listed above, in their Progress Schedule. (Reference Section 3.1.1 for Progress Schedule requirements)
- 8.17 The Contractor shall indicate the approved adverse weather days (whether less or more than the anticipated days) in their monthly Progress Schedule update.

9. PAYMENT PROCEDURE:

- 9.1 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the City no later than the time of payment. The Contractor further warrants that upon submittal on the first day of each month of an Application for Payment, all Work for which payments have been received from the City shall be free and clear of liens, claims, security interest or other encumbrances in favor of the Contractor or any other person or entity whatsoever.
- 9.2 Each application for payment must be submitted with Contractor's waiver for period of construction covered by application. Each progress payment will be submitted with

executed waivers from the subcontractors or sub-contractors and suppliers for the previous period of construction covered by the previous application. The final payment application must be submitted together with or preceded by final or complete waivers from every entity involved with performance of the work covered by the payment request.

- 9.3 The Contractor will submit waivers on forms, and executed in a manner, acceptable to City.
- 9.4 The Contractor shall promptly pay each Subcontractor out of the amount paid to the Contractor because of such Subcontractor's Work the amount to which such Subcontractor is entitled. In the event the City becomes informed that the Contractor has not paid a Subcontractor as herein provided, the City shall have the right, but not the duty, to issue future checks in payment to the Contractor of amounts otherwise due hereunder naming the Contractor and such Subcontractor as joint payees. Such joint check procedure, if employed by the City, shall be deemed payment to the Contractor but shall create no rights in favor of any person or entity beyond the right of the named payees to payment of the check and shall not be deemed to commit the City to repeat the procedure in the future.
- 9.5 The Project Manager will, upon receipt of a written Application for Payment from the Contractor, review the amount of work performed during the preceding period and the value thereof at the unit prices contracted. From the amounts so ascertained, there shall be deducted ten percent (10%) to be retained until after final completion of the entire work to the satisfaction of the City. The Project Manager will submit an estimate each month to the City for payment to the Contractor, except that no amount less than \$500.00 will be submitted unless the total amount of the Contract remaining unpaid is less than \$500.00.
- 9.6 Deductions will be made from progress payments if the Contract includes a provision for a lump sum or a percentage deduction. Lump sum deductions will be that portion of the stated lump sum computed as the ratio that the amount earned bears to the Contract amount. Percentage deductions will be computed at the stated percentage of the amount earned.
- 9.7 No progress payment, nor any use or occupancy of the Work by the City, shall be interpreted to constitute an acceptance of any Work not in strict accordance with this Contract.
- 9.8 The City may decline to make payment, may withhold funds, and, if necessary, may demand the return of some or all of the amounts previously paid to the Contractor, to protect the City from loss because of:
- Defective Work not remedied by the Contractor;
 - Claims of third parties against the City or the City's property;
 - Failure by the Contractor to pay Subcontractors or others in a prompt and proper fashion;
 - Evidence that the balance of the Work cannot be completed in accordance with the Contract for the unpaid balance of the Contract Price;
 - Evidence that the Work will not be completed in the time required for substantial or final completion;
 - Persistent failure to carry out the Work in accordance with the Contract;
 - Damage to the City or a third party to whom the City is, or may be, liable;

- Evidence that the work is not progressing according to agreed upon schedule by both parties.

9.9 In the event that the City makes written demand upon the Contractor for amounts previously paid by the City as contemplated in this subparagraph, the Contractor shall promptly comply with such demand and refund such monies to the City.

9.10 Neither the observation by the City or any of the City's officials, employees, or agents, nor any order by the City for payment of money, nor any payment for, or acceptance of, the whole or any part of the work by the City or Project Manager, nor any extension of time, nor any possession taken by the City or its employees, shall operate as a waiver of any provision of this Contract, or of any power herein reserved to the City, or any right to damages herein provided, nor shall any waiver of any breach in this Contract be held to be a waiver of any other or subsequent breach.

10. COMPLETION AND FINAL PAYMENT

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

10.2 When all of the Work is finally complete and the Contractor is ready for a final inspection, it shall notify the City and the Project Manager thereof in writing. Thereupon, the Project Manager will make final inspection of the Work and, if the Work is complete in accordance with this Contract, the Project Manager will promptly issue a final Certificate for Payment certifying to the City that the Work is complete and the Contractor is entitled to the remainder of the unpaid Contract Price, less any amount withheld pursuant to this Contract. If the Project Manager is unable to issue its final Certificate for Payment and is required to repeat its final inspection of the Work, the Contractor shall bear the cost of such repeat final inspection(s), which cost may be deducted by the City from the Contractor's full payment.

10.3 The Contractor shall not be entitled to any payment unless and until it submits to the Project Manager its affidavit that all payrolls, invoices for materials and equipment, and other liabilities connected with the Work for which the City, or the City's property might be responsible, have been fully paid or otherwise satisfied; releases and waivers of lien from all Subcontractors and Suppliers of the Contractor and of any and all other parties required by the City; and consent of Surety, if any, to final payment. If any third party fails or refuses to provide a release of claim or waiver of lien as required by the City, the Contractor shall furnish a bond satisfactory to the City to discharge any such lien or indemnify the City from liability.

10.4 The City shall make final payment of all sums due the Contractor within thirty days of the later of the Project Manager's execution of a final Certificate for Payment.

10.5 Acceptance of final payment shall constitute a waiver of all claims against the City by the Contractor except for those claims previously made in writing against the City by the Contractor, pending at the time of final payment, and identified in writing by the Contractor as unsettled at the time of its request for final inspection.

11. CLAIMS BY THE CONTRACTOR

- 11.1 All Contractor claims shall be initiated by written notice and claim to the Project Manager. Such written notice and claim must be furnished within seven calendar days after occurrence of the event, or the first appearance of the condition, giving rise to the claim.
- 11.2 The Contractor shall diligently proceed with performance of this Contract whether or not there be such a claim pending and the City shall continue to make payments to the Contractor in accordance with this Contract. The resolution of any claim shall be reflected by a Change Order executed by the City, the Project Manager and the Contractor.
- 11.3 Should concealed and unknown conditions which could not, with reasonable diligence, have been discovered in the performance of the Work (a) below the surface of the ground or (b) in an existing structure differ materially with the conditions indicated by this Contract, or should unknown conditions of an unusual nature differing materially from those ordinarily encountered in the area and generally recognized as inherent in Work of the character provided by this Contract, be encountered, the Contract Price shall be equitably adjusted by the Change Order upon the written notice and claim by either party made within seven (7) days after the first observance of the condition. As a condition precedent to the City having any liability to the Contractor for concealed or unknown conditions, the Contractor must give the City written notice of, and an opportunity to observe, the condition prior to disturbing it. The failure by the Contractor to make the written notice and claim as provided in this Subparagraph shall constitute a waiver by the Contractor of any claim arising out of or relating to such concealed or unknown condition.
- 11.4 If the Contractor wishes to make a claim for an increase in the Contract Price, as a condition precedent to any liability of the City therefore, the Contractor shall give the City written notice of such claim within seven (7) days after the occurrence of the event, or the first appearance of the condition, giving rise to such claim. Such notice shall be given by the Contractor before proceeding to execute any additional or changed Work. The failure by the Contractor to give such notice and to give such notice prior to executing the Work shall constitute a waiver of any claim for additional compensation.
- 11.5 The City reserves the right to increase or decrease quantities, and alter the details of construction including grade and alignment as the Project Manager may consider necessary or desirable, by approved Change Order. Such modifications shall not invalidate the Contract nor release the surety. Unless such alterations and increases or decreases change the total cost of the Work, based on the originally estimated quantities and the unit prices bid, by more than 25 percent, or change the total cost of any major item, based on the originally estimated quantities and the unit price bid, by more than 25 percent, the Contractor shall perform the work altered, increased or decreased, at a negotiated price or prices. (A major item shall mean any bid item, the total cost of which exceeds 12-1/2 percent of the total Contract amount based on the proposed quantity and the contract unit price).
- 11.6 When the alterations cause an increase or decrease in excess of the 25 percent indicated above, either the Contractor or the Project Manager may request an adjustment of the unit price to be paid for the item or items.
- 11.7 If a mutually agreeable adjustment cannot be obtained, the City reserves the right to terminate the Contract as it applies to the items in question and make such arrangements as may be deemed necessary to complete the Work.

- 11.8 In connection with any claim by the Contractor against the City for compensation in excess of the Contract Price, any liability of the City for the Contractor's costs shall be strictly limited to direct costs incurred by the Contractor and shall not include standby costs, indirect costs or consequential damages of the Contractor. The City shall not be liable to the Contractor for claims of third parties.
- 11.9 If the Contractor is delayed in progressing any task which at the time of the delay is then critical or which during the delay becomes critical, as the sole result of any act or neglect to act by the City or someone acting in the City's behalf, or by changes ordered in the Work, unusual delay in transportation, unusually adverse weather conditions not reasonably anticipated, fire or any causes beyond the Contractor's control, then the date for achieving Final Acceptance of the Work shall be extended upon the written notice and claim of the Contractor to the City, for such reasonable time as the City may determine. Any notice and claim for an extension of time by the Contractor shall be made not more than seven calendar days after the occurrence of the event or the first appearance of the condition-giving rise to the claim and shall set forth in detail the Contractor's basis for requiring additional time in which to complete the Work. In the event the delay to the Contractor is a continuing one, only one notice and claim for additional time shall be necessary. If the Contractor fails to make such claim as required in this subparagraph, any claim for an extension of time shall be waived.
- 11.10 The Contractor shall delay or suspend the progress of the work or any part thereof, whenever so required by written order of the City, and for such periods of time as required; provided, that in the event of such delay or delays or of such suspension or suspensions of the progress of the work, or any part thereof, the time for completion of work so suspended or of work so delayed by such suspension or suspensions shall be extended for a period equivalent to the time lost by reason of such suspension or suspensions; but such order of the City or Project Manager shall not otherwise modify or invalidate in any way, any of the provisions of this Contract. In the event that the work shall be stopped by written order of the City, any expense, which, in the sole opinion and judgment of the City, is caused by the City, shall be paid by the City to the Contractor.
- 11.11 In executing the Contract Documents, the Contractor expressly covenants and agrees that, in undertaking to complete the Work within the time herein fixed, it has taken into consideration and made allowances for all hindrances and delays incident to such work, whether growing out of delays in securing materials or workers or otherwise. No charge shall be made by the Contractor for hindrances or delays from any cause during the progress of the work, or any portion thereof, included in this Contract, except as provided herein.
- 11.12 In addition to the Project Manual particular to Mobilization found elsewhere in this document, additional mobilization shall not be compensable for work outside of the designated areas for work deemed essential by the City. A quantity of work equal to as much as 10% of the total Contract may be required to be performed beyond the boundaries of the designated work areas

12. CHANGES IN THE WORK

- 12.1 Changes in the Work within the general scope of this Contract, consisting of additions,

deletions, revisions, or any combination thereof, may be ordered without invalidating this Contract, by Change Order or by Field Order.

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

13. INSURANCE AND HOLD HARMLESS.

- 13.1 The Contractor shall assume full responsibility for the protection of all public and private property, structures, sewers, and utilities, both above and below the ground, along, beneath, above, across or near the site or sites of the work being performed under this Contract, or which are in any manner affected by the prosecution of the Work or the transportation of men/women or materials in connection therewith. Barriers shall be kept placed at all times to protect persons other than those engaged on or about the Work from accident, and the Contractor will be held responsible for all accidents to persons or property resulting from the acts of Contractor or its employees.
- 13.2 To the fullest extent permitted by law, the Contractor shall indemnify, defend, and hold harmless the City, the Project Manager, and their agents and employees from and against all claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from the performance of the Work, provided that any such claim, damage, loss or expense (1) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of property (other than the Work itself) including the loss of use resulting there-from, and (2) is caused in whole or in part by any intentional or negligent act or omission of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity, which would otherwise exist.
- 13.3 All property damaged shall be repaired or replaced to a condition immediately prior to the time of damage, and to the satisfaction of the City.
- 13.4 All loss or damage arising out of the nature of the work to be done, or from the action of the elements, or from floods or overflows, or from ground water, or from unusual obstructions or difficulties, or any other natural or existing circumstances either known or unforeseen, which may be encountered in the prosecution of the said work shall be sustained and borne by the Contractor at its own cost and expense.
- 13.5 The Contractor shall give reasonable notice to the City or owners of public or private property and utilities when such property is liable to injury or damage through the performance of the Work, and shall make all necessary arrangements with such City or owners relative to the removal and replacement or protection of such property or utilities.
- 13.6 The Contractor shall satisfactorily shore, support, and protect all structures and all pipes, sewers, drains, conduits, and other utility facilities, and shall be responsible for any damage resulting thereto. The Contractor shall not be entitled to any damages or extra compensation because of any postponement, interference, or delay caused by any such structures and facilities being on the line of the Work whether they are shown on the plans or not, specifically including, but not limited to, damages due to delay in utility relocation.
- 13.7 The Contractor shall secure and maintain, throughout the duration of this Contract, insurance from a company authorized to do business in the State of Kansas. Such insurance shall be of such types and in such amounts as may be necessary to protect himself and the interests of the City and agents of the City against all hazards or risks of loss as hereinafter specified including an endorsement covering explosion, collapse, blasting and damage to underground property if applicable as specified in these Contract Documents. The form and limits of such insurance, together with the underwriter thereof in

each case, shall be approved by the City, but regardless of such approval, it shall be the responsibility of the Contractor to maintain adequate insurance coverage at all times. Failure of the Contractor to maintain adequate insurance coverage shall not relieve it of any contractual responsibility or obligation. The insurance shall be provided on an occurrence basis and, not claims made basis.

- 13.8 The City and the Project Manager shall be a named insured on such policies. Satisfactory certificates of insurance shall be filed with the City prior to starting any construction work on this Contract. The certificates shall state that thirty (30) days written notice will be given to the City before any policy coverage thereby is changed or canceled.
- 13.9 The Contractor shall secure and maintain through the duration of this Contract insurance on an occurrence basis of such types and in such amounts as may be necessary to protect the Contractor and the City and agents of the City against all hazards or risks of loss as hereinafter specified. The form and limits of such insurance, together with the underwriter thereof in each case, shall be approved by the City, but regardless of such approval, it shall be the responsibility of the Contractor to maintain adequate insurance coverage at all times. Failure of the Contractor to maintain adequate coverage shall not relieve it of any contractual responsibility or obligation, including but not limited to, the indemnification obligation.
- 13.10 Satisfactory certificates of insurance shall be filled with the City prior to the Contractor starting any construction work on this Contract. The Certificates shall state that the thirty (30) days written notice will be given to the City before any policy covered thereby is changed or cancelled. Failure by the Contractor to furnish the required insurance within the time specified in the notice of award of the Contract by the City, at the City option, may be the basis for the City exercising its right to terminate the Contract.
- 13.11 The liability limits shall be as stated:
- Worker's Compensation and Employer's Liability: This insurance shall protect the Contractor against all claims under applicable state worker's compensation laws. The Contractor shall also be protected against claims for injury, disease, or death of employees, which, for any reason, may not fall within the provisions of a worker's compensation law. This policy shall include an "all states" endorsement.
 - Automobile Liability.: This insurance shall be written in comprehensive form and shall protect the Contractor against all claims for injuries to members of the public and damage to property of others arising from the use of motor vehicles, and shall cover operation on and off the site of all motor vehicles licensed for highway use, whether they are owned, non-owned, or hired. Unless otherwise specified, Contractor's insurance shall include the following:
 - \$300,000 single limit (on contracts less than \$100,000)
 - \$1,000,000 single limit (on contracts \$100,000 and more)
 - Commercial General Liability. This insurance shall be written in comprehensive form including Products, completed operations and Personal and Advertising injury and shall protect the Contractor against all claims arising from injuries to members of the public or damage to property of others arising out of any act or omission of the Contractor or its

agents, employees, or subcontractors. In addition, this policy shall specifically insure the contractual liability assumed by the Contractor under this Contract entitled "Insurance and Hold Harmless." The property damage liability coverage shall contain no exclusion relative to blasting, explosion, collapse of building, or damage to underground property. Unless otherwise specified, Contractor's insurance shall include the following:

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

- Additional Insurance: Excess Liability coverage or additional insurance covering special hazards may be required on certain projects. Such additional insurance requirements shall be as specified in Instructions to Bidders or Special Conditions.

14. INDEMNITY

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

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

- 14.2 For purposes of this Contract, and without in any way limiting indemnification obligations that may be set forth elsewhere in the Contract, the Contractor hereby agrees to indemnify, defend and hold harmless the City and County from any and all Loss where Loss is caused or incurred or alleged to be caused or incurred in whole or in part as a result of the negligence or other actionable fault of the Contractor, his/her employees, agents, Subcontractors and suppliers.
- 14.3 It is agreed as a specific element of consideration of this Contract that this indemnity shall apply notwithstanding the joint, concurring or contributory or comparative fault or negligence of the City and County or any third party and, further, notwithstanding any theory of law including, but not limited to, a characterization of the City's or County's or any third party's joint, concurring or contributory or comparative fault or negligence as either passive or active in nature.
- 14.4 Nothing in this section shall be deemed to impose liability on the Contractor to indemnify the City or County for Loss when the negligence or other actionable fault the City is the sole cause of Loss.
- 14.5 With respect to the City's or County's rights as set forth herein, the Contractor expressly

waives all statutory defenses, including, but not limited to, those under workers compensation, contribution, comparative fault or similar statutes to the extent said defenses are inconsistent with or would defeat the purpose of this section.

15. SUCCESSORS AND ASSIGNS

- 15.1 The City and Contractor bind themselves, their successors, assigns and legal representatives to the other party hereto and to successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in this Contract.
- 15.2 The Contractor shall not assign or sublet the work, or any part thereof, without the previous written consent of the City, nor shall it assign, by power of attorney or otherwise, any of the money payable under this Contract unless by and with the like written consent of the City. In case the Contractor assigns all, or any part of any moneys due or to become due under this Contract, the instrument of assignment shall contain a clause substantially to the effect that it is agreed that the right of the assignee in and to any moneys due or to become due to the Contractor shall be subject to all prior liens of all persons, firms and corporations for services rendered or materials supplied for the performance of the Work called for in this Contract.
- 15.3 Should any Subcontractor fail to perform in a satisfactory manner, the work undertaken, its subcontract shall be immediately terminated by the Contractor upon notice from the City. Performing in an unsatisfactory manner is defined as consistently having more than 10% of work unacceptable. The Contractor shall be as fully responsible to the City for the acts and omissions of the subcontractors, and of persons either directly or indirectly employed by them, as Contractor is for the acts and omissions of persons directly employed. Nothing contained in this Contract shall create any contractual relations between any Subcontractor and the City, nor shall anything contained in the Contract Documents create any obligation on the part of the City to pay or to see to the payment of any sums due any Subcontractor.
- 15.4 The Contractor shall not award subcontracts which total more than forty-five (45%) of the Contract Price and shall perform within its own organization work amounting to not less than fifty-five percent (55%) of the total Contract Price. Approval by the City of any Subcontractor shall not constitute a waiver of any right of the City to reject defective work, material or equipment not in compliance with the requirements of the Contract Documents. The Contractor shall not make any substitution for any Subcontractor accepted by the City unless the City so agrees in writing.
- 15.5 The Contractor shall not subcontract, sell, transfer, assign or otherwise dispose of the Contract or any portion thereof without previous written consent from the City. In case such consent is given, the Contractor, shall be permitted to subcontract a portion thereof, but shall perform with his/her own organization work amounting to not less than fifty five (55%) of the total Contract Price. No subcontracts, or other transfer of Contract, shall release the Contractor of its liability under the Contract and bonds applicable thereto.
- 15.6 The Contractor shall cause appropriate provisions to be inserted in all subcontracts relative to the Work to bind Subcontractors to the Contractor by the terms of the Contract Documents insofar as applicable to the work of the Subcontractor and to give the Contractor the same power to terminate any Subcontract as the City has to terminate the Contractor under any provisions of the Contract Documents.

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

16. NON-DISCRIMINATION LAWS

- 16.1 The Contractor further agrees that the Contractor shall abide by the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 et seq.) and the applicable provision of the Americans With Disabilities Act (42 U.S.C. 1201 et seq.) as well as all other federal, state and local laws, ordinances and regulations applicable to this Work and furnish any certification required by any federal, state or local governmental agency in connection therewith.
- 16.2 In all solicitations or advertisements for employees, the Contractor shall include the phrase, "equal opportunity employer", or similar phrase to be approved by the Kansas Human Rights Commission (Commission);
- 16.3 If the Contractor fails to comply with the manner in which the Contractor reports to the Commission in accordance with the provisions of K.S.A. 44-1031 and amendments thereto, the Contractor shall be deemed to have breached the present contract and it may be cancelled, terminated or suspended, in whole or in part, by the contracting agency;
- 16.4 If the Contractor is found guilty of a violation of the Kansas Act Against Discrimination under a decision or order of the Commission which has become final, the Contractor shall be deemed to have breached the present Contract and it may be cancelled, terminated or suspended, in whole or in part, by the contracting agency; and
- 16.5 The Contractor shall include the provisions of this section in every subcontract or purchase order so that such provisions will be binding upon such Subcontractor or vendor.
- 16.6 The provisions of this section shall not apply to a contract entered into by a Contractor who employs fewer than four employees during the terms of such contract; or whose contracts with the City cumulatively total \$5,000 or less during the fiscal year of the City.

17. RELATIONS WITH OTHER CONTRACTORS:

- 17.1 The Contractor shall cooperate with all other contractors who may be performing work on

behalf of the City, and workers who may be employed by the City, or any other entity on any work in the vicinity of the Work to be done under this Contract, and the Contractor shall so conduct his/her operations as to interfere to the least possible extent with the work of such contractors or workers. The Contractor shall be responsible for any injury or damage, that may be sustained by other contractors, workers, their work or employees of the City, because of any fault or negligence on the Contractor's part, and shall, at his/her own expense, repair or pay for such injury or damage. If the work of the Contractor is delayed because of any acts or omissions of any other Contractor or Contractors, the Contractor shall have no claim against the City on that account other than for an extension of time.

- 17.2 When two or more Contracts are being executed at one time in such manner that work on one Contract may interfere with that on another, the City shall decide which Contractor shall progress at which time.
- 17.3 Other projects the Contractor may have to coordinate shall be listed in the Special Conditions.
- 17.4 When the territory of one Contract is the necessary or convenient means of access for the transportation or movement of workers, materials, or appliances required for the execution of another Contract, such privileges of access or any other responsible privilege may be granted by the City to the Contractor so desiring, to the extent such may be reasonably necessary.
- 17.5 Upon execution of the Contract, the Contractor shall furnish the City, in writing, the names of persons or entities proposed by the Contractor to act as a Subcontractor on the Work. The City shall promptly reply to the Contractor, in writing, stating any objections the City may have to such proposed Subcontractor. The Contractor shall not enter into a Subcontract with a proposed Subcontractor with reference to whom the City has made timely objection. The Contractor shall not be required to Subcontract with any party to whom the Contractor has objection.

18. RIGHT OF CITY TO TERMINATE

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

and the Contractor shall be compensated as provided herein.

- 18.2 The City, within its sole discretion, may elect to terminate the Contract with the Contractor for convenience upon three (3) days written Notice to Contractor. In the event of such termination, Contractor shall cease immediately all operations and shall be compensated for all work performed as of the date of termination in accordance with the terms of payment in this contract. Contractor shall not be entitled to any anticipatory profits of other costs other than direct costs of demobilization.

19. MISCELLANEOUS:

- 19.1 The Contractor warrants to the City that all labor furnished to progress the Work under the Contract will be competent to perform the tasks undertaken, that the product of such labor will yield only first-class results, that materials and equipment furnished will be of good quality and new unless otherwise permitted by this Contract, and that the Work will be of good quality, free from faults and defects and in strict conformance with the Project Manual. All Work not conforming to these requirements may be considered defective.
- 19.2 The Contractor shall obtain and pay for all permits, fees and licenses necessary or ordinary for the Work. The Contractor shall comply with all lawful requirements, including federal and state laws, City and County laws and ordinances and building codes, applicable to the Work and shall give and maintain copies of all notices required by applicable law pertaining to the Work.
- 19.3 Both the business address of the Contractor given in the Bid or proposal upon which this Contract is founded, and the Contractor's Office near the Work, is hereby designated as the places to which all notices, letters, and other communications to the Contractor may be mailed or delivered. The delivering at either of the above named addresses, or depositing in any mailbox regularly maintained by the Post Office, of any notice, letter or other communication so addressed to the Contractor, and the date of said service shall be the date of such delivery or mailing. Such addresses may be changed at any time by an instrument in writing, executed by the Contractor, presented, and delivered to the Project Manager and to the City. Nothing herein contained shall be deemed to preclude or render inoperative the service of any notice, letter, or communication upon the Contractor personally.
- 19.4 It is mutually agreed by and between the parties to this Contract that all royalties and fees for and in connection with patents, or patent infringement, claims for materials, articles, apparatus, devices or equipment (as distinguished from processes) used in or furnished for the work shall be included in the Contract amount and the Contractor shall satisfy all demands that may be made at any time for such, and the Contractor shall at its cost and expense, defend any and all suits or proceedings that may be instituted at any time against the City for infringement or alleged infringement of any such patents involved in the work, and Contractor shall pay any award of damages.
- 19.5 The right of general administration of the City shall not make the Contractor an agent of the City, and the liability of the Contractor for all damages to persons, firms, and corporations, arising from the Contractor's execution of the Work, shall not be lessened because of such general administration, but as to all such persons, firms, and corporations, and the damages, if any, to them or their property. The Contractor herein is an independent

Contractor in respect to the work.

- 19.6 For a period of time, from the inception of the Contract to three (3) years from the date of final payment under the Contract, the Contractor and subcontractors shall maintain books, accounts, ledgers, invoices, drafts, pages and other records pertaining to the performance of this Contract. At all reasonable times during this period these records shall be available within the State of Kansas at a field or permanent business office for inspection by authorized representatives of the City or of any other agency, which has contributed funds in connection with the Contract or to which the City is obligated to make such inspections available. In addition, this requirement shall be included in all subcontracts entered into in connection with this Contract.
- 19.7 Titles, subheadings used herein, and other Contract Documents are provided only as a matter of convenience and shall have no legal bearing on the interpretation of any provision of the Contract Documents.
- 19.8 No waiver of any breach of this Contract shall be construed to be a waiver of any other subsequent breach.
- 19.9 Should any provision of this Agreement or other Contract Documents be determined to be void, invalid, unenforceable or illegal for whatever reason, such provision(s) shall be null and void; provided, however, that the remaining provisions of this Agreement and/or the other Contract Documents shall be unaffected thereby and shall continue to be valid and enforceable.
- 19.10 The Contractor shall keep fully informed of all existing and current regulations of the City, and County, State, and National Laws, which in any way limit or control the actions or operations of those engaged upon the work, or affecting materials supplied, to or by them. The Contractor shall at all times observe and comply with all ordinances, laws, and regulations, and shall protect and indemnify the City and the City's officers and agents against any claims or liability arising from or based on any violation of the same.
- 19.11 Nothing contained in these Project Manual shall create, or be interpreted to create, privity or any other contractual agreement between the City and any person or entity other than the Contractor.
- 19.12 Duties and obligations imposed by the Contract Documents, rights, and remedies available hereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.
- 19.13 No action or failure to act by the City, Project Manager or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval or acquiescence in a breach hereunder, except as may be specifically agreed in writing.
- 19.14 Contractor specifically acknowledges and confirms that: 1.) he/she has visited the site, made all inspections he deems appropriate and has read and fully understands the Contract Documents, including all obligations and responsibilities undertaken by he as specified herein and in other Contract Documents and knowingly accepts the same; 2.) he/she has furnished copies of all Contract Documents to his/her insurance carrier(s)

and his/her surety(ies); and 3.) his/her insurance carrier(s) and surety(ies) agree to be bound as specified herein, in the Contract Documents and in the insurance policy(ies) and bonds as to liability and surety coverage.

- 19.15 It is specifically agreed between the parties executing this Agreement that the Contract Documents are not intended to create any third party beneficiary relationship nor authorize anyone not a party to this Agreement to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of this Agreement. The duties, obligations and responsibilities of the parties to this Agreement with respect to third parties shall remain as imposed by law.
- 19.16 This agreement is entered into, under and pursuant to, and is to be construed and enforceable in accordance with the laws of the State of Kansas.

WITNESSETH:

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

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

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

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

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

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

IN WITNESS WHEREOF, the City, has caused this Agreement to be executed in its behalf, thereunto duly authorized, and the said Contractor has executed five (5) counterparts of this Contract in the prescribed form and manner, the day and year first above written.

Project: _____

Month Year _____

CITY OF PRAIRIE VILLAGE

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

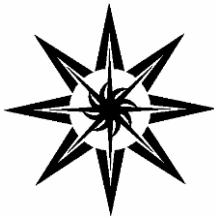
ATTEST:

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: November 17, 2014

DISCUSS RE-BIDDING OF THE 75TH STREET PROJECT FROM STATELINE ROAD TO MISSION ROAD, PROJECT 75ST0001.

RECOMMENDATION

No formal recommendations are required at this time. Once the project is re-bid then formal action will be required.

BACKGROUND

Project 75ST0001, 75th Street- Stateline Road to Mission Road was selected by the Mid-America Regional Council(MARC) to receive Federal Funds in 2011. The Kansas Department of Transportation(KDOT) administers the Federal Funds for local communities in Kansas. This project was initiated by the City and coordinated through KDOT. GBA was hired by the City as the design consultant and the 75th Street Committee provided input into the project design.

Bids were opened for this project by KDOT on October 22, 2014. At the November 3, 2014 City Council Meeting the bids that KDOT received were rejected.

It was requested at the November 3, 2014 meeting to have GBA better explain why their final estimate was significantly lower than the low bid amount and to also obtain more information about re-bidding the project.

GBA will present information that they have learned from discussions with KDOT, Amino Brothers, and O'Donnell and Son's. Areas where GBA's estimate was significantly different from bid prices include earthwork, retaining walls, drainage items, sidewalk/ramps, and curb and gutter.

Items proposed to modify for the re-bidding of the project.

Pavement Repair- Estimated reduction of \$200,000. GBA had shown the full depth pavement repair to be concrete versus asphalt and also assumed 5% of the total pavement area for repair. A significantly lower amount of pavement repair is appropriate. Utilizing asphalt for the repair is adequate and will be less expensive.

Asphalt Overlay thickness- A 3 inch mill and asphalt overlay was designed for this project. With the work WaterOne performed this year we were able to see the pavements condition and we feel the pavement is structurally sound and that a thinner wearing surface of 2 inches is adequate. This will reduce the estimate by about \$100,000.

After discussions with KDOT there are no additional changes that can be made unless significant design changes are made to the scope of the project. Changing the western limit to Windsor will not work as the elevation of the street changes in this area. With the two changes listed above we could get the project through the final KDOT process and

meet a January 2014 letting. Any significant design changes would delay the letting further into 2014 and thus would reduce the construction time period.

It is anticipated that with the two changes mentioned above that the new bid would be less than it previously was but would still be significantly above what was originally planned. If the path above is chosen then the City Council should have the expectation to fund and award the project. Additional funds required would come from other CIP sources discussed on December 3, 2014 or as determined at the time of award. The City will need to bid and award a project to continue the utilization of the 1.6 million in federal funds.

FUNDING SOURCE

CIP Funds and KDOT/Federal Funds

RELATION TO VILLAGE VISION

TR1a. *Ensure that infrastructure improvements meet the needs of all transportation users.*

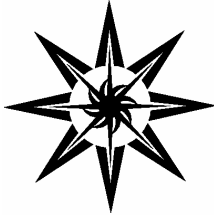
ATTACHMENTS

None

PREPARED BY

Keith Bredehoeft, Public Works Director

November 12, 2014



ADMINISTRATION

Council Committee Meeting Date: November 17, 2014
Council Meeting Date: November 17, 2014

Consider approval of a deferred compensation 457(b) plan document

RECOMMENDED MOTION:

Move for the approval of a deferred compensation 457(b) city plan document and withdraw from the State's 457(b) plan. Also move to designate a Retirement Plan Committee consisting of the City Administrator, HR Manager and Finance Director.

BACKGROUND:

City employees can voluntarily participate in a deferred compensation 457(b) plan. The employee designates the amount to be withdrawn from their paycheck and also directs their funds within the selection of investment funds offered by the provider.

The City currently participates in a 457(b) plan attached to the State of Kansas and operated through the KPERS office. Voya (ING) has been the state's plan provider for 30+ years. The State has selected another provider starting in January 2015.

A majority of city employees prefer to keep their personal 457(b) plans with Voya due to the level of service and familiarity. Staff was able to negotiate with Voya for the fund management rates to remain similar to the state's existing plan. The City offers a match incentive for employees with the matching funds placed in a city sponsored 401a plan. The 401a plan provider is Voya with the funds individually directed by the employee.

The attached 457(b) plan document consists of both the adoption agreement and the basic plan document. The attorney with Lathrop & Gage who reviews the City's police pension plan prepared the documents. The provisions of the 457(b) plan mirror the provisions under the state's plan. The adoption agreement is for a 5 year period.

The plan fees are paid by the employee as part of their fund investments. The city supports the plan with indirect expenses such as administering the payroll process and arranging employee investment counseling sessions.

There is minimal risk associated with the City administering its own plan. The City takes on the fiduciary duty similar to the current 401a plan and Police Pension Plan. The City carries fiduciary insurance for the Police Pension Plan and the other two plans are in the process of being added.

ATTACHMENT:

- Proposed 457(b) Plan Document which consists of the adoption agreement and basic plan document

PREPARED BY:

Quinn Bennion

City Administrator

Date: November 13, 2014

Voya Financial™

**SPECIMEN ADOPTION AGREEMENT FOR
457(b) DEFERRED COMPENSATION PLAN
FOR GOVERNMENTAL EMPLOYERS**

The undersigned Employer adopts the 457(b) Deferred Compensation Plan for Governmental Employers for those Employees who will qualify as Participants hereunder, to be known as the

The City of Prairie Village, Kansas 457(b) Plan
(Enter Plan Name)

It will be effective as of the date specified below. The Employer hereby selects the following Plan specifications:

EMPLOYER INFORMATION (Plan Section 1.11)

Name of Employer: The City of Prairie Village, Kansas

Address: 7700 Mission Road
Prairie Village KS 66208
City State Zip

Telephone Number: (913) 381-6464

Employer Identification Number: 48-6077081

Location of Employer's Principal Office:

state commonwealth district city of Prairie Village and the Plan shall be governed in accordance with retirement plan laws of the City of Prairie Village, Kansas (name of state/commonwealth).

Employer Fiscal Year:

The 12-consecutive month period commencing on January 1 [month and day] and ending on December 31 [month and day].

PLAN INFORMATION

Effective Date:

This Adoption Agreement of the 457(b) Deferred Compensation Plan for Governmental Employers will:

establish a new Plan effective as of January 1, 2015.

constitute an amendment and restatement in its entirety of a previously established 457(b) Plan of the Employer which was effective _____. Except as specifically provided in the Plan, the effective date of this amendment and restatement is _____.

Plan Year (Plan Section 1.21):

The 12-consecutive month period commencing on January 1 [month and day] and ending on December 31 [month and day].

Name of Administrator (Plan Section 1.1):

- Employer (Use Employer Address)
- Name(s) Retirement Plan Committee

Address 7700 Mission Road

Prairie Village, Kansas 66208
City State Zip

ELIGIBILITY (Plan Section 2.1)

Eligible Individuals for Purposes of Participant Deferral Contributions:

- All Employees
- All Employees other than the following group or groups of Employees elected below:
- Nonresident aliens with no U.S. source of income
 - Employees who normally work less than 20 hours per week
 - Students performing services for the Employer whose Compensation is not considered wages under the Federal Insurance Contributions Act ("FICA")
 - Collectively bargained employees

NOTE: The group(s) specified must correspond to a group of the same designation that is defined in statutes, ordinances, rules, regulations, personnel manuals or other authority for the state or local jurisdiction of the Employer.

Independent Contractors

For purposes of this section, the term Eligible Individual:

- Will **not** include Independent Contractors
- Will include all Independent Contractors
- Will include all Independent Contractors other than as specified below:

CONTRIBUTIONS AND ALLOCATIONS

Roth 457(b) Contributions (Plan Section 1.24)

Roth 457(b) Contributions will will not be permitted under the Plan.

Deferral of Accumulated Sick Pay, Accumulated Vacation Pay and Back Pay (Plan Section 3.1(b)):

Participant may elect to defer (check all that are applicable) to the Plan:

- accumulated sick pay
- accumulated vacation pay
- back pay

Note: any amounts deferred under Section 3.1(b) of the Plan must be consistent with applicable state and local law, including, but not limited to, the terms of any collective bargaining agreements.

Age 50 Plus Catch-Up Contributions (Plan Section 3.3):

Age 50 Plus Catch-Up Contributions will will not be permitted under the Plan.

Transfers into the Plan (Plan Section 3.7):

Transfers into the Plan from an eligible 457 plan sponsored by another governmental employer will will not be permitted.

Rollovers:

Rollover Contributions will will not be permitted under the Plan (Plan Section 3.8).

The Plan will accept the following types of non-Roth Rollover Contributions:

- 457(b) Rollovers
- Non-457(b) Rollovers

If Roth 457(b) Contributions are permitted the Plan, then the following rollover contributions will be permitted:

- Not Applicable
- Non-457(b) Rollovers
- Roth 457(b) Rollovers
- Roth Non-457(b) Rollovers
- Rollover of In-Plan Roth Non-457(b) Rollovers

Normal Retirement Age (Plan Section 1.16):

For purposes of the Special 457 Catch-Up Deferral Election under Section 3.2, Normal Retirement Age will be:

Option 1: Employer determines Normal Retirement Age

The NRA is a range of age(s) beginning at:

- the earliest retirement age at which an individual could receive unreduced benefits under the Employer's defined benefit pension plan
- Age 65
- Other: _____

NOTE: Age specified can be the earlier of age 65 or, if applicable, date above at which a Participant could receive unreduced benefits from Employer's defined benefit pension Plan.

and ending at:

- Age 70½
- Other: _____

NOTE 1: Normal Retirement Age cannot be later than age 70 ½.

NOTE 2: Beginning and ending ages may be the same age, if elected by the Employer.

Option 2: Participant determines Normal Retirement Age

- Age 70 ½.
- the Normal Retirement Age elected by the Participant that is between:
 - the earlier of the earliest retirement age under the Employer's pension plan at which the Participant immediately could receive unreduced retirement benefits or age 65; and
 - age 70 ½.

NOTE 3: The Employer is not permitted to have more than one Normal Retirement Age for each Participant under all of the plans under Section 457(b) of the Code that it sponsors.

DISTRIBUTIONS

Distribution Options (Plan Section 4.3(c)):

- Joint and survivor annuity
- Lump sum
- Immediate or deferred annuity (including life annuities and installment payment annuities)
- Systematic distribution option permitted under the Investment Product.
- Other: _____

NOTE: Distribution options selected are available to the extent permitted by applicable law and the terms of the Investment Product.

In the event that a Participant does not elect a form of payment at the time that distributions are required to begin in accordance with Section 4.5, any benefits payable to the Participant will be made as follows:

- In the form of an annuity payable over the life expectancy of the Participant that meets the requirements of Code Section 401(a)(9)
- Lump sum
- Other: _____

Death Benefits Payable to Beneficiary (Plan Section 4.3(d)):

Amounts payable to the Beneficiary may be elected by the Beneficiary in the following forms of benefit payment:

- Same distribution options as available to the Participant
- Other:

NOTE: Distribution options selected are available to the extent permitted by applicable law and the terms of the Investment Product.

In the event a Beneficiary fails to make an election as to a benefit distribution option, any benefit payable to such Beneficiary will be distributed in accordance with Code Section 401(a)(9).

Rollovers

Distribution of a Participant 457 Rollover Account and a Participant Non-457 Rollover Account (Plan Section 4.1(b)):

Amounts payable under a Participant 457 Rollover Account and a Participant Non-457 Rollover Account will be paid to a Participant:

- Upon attainment of an event as described in Section 4.1
- Upon the request of a Participant
- Other:

Unforeseeable Emergency Withdrawals (Plan Section 4.6):

Unforeseeable Emergency Withdrawals will will not be permitted under the Plan.

If Unforeseeable Emergency withdrawals are allowed by the Plan, the amount eligible for such withdrawals will consist of:

- The Participant Account
- The Participant Deferral Account
- The Participant 457 Rollover Account (if amounts are not payable before a Participant attains an event as described in Section 4.1)
- The Participant Non-457 Rollover Account (if amounts are not payable before a Participant attains an event as described in Section 4.1)

A Participant may may not take an Unforeseeable Emergency Withdrawal resulting from the illness or accident of a primary Beneficiary designated by the Participant.

Small Balance Distribution (Plan Section 4.7):

Small balance distributions attributable to a Participant Deferral Account will will not be permitted under the Plan.

Transfer of Amounts for Purchase of Service Credits in Governmental Retirement System (Plan Section 4.9)

Participant will will not be permitted to transfer amounts under the Plan to a governmental retirement system in order to purchase service credits.

Loans to Participants (Plan Section 4.11):

Loans will will not be permitted under the Plan.

Distributions for Health Insurance and Long Term Care (Plan Section 4.12):

Distributions to pay for health insurance and long term care will will not be permitted under the Plan.

CERTIFICATION AND SIGNATURE

The undersigned Employer hereby represents that it is a unit of a State or local government or an agency or instrumentality of one or more units of a State or local government as described in Code Section 414(d).

This Adoption Agreement and the Plan document together constitute the Plan.

IN WITNESS WHEREOF, the Employer hereby causes this Plan to be executed on this _____ day of November, 2014.

EMPLOYER: _____ City of Prairie Village, Kansas _____

By: _____
Ronald L. Shaffer, Mayor

**457(b) DEFERRED COMPENSATION
PLAN FOR GOVERNMENTAL
EMPLOYERS
BASIC PLAN DOCUMENT**

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457(b) DEFERRED COMPENSATION
PLAN FOR GOVERNMENTAL EMPLOYERS
PREAMBLE

The Employer hereby establishes the Code Section 457(b) Deferred Compensation Plan for Governmental Employers (the "Plan").

The Plan is established pursuant to applicable state law and is intended to comply with the provisions of Section 457(b) of the Internal Revenue Code of 1986, as amended, Income Tax Regulations thereunder and applicable law. The Plan consists of the provisions set forth in this basic plan document and the Adoption Agreement, and is applicable to each Eligible Individual.

ARTICLE I
DEFINITIONS

As used in this Plan, the following words and phrases will have the meanings set forth herein unless a different meaning is clearly required by the context.

1.1 "Administrator" means the person(s), committee or organization appointed by the Employer pursuant to Section 5.2 to administer the Plan and perform administrative functions for the Plan as specified by the Employer.

1.2 "Adoption Agreement" means the separate agreement that is executed by the Employer and sets forth the elective provisions of the Plan. The Adoption Agreement is considered a part of the Plan.

1.3 "Age 50 Plus Catch-Up Contribution" means the catch-up contribution for Participants who attain age 50 by the end of the calendar year, as permitted under Code Section 414(v) and pursuant to Section 3.3.

1.4 "Beneficiary" means the individual, individuals or trust designated by the Participant in writing on a form acceptable to the Administrator, and received by the Administrator before the Participant's death, to receive any undistributed amounts under the Participant Account which becomes payable upon the Participant's death. A Beneficiary may designate his own Beneficiary. If a Participant or Beneficiary does not designate a Beneficiary in a form acceptable to the Administrator, then his estate will be deemed to be his Beneficiary. In addition, any Beneficiary designation will meet the requirements of applicable state law.

1.5 "Code" means the Internal Revenue Code of 1986, as now in effect or as hereafter amended. All citations to sections of the Code are to such sections as they may from time to time be amended or renumbered.

1.6 "Compensation" means for an Employee all cash compensation for services to the Employer, including salary, wages, fees, commissions, bonuses, and overtime pay, that is includible in the Employee's gross income for the calendar year, plus amounts that would be cash compensation for services to the Employer includible in the Employee's gross income for the calendar year but for a compensation reduction election under Code Sections 125, 132(f), 401(k), 403(b) or 457(b) (including an election under Article III to defer Compensation under the Plan). For purposes of an Independent Contractor, "Compensation" will mean all amounts payable to a Participant from the Employer as remuneration for services rendered which would be includible in income for federal tax purposes if not deferred under this Plan, subject to the provisions of the current Code.

1.7 “Deferrals” means the amount of Compensation deferred by a Participant to the Plan, comprising of Elective Deferrals and, if elected by the Employer in the Adoption Agreement and the Participant so elects on a Participation Agreement, Roth 457(b) Contributions.

1.8 “Elective Deferrals” means amounts made by the Employer to the Plan on a voluntary pre-tax basis pursuant to a Participation Agreement entered into by a Participant,

1.9 “Eligible Individual” means any Employee who is in one or more of the classifications specified in the Adoption Agreement, and, if elected by the Employer, may include Independent Contractors.

1.10 “Employee” means any common law employee who is employed by the Employer and who performs services for the Employer for which Compensation is payable.

1.11 “Employer” means a state or the District of Columbia, any political subdivision of a state or the District of Columbia, or any agency or instrumentality of a state or the District of Columbia, which satisfies the definition of Code Section 457(e)(1)(A) (together with any other entity required to be aggregated with such governmental employer under Code Sections 414(b), (c), (m) or (o)) and which has adopted this Plan as indicated in the Adoption Agreement.

1.12 “Includible Compensation” means an Employee’s actual wages in box 1 of Form W-2 for the Employer, but increased (up to the dollar maximum) by any compensation reduction election under Code Section 125, 132(f), 402(g)(3) or 457(b). The amount of Includible Compensation is determined without regard to any community property laws. Pursuant to Section 1.457-4(d)(1) of the Income Tax Regulations, Includible Compensation will include any payments made to a Participant who has had a Severance from Employment, provided that the Includible Compensation is paid by the later of 2 ½ months after the Participant’s Severance from Employment or the end of the calendar year that contains the date of such Participant’s Severance from Employment. In addition, pursuant to Section 1.457-4(d)(1) of the Income Tax Regulations, Includible Compensation will include payments made to an individual who does not currently perform services for the Employer by reason of qualified military service (as defined in Code Section 414(u)(5)) to the extent those payments do not exceed the amount the individual would have received if the individual had continued to perform services for the Employer rather than enter qualified military service. Includible Compensation will not include Employee pick-up contributions described in Code Section 414(h)(2).

1.13 “Independent Contractor” means any person to whom Compensation from the Employer is payable for services rendered pursuant to one or more written or oral contracts, if such person is not a common-law employee.

1.14 “In-Plan Roth Rollover” means a rollover contribution to the Plan that consists of a distribution from an Elective Deferral Account, a 457(b) Rollover Account or a non-457(b) Rollover Account under the Plan that the Participant rolls over to the Participant’s In-Plan Roth 457(b) Rollover Account in the Plan, in accordance with Code Section 402A(c)(4).

1.15 “Investment Product” means group or individual annuity contracts or such other investment arrangements issued by or offered through the Provider and used to hold assets of the Plan.

1.16 “Normal Retirement Age” means the age as elected by the Employer in the Adoption Agreement that is used for the Special 457 Catch-up Contribution election under Section 3.2. The Employer is not permitted to have more than one Normal Retirement Age for each Participant under all plans under Code Section 457(b) that it (together with any other entity required to be aggregated with the Employer under Code Section 414(b), (c), (m) or (o)) sponsors.

1.17 "Participant" means any individual who has entered into a Participation Agreement to make Deferrals under the Plan or has previously made Deferrals under the Plan and who has not yet received a distribution of his entire Participant Account under the Plan. As appropriate, a Participant means a Beneficiary or an alternate payee as defined in Code Section 414(p)(8).

1.18 "Participant Account" means the following accounts established for the Participant and maintained by the Administrator for each Participant, including any earnings and losses attributable thereon:

- (a) Elective Deferral Account,
- (b) Roth 457(b) Contributions Account,
- (c) 457(b) Rollover Account,
- (d) Non-457(b) Rollover Account,
- (e) Roth 457(b) Rollover Account,
- (f) Roth Non-457(b) Rollover Account,
- (g) Rollover of In-Plan Roth Non-457(b) Rollover Account; and
- (h) In-Plan Roth 457(b) Rollover Account.

1.19 "Participation Agreement" means an agreement, which meets the requirements of Section 2.4, entered into between an Eligible Individual and the Employer pursuant to which an Eligible Individual agrees to defer Elective Deferrals and/or Roth 457(b) Contributions to the Plan and thus to become a Participant.

1.20 "Plan" means the name of the Plan as indicated in the Adoption Agreement.

1.21 "Plan Year" means the Plan's 12-consecutive month accounting year as elected by the Employer in the Adoption Agreement.

1.22 "Provider" means Voya Retirement Insurance and Annuity Company and/or ReliaStar Life Insurance Company or such other provider entity as the Employer may approve.

1.23 "Rollover Contribution" means, if so elected by the Employer in the Adoption Agreement, contributions made by a Participant (or, if applicable, Eligible Individual) of "eligible rollover distributions" in accordance with Code Section 402(c)(4).

1.24 "Roth 457(b) Contributions" means, if so elected by the Employer in the Adoption Agreement, contributions that are:

(a) made by the Employer to the Plan pursuant to a Participation Agreement entered into by a Participant, which qualifies as a "designated Roth contribution" within the meaning of Code Section 402A;

(b) irrevocably designated by the Participant at the time of the cash or deferred election as a Roth 457(b) Contribution that is being made in lieu of all or a portion of the Elective Deferrals the Participant is otherwise eligible to make under the Plan; and

(c) treated by the Employer as includible in the Participant's income at the time the Participant would have received that amount in cash if the Participant had not made a cash or deferred election.

1.25 "Severance from Employment" means the date on which the Employee dies, retires or otherwise has a severance from employment with the Employer, as determined by the Administrator.

1.26 "Special Section 457 Catch-up Contributions" means the catch-up contribution for a Participant in the three consecutive years prior to the year in which the Participant reaches Normal Retirement Age, as permitted under Code Section 457(b)(3) and pursuant to Section 3.2.

1.27 "Unforeseeable Emergency" means a financial hardship of the Participant or Beneficiary resulting from:

(a) An illness or accident of:

- (1) the Participant or the Beneficiary
- (2) the spouse of the Participant or Beneficiary, or
- (3) the dependent of the Participant or Beneficiary;

(b) Loss of the Participant's or Beneficiary's property due to casualty; or

(c) Similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the Participant or Beneficiary.

In addition, if elected by the Employer in the Adoption Agreement, an Unforeseeable Emergency means a severe financial hardship of the Participant resulting from an illness or accident of a primary Beneficiary designated by the Participant under the Plan.

A determination of an Unforeseeable Emergency will be based on each Participant's and Beneficiary's specific facts and circumstances.

2.8 "Valuation Date" means each business day during the Plan Year or such other valuation date specified by the Investment Provider for a particular investment.

ARTICLE II PARTICIPATION

2.1 Eligibility

Each Eligible Individual will be a Participant in the Plan when he satisfies the eligibility requirements specified by the Employer in the Adoption Agreement and has executed a Participation Agreement.

2.2 Determination of Eligibility and Effective Date of Participation

(a) The Administrator will determine whether an Eligible Individual has satisfied the eligibility requirements specified by the Employer in the Adoption Agreement based upon information furnished by the Employer. Such determination will be conclusive and binding and the criteria for such determination will be applied uniformly to all Participants.

(b) The Participant will provide investment direction for contributions made to an Investment Product on such forms as may be required by the Provider.

2.3 Termination of Eligibility

In the event a Participant will go from a classification of an Eligible Individual to a non-Eligible Individual, such Participant will not be able to make Deferrals to the Plan until he is again reclassified as an Eligible Individual. The Participant Account of such inactive Participant will continue to be allocated any attributable earnings and losses based on the investment direction supplied by the Participant.

2.4 Participation Agreements

(a) In order to participate in the Plan, a Participant must complete a Participation Agreement with the Employer and file such Participation Agreement in a manner and method determined by the Administrator. The Participation Agreement will specify:

- (1) The amount (expressed either as a dollar amount or as a percentage) of the Participant's Compensation which the Participant agrees to make as Deferrals, subject to the limitations of Article III; and
- (2) The date as of which Deferrals pursuant to the Participation Agreement will begin.

(b) A Participant may make Deferrals payable in the calendar month during which the Eligible Individual first becomes a Participant if the Participation Agreement providing for such Deferrals is entered into before the first day of the month in which the Compensation is paid or becomes available.

(c) Notwithstanding subsection (b), a new Employee who is also an Eligible Individual may become a Participant and make Deferrals payable in the calendar month during which he first becomes an Employee if a Participation Agreement providing for the Deferrals is entered into on or before the first day on which he performs services for the Employer.

(d) A Participant may, by amendment of a Participation Agreement or by any manner as the Administrator may prescribe, do any of the following:

- (1) change the specification of the investment for any contributions to a Participant Account under an Investment Product; or
- (2) change prospectively the amount of Deferrals.

An amendment to the Participation Agreement will be effective as early as administratively practicable, but not earlier than the first day of the following calendar month in which the Compensation is paid or made available.

2.5 Information Provided by the Employee

Each Eligible Individual enrolling in the Plan should provide to the Administrator at the time of initial enrollment, and later if there are any changes, any information necessary for the Administrator to administer the Plan, including, without limitation, whether he is a participant in any other eligible plan under Code Section 457(b).

2.6 Contributions Made Promptly

All contributions under the Plan will be transferred to the applicable Investment Product within a period that is not longer than is reasonable for the proper administration of the Participant Accounts. For purposes of this requirement, Deferrals under the Plan by a Participant must be transferred to the Investment Product within 15 business days following the month in which these amounts would otherwise have been paid to the Participant.

2.7 Leave of Absence

Unless an election is otherwise revised, if an Employee is absent from work by leave of absence, Deferrals under the Plan will continue to the extent that Compensation continues.

2.8 Disability

A disabled Participant may elect Deferrals during any portion of the period of his or her disability to the extent that he or she has actual Compensation (not imputed Compensation and not disability benefits) from which to make contributions to the Plan and has not had a Severance from Employment.

ARTICLE III
CONTRIBUTIONS AND LIMITATIONS

3.1 Deferrals

(a) Except as provided in Section 3.2 and 3.3 and subject to any applicable law or under any applicable collective bargaining agreement, the maximum amount of Deferrals which may be made by a Participant in any taxable year will not exceed the lesser of (1) the applicable dollar amount provided under Code Section 457(b)(2) (adjusted for cost of living under Code Section 457(e)(15)) or (2) 100% of the Participant's Includible Compensation.

(b) If elected by the Employer in the Adoption Agreement, a Participant may elect to make Deferrals from accumulated sick pay, accumulated vacation pay and back pay, provided the Participant enters into a Participation Agreement pursuant to Section 2.4 to make such Deferrals before the amounts would otherwise be paid or made available. A Participant who is a former Employee may make Deferrals from accumulated sick pay, vacation pay and back pay, provided that the Participant enters into a Participation Agreement pursuant to Section 2.4 prior to the first day of the calendar month to make such Deferrals before the amounts would otherwise be paid or made available, provided that such amounts are payable within the later of 2 ½ months after the Participant's Severance from Employment or the end of the calendar year that includes the date of the Participant's Severance from Employment.

3.2 Special 457 Catch-Up Contributions

(a) In any one or more of a Participant's last three calendar years ending before the year in which the Participant attains Normal Retirement Age, as defined by the Employer in the Adoption Agreement, the Participant may elect to make Deferrals in an amount not exceeding the lesser of (1) twice the dollar amount permitted as a general deferral under Section 3.1 or (2) the sum of the maximum deferral permitted under Section 3.1 for the current tax year and as much of the applicable deferral limit under Code Section 457(b)(2) in prior years before the current tax year that had not previously been used ("underutilized amount"). For purposes of this Section, a prior year will be taken into account only if such year began after December 31, 1978, and the Participant was eligible to participate in the Plan during all or a portion of the prior year. A Participant may only make this election under this subsection once with respect to any plan under Code Section 457(b) of the Employer.

(b) In determining a Participant's underutilized amount, the Plan will take into consideration:

- (1) Prior to 2002, if a Participant made Deferrals to the Plan and deferrals to any other plan under Code Section 457(b), salary reduction contributions made to plans under Code Section 401(k), plans under Code Section 403(b), simplified employee pension (SARSEP) plans under Code Section 402(h)(1), simple retirement accounts under Code Section 408(p), and amounts deferred under any plan for which a deduction is allowed because of a contribution to an organization described in Code Section 501(c)(18), such deferrals to the other plans will be taken into account in determining a Participant's underutilized amount under Code Section 457(b)(2). In addition, Includible Compensation will be limited to the limitation in effect in the calendar year in which the deferrals were made. If such deferrals cumulatively exceed the then-applicable dollar amount in Code Section 457(b)(2) in the year that such amounts were deferred, then there will be no underutilized amount for that year.
- (2) To the extent that the Employer did not maintain a plan under Code Section 457(b), no underutilized limitation is available to a Participant for that prior year.

- (3) After 2001, only deferrals to plans under Code Section 457(b) will be taken into account for purposes of determining the underutilized amount.
- (4) Age 50 Plus Catch-Up Contributions will not be taken into account for purposes of determining a Participant's underutilized amount.

3.3 Age 50 Plus Catch-Up Contributions

If elected by the Employer in the Adoption Agreement, a Participant who has attained age 50 before the close of the calendar year may elect Age 50 Plus Catch-up Contributions. Such contributions are not subject to the limitations of Code Section 457(b). The maximum dollar amount of the Age 50 Plus Catch-up Contributions for a calendar year adjusted for cost of living under Code Section 414(v)(2)(C).

3.4 Maximum Amount of Catch-Up Contributions

Any catch-up contributions made by a Participant pursuant to Section 3.2 or Section 3.3 may not exceed the greater of (a) the amount that the Participant is eligible to make as Deferrals under Section 3.2 or (b) the amount that the Participant is eligible to make as Deferrals under Section 3.3.

3.5 Participant Covered by More than one 457(b) Plan

If a Participant is or has been a participant in one or more other plans under Code Section 457(b) in the same calendar year, then the Plan and all such other plans will be considered as one plan for purposes of applying the limitations of this Article III. For this purpose, the Administrator will take into account any other such plan of the Employer under Code Section 457(b) and, to the extent the Participant provides the Administrator with sufficient information concerning his participation, any such other plans under Code Section 457(b) in which the individual participated in the same calendar year.

3.6 Excess Deferrals

(a) In the event that the limit on Deferrals is exceeded pursuant to this Article III, the Administrator will direct the Provider as to the proper correction method permissible under applicable law, including calculation of any earnings or losses and the proper tax reporting with respect to such distributions as soon as administratively practicable after the Administrator determines that the amount is an excess deferral.

(b) A Participant who participates in the Plan and another 457(b) plan of another employer will be responsible for complying with the deferral limits of this Article III. In the event of an excess amount, the Participant will notify the Administrator so that the excess may be distributed as soon as practicable after the Administrator determines that the amount is an excess deferral.

3.7 Transfers from Other Plans under Code Section 457(b)

(a) If elected by the Employer in the Adoption Agreement, the Plan will accept transfers of amounts previously deferred under another plan under Code Section 457(b) maintained by another employer as defined in Code Section 457(e)(1)(A).

(b) A transfer under subsection (a) will only be permitted if:

- (1) the transferring plan provides for the transfer of such amounts, and
- (2) the Participant has a benefit equal to the amount immediately after the transfer to least equal to the amount under the Plan immediately before the transfer.

(c) The Administrator may require such documentation from the transferring plan as it deems necessary to effectuate the transfer in accordance with Section 1.457-10(b) of the Income Tax

Regulations and to confirm that the transferring plan is an eligible government plan as defined in Section 1.457-2(f) of the Income Tax Regulations. The amount so transferred will be credited to the appropriate account under the Participant Account and will be held, accounted for, administered and otherwise treated in the same manner as amounts as held in the transferor plan, except that the transferred amounts will not be taken into consideration for purposes of Code Section 457(b)(2) for the year of transfer.

3.8 Rollovers to the Plan

(a) The Employer may elect in the Adoption Agreement to permit an Eligible Individual, whether a Participant at the time, to rollover amounts that are considered eligible rollover distributions as defined in Code Section 402(c)(4) to the Plan from an eligible retirement plan, as defined in Code Section 402(c)(8)(B).

(b) Amounts (other than designated Roth contributions as defined in Code Section 402A) rolled over from another Code Section 457(b) plan maintained by an employer defined in Code Section 457(e)(1)(A) will be allocated to the Participant's 457(b) Rollover Account. Amounts (other than designated Roth contributions as defined in Code Section 402A) rolled over from an eligible retirement plan that is not a Code Section 457(b) plan will be allocated to the Participant's Non-457(b) Rollover Account.

(c) Designated Roth contributions as defined in Code Section 402A rolled over from another Code Section 457(b) plan maintained by an employer as defined in Code Section 457(e)(1)(A) will be allocated to the Participant's Roth 457(b) Rollover Account. Designated Roth contributions as defined in Code Section 402A rolled over from an eligible retirement plan that is not a Code Section 457(b) plan will be allocated to the Participant's Roth Non-457(b) Rollover Account.

(d) Designated Roth contributions relating to in-plan rollovers under Code Section 402A(c)(4) rolled over from an eligible retirement plan that is not a Code Section 457(b) plan will be allocated to the Participant's Rollover of In-Plan Roth Non-457(b) Rollover Account.

(e) Amounts attributable to In-Plan Rollovers will be allocated to an In-Plan Roth 457(b) Rollover Account. In-Plan Roth Rollover Contributions will be subject to the Plan rules related to Roth 457(b) Contributions.

3.9 Investments and Valuation

Subject to Section 5.9, amounts contributed to the Plan will be invested in an Investment Product. Participants will direct the investment of their Participant Accounts among the investment options available under the Investment Product. Contributions will be allocated to a Participant Account in accordance with this Article III and earnings and losses attributable to such contributions will be allocated to such Participant Account. If any provision of an Investment Product agreement is not consistent with the Plan provisions, the terms of the Plan will control.

The Provider shall value, at fair market value, the assets held in each Investment Product established under the Plan whenever deemed necessary or as directed by the Administrator, but at least annually as of the Plan's Anniversary Date. On the basis of such valuation, all Participant Accounts shall be adjusted to reflect the effect income received and accrued, realized and unrealized profits and losses, expenses, allocated forfeitures and all other transactions of the preceding period.

As of each Valuation Date, all income experienced by the assets held by the Plan's Investment Products for the period since the preceding Valuation Date shall be credited to, and all losses and expenses of the Plan for such period shall be charged to, all Participant Accounts. Such credits and charges shall be made in proportion to the value of each respective Participant's Account as of the preceding Valuation Date (after recording all credits and charges which would otherwise be made based on Participant Account balances as of the preceding Valuation Date).

The net income or net loss of the assets held by the Plan's Investment Products, as ascertained by the Provider whose findings shall be conclusive, shall be the profits and income received or accrued less the losses and expenses incurred or paid from the Plan plus any net increase or minus any net decrease in the value of such assets not actually realized and received or incurred and paid from the Plan.

3.10 Protection of Persons Who Serve In a Uniformed Service

(a) An Employee whose employment is interrupted by qualified military service under Code Section 414(u) or who is on a leave of absence for qualified military service under Code Section 414(u) may elect to make additional Deferrals upon resumption of employment with the Employer equal to the maximum Deferrals that the Employee could have elected during that period if the Employee's employment with the Employer had continued (at the same level of Compensation) without the interruption or leave, reduced by the Deferrals, if any, actually made for the Employee during the period of the interruption or leave. Except to the extent provided under Code Section 414(u), this right applies for five years following the resumption of employment (or, if sooner, for a period equal to three times the period of the interruption or leave).

(b) In the case of a Participant who dies while performing qualified military service (as defined in Code Section 414(u)), the Beneficiaries are entitled to any additional benefits (other than Deferrals relating to the period of qualified military service) provided under the Plan had the Participant resumed employment and then had a Severance from Employment on account of death.

ARTICLE IV BENEFIT DISTRIBUTIONS

4.1 Distributions Under the Plan

(a) A Participant Elective Deferral Account, Roth 457(b) Contributions Account or In-Plan Roth 457(b) Rollover Account may not be paid to a Participant (or, if applicable, the Beneficiary) until one of the following events has occurred:

- (1) upon the Participant's Severance from Employment;
- (2) the calendar year in which the Participant attains age 70 ½;
- (3) an Unforeseeable Emergency, within the meaning of and subject to Section 4.6, if elected by the Employer in the Adoption Agreement; or
- (4) the election of a small balance distribution within the meaning of and subject to Section 4.7, if elected by the Employer in the Adoption Agreement.

(b) A Participant may choose to receive a distribution from his 457(b) Rollover Account, Non-457(b) Rollover Account, Roth 457(b) Rollover Account, Rollover of In-Plan Roth Non-457(b) Rollover Account and Roth Non-457(b) Rollover Account at the time elected by the Employer in the Adoption Agreement.

(c) An Independent Contractor will be considered to have a Severance from Employment upon the expiration of all of the contracts under which services are performed for the Employer, if the expiration constitutes a good faith and complete termination of the contractual relationship. An expiration of such contractual relationship will not be considered to be a good faith and complete termination if the Employer anticipates a renewal of such contractual relationship or the Independent Contractor becomes an Employee.

4.2 Distributions from a Roth 457(b) Contributions Account, a Roth 457(b) Rollover Account, a Roth Non-457(b) Rollover Account, a Rollover of In-Plan Roth Non-457(b) Rollover Account and an In-Plan Roth 457(b) Rollover Account, will be tax-free for federal income tax purposes if:

- (1) The distribution meets the requirements of Section 4.1(a);
- (2) The amounts are held for a 5-year holding period, measured from the first year that the initial Roth 457(b) Contribution was made on behalf of the Participant to a Roth 457(b) Contributions Account, and
- (3) The distribution is due to a Participant's attainment of age 59 ½, death, or in the event of the Participant's becoming Disabled.

4.3 Determination of Benefits Payable to a Participant

(a) Upon attainment of a distributable event described in Section 4.1, but in no event later than the requirement to commence minimum distribution payments in accordance with Code Section 401(a)(9) and the Income Tax Regulations thereunder, a Participant may elect a benefit distribution option to which benefits will be paid.

(b) Upon a Participant's application for benefits, the Administrator will direct the distribution of a Participant Account in accordance with this Section 4.2.

(c) A Participant may choose a benefit distribution option as elected by the Employer in the Adoption Agreement. In the event a Participant fails to make an election as to a benefit distribution option, any benefit payable to such Participant will be distributed as elected by the Employer in the Adoption Agreement. The terms of any annuity contract purchased and distributed by the Plan to a Participant will comply with the requirements of the Plan.

4.4 Determination of Benefits Upon Death

(a) Upon the death of a Participant, the Administrator will direct that the deceased Participant's Participant Account, be distributed to the Beneficiary in accordance with the provisions of this Section.

(b) The designation of a Beneficiary will be made on a form satisfactory to the Administrator. A Participant or Beneficiary may at any time revoke his designation of a Beneficiary or change his Beneficiary by filing written notice of such revocation or change with the Administrator. In the event no valid designation of Beneficiary exists at the time of the Participant's or Beneficiary's death, the death benefit will be payable to the Participant's or Beneficiary's estate.

(c) The Administrator may require such proper proof of death and such evidence of the right of any person to receive payment of the value of the Participant Account of a deceased Participant or Beneficiary, as the Administrator may deem appropriate. The Administrator's determination of death and of the right of any person to receive payment will be conclusive.

(d) Death benefits payable to a Beneficiary will be made in a form as selected by the Beneficiary in accordance with the available options as elected by the Employer in the Adoption Agreement. In the event a Beneficiary fails to make an election as to a benefit distribution option, any benefit payable to such Beneficiary will be distributed in accordance with Code Section 401(a)(9). The terms of any annuity contract purchased and distributed by the Plan to a Beneficiary will comply with the requirements of the Plan.

4.5 Minimum Distributions.

(a) All distributions under the Plan will comply with the minimum distribution requirements of Code Section 401(a)(9) and the Income Tax Regulations.

4.6 Unforeseeable Emergency Withdrawals

(a) If elected by the Employer in the Adoption Agreement, a Participant or Beneficiary may request an Unforeseeable Emergency withdrawal subject to the following requirements:

- (1) The request for an Unforeseeable Emergency withdrawal will be determined by the Administrator based on the Participant's or Beneficiary's relevant facts and circumstances.
- (2) The request for an Unforeseeable Emergency may be made only to the extent that such emergency is or may not be relieved through:
 - reimbursement or compensation from insurance or otherwise;
 - liquidation of the Participant's or Beneficiary's assets, to the extent the liquidation of such assets would not itself cause severe financial hardship; or
 - cessation of the Participant's Deferrals to the Plan.
- (3) Distributions due to an Unforeseeable Emergency must be limited to the amount reasonably necessary to satisfy the emergency need (which may include any amounts necessary to pay federal, state, or local income taxes or penalties reasonably anticipated to result from the distribution).

(b) A Participant or Beneficiary may request an Unforeseeable Emergency withdrawal by submitting that request in writing on the Plan's approved form to the Administrator, who will review and approve the request. If the request is denied, a request for review of the determination may be made in writing to such entity as the Administrator may designate, provided that such entity has accepted the designation. If the review of the determination fails to confirm a claim of Unforeseeable Emergency, an appeal may be made to the appellate committee established by the Administrator in writing. If at any time a request of an Unforeseeable Emergency withdrawal is approved, the Employer may thereupon direct the Provider to distribute so much of the Participant Account as is necessary to provide the amount approved to meet the Unforeseeable Emergency, as determined by the Administrator.

(c) Unforeseeable Emergency withdrawals will be made in accordance with the procedures established by the applicable Provider's Investment Products.

4.7 Small Balance Distribution

If elected by the Employer in the Adoption Agreement and upon proper written request, a Participant may elect to receive a small balance distribution, payable in a lump sum, if the Participant's Deferral Account value is \$5,000 or less, and the Participant has not made Deferrals to the Plan for a period of two years before distribution. A Participant may take a small balance distribution under this Section only once while a Participant under the Plan.

4.8 Rollovers From The Plan

(a) Notwithstanding any provision of the Plan to the contrary, a Participant, a surviving spouse who is the designated Beneficiary of the Participant or a spouse or former spouse who is the alternate payee will be permitted to elect to have any eligible rollover distribution as defined in Code Section 402(c)(4) paid directly to an eligible retirement plan as defined in as defined in Code Section 402(c)(8)(B) or to a Roth IRA established under Code Section 408A specified by the Participant. The Participant will, in the time and manner prescribed by the Administrator, specify the amount to be rolled

over and the eligible retirement plan to receive such rollover. Any portion of a distribution which is not rolled over will be distributed directly to the Participant.

(b) A non-spousal Beneficiary may elect to roll over death benefits amounts in accordance with Code Section 402(c)(11) provided that:

- (1) such amounts are rolled over to an inherited IRA via a direct trustee-to-trustee transfer;
- (2) such election is made by December 31 of the year following the year of the Participant's death; and
- (3) the rolled over amounts are eligible rollover distributions as defined in Code Section 402(c)(4).

4.9 Permissive Service Credit Transfers

(a) If a Participant is also a participant in a tax qualified defined benefit governmental plan (as defined in Code Section 414(d)) that provides for the acceptance of plan-to-plan transfers with respect to the Participant, then the Participant may elect to have any portion of his Participant Account transferred to the defined benefit governmental plan in accordance with Code Section 457(e)(17). A transfer under this Section may be made before the Participant has had a Severance from Employment.

(b) A transfer may be made under subsection (a) only if the transfer is either for the purchase of permissive service credit (as defined in Code Section 415(n)(3)(A)) under the receiving defined benefit governmental plan or a repayment to which Code Section 415 does not apply by reason of Code Section 415(k)(3).

4.10 Transfers to Other Plans under Code Section 457(b) Upon Severance From Employment

(a) Upon a Participant's Severance from Employment, a Participant may elect to have all or a portion of the Participant Account transferred to the plan under Code Section 457(b) of an employer defined in Code Section 457(e)(1)(A). Such amounts will be transferred at the Participant's election, provided:

- (1) The plan under Code Section 457(b) to which the Participant's benefit is being transferred provides for the acceptance of such amounts;
- (2) The Participant or Beneficiary has a benefit equal to the amount immediately after the transfer to least equal to the amount under the Plan immediately before the transfer; and
- (3) In the case of a transfer made on behalf of a Participant, such individual has had a Severance from Employment with the Employer and is performing services for the employer maintaining the receiving plan.

(b) Upon the transfer of amounts under subsection (a), the Plan's liability to pay benefits to the Participant or Beneficiary under the Plan will be discharged to the extent of the amount so transferred on behalf of the Participant or Beneficiary. The Administrator may require such documentation from the receiving plan as it deems appropriate or necessary to comply with this Section or effectuate the transfer pursuant to Section 1.457-10(b) of the Income Tax Regulations. If Roth 457(b) Contributions are transferred, the receiving plan must permit Designated Roth contributions as defined in Code Section 402A.

4.11 Loans to Participants

(a) If elected by the Employer in the Adoption Agreement, a Participant may receive a loan from his Elective Deferral Account, 457(b) Rollover Account and non-457(b) Rollover Account. Such

loans may also be subject to the requirements of the Investment Product and as set forth in the loan program created by the Employer.

(b) For purposes of this Section, all plans of the Employer will be considered one plan in accordance with Code Section 72(p) and Income Tax Regulations thereunder, and the balance of all loans under any plan of the Employer under which the Participant participates must be aggregated in determining the maximum loan available under subsection (d).

(c) The Provider may, in accordance with the Administrator's direction, make loans to Participants under the following circumstances: (1) loans will be made available to all Participants on a reasonably equivalent basis; (2) loans will bear a reasonable rate of interest; (3) loans will be adequately secured; and (4) will provide for periodic repayment over a reasonable period of time.

(d) No loan made pursuant to this Section will exceed the lesser of:

- (1) \$50,000 reduced by the excess (if any) of the highest outstanding balance of loans from the Plan to the Participant during the one-year period ending on the day before the date on which such loan is made, over the outstanding balance of loans from the Plan to the Participant on the date on which such loan was made, or
- (2) one-half (1/2) of the Participant Account.

For purposes of this Section, any loan from any other plan maintained by the Employer will be treated as if it were a loan made from the Plan, and the Participant's vested interest under any such other plan will be considered a vested interest under this Plan; provided, however, that the provisions of this paragraph will not be applied so as to allow the amount of a loan to exceed the amount that would otherwise be permitted in the absence of this paragraph.

(e) Loans will provide for level amortization with payments to be made not less frequently than quarterly over a period not to exceed five (5) years. However, loans used to acquire any dwelling unit which, within a reasonable time, is to be used (determined at the time the loan is made) as a principal residence of the Participant will, provide for periodic repayment over a reasonable period to be determined by the Administrator of time that may exceed five (5) years. Notwithstanding the foregoing, in the event a Participant enters the uniformed services of the United States and retains reemployment rights under law, repayments will be suspended and interest will cease to accrue during the period of leave and the period of repayment will be extended by the number of months of leave in the uniformed services. In the event a Participant is on an Employer approved, bona fide leave of absence without pay, loan payments may be suspended (but interest will continue to accrue) for the period of leave but not to exceed one year; however, the loan must be repaid by the original loan repayment date.

(f) An assignment or pledge of any portion of a Participant's interest in the Plan will be treated as a loan under this Section.

(g) Any security interest held by the Plan by reason of an outstanding loan to the Participant will be taken into account in determining the amount of the death benefit or single lump-sum payment.

4.12 Distributions from Governmental Plans for Health and Long Term Care.

If elected by the Employer in the Adoption Agreement and pursuant to Code Section 457(a)(3), annual distributions of up to \$3,000 from the Plan that would otherwise be taxable, are excludable for income tax purposes if the following conditions are satisfied: (1) the distribution is used to pay for qualified health insurance premiums (accident, health insurance or long term care) for an eligible public safety officer, or spouse or dependent of the public safety officer, (2) the public safety officer is separated from service due to disability or attainment of the age which the Participant has the right to retire and receive unreduced

retirement benefits from the Employer's basic pension plan, and (3) the distributions are paid directly to the insurer or to the administrator of a self-insured plan.

ARTICLE V ADMINISTRATION

5.1 Powers and Responsibilities of the Employer

(a) The Employer will have full power to interpret and construe the Plan in a manner consistent with its terms and the provisions of Code Section 457, including the applicable Income Tax Regulations and to establish practices and procedures conforming to those provisions. In all such cases, the Employer's determination will be final and conclusive upon all persons. It is recognized that unusual circumstances may occur and questions may arise that are not specifically covered by any provision of the Plan, and the Employer will have the right to resolve all such questions. Notwithstanding the above, the Employer's power and responsibility under the Plan will not extend to, nor have any control over, those responsibilities and duties of the Provider.

(b) The Employer will be empowered to appoint and remove the Administrator from time to time as it deems necessary for the proper administration of the Plan to assure that the Plan is being operated for the exclusive benefit of the Participants and their Beneficiaries in accordance with the terms of the Plan and the Code.

(c) The Employer will periodically review the performance of any person to whom duties have been delegated or allocated by it under the provisions of this Plan or pursuant to procedures established hereunder. This requirement may be satisfied by formal periodic review by the Employer or by a qualified person specifically designated by the Employer, through day-to-day conduct and evaluation, or through other appropriate ways.

5.2 Designation of Administrative Authority

The Employer may appoint a committee ("Committee") of one or more persons to serve as the Administrator and to discharge the Administrator's responsibilities under the Plan. The Employer may remove a Committee member for any reason by giving such member ten (10) days written notice and may thereafter fill any vacancy thus created. If the Employer does not appoint a Committee to administer the Plan, the Employer will be the Administrator.

5.3 Allocation and Delegation of Responsibilities

If more than one person is appointed as Administrator, the responsibilities of each Administrator may be specified by the Employer and accepted in writing by each Administrator. In the event that the Employer makes no such delegation, the Administrators may allocate the responsibilities among themselves, in which event the Administrators will notify the Employer in writing of such action and specify the responsibilities of each Administrator.

5.4 Powers and Duties of the Administrator

The primary responsibility of the Administrator is to administer the Plan for the benefit of the Participants and their Beneficiaries, subject to the specific terms of the Plan. The Administrator will administer the Plan in accordance with its terms and will have the power and discretion to construe the terms of the Plan and determine all questions arising in connection with the administration, interpretation, and application of the Plan. Any such determination by the Administrator will be conclusive and binding upon all persons. The Administrator may establish procedures, correct any defect, supply any information, or reconcile any inconsistency in such manner and to such extent as will be deemed necessary or advisable to carry out the purpose of the Plan; provided, however, that any procedure, discretionary act, interpretation or construction will be done in a nondiscriminatory manner based upon uniform principles consistently

applied and will be consistent with the intent that the Plan will continue to be deemed a qualified plan under the terms of Code Section 457, and will comply with the terms of all Income Tax Regulations issued pursuant thereto. The Administrator will have all powers necessary or appropriate to accomplish his duties under this Plan. The Administrator will be charged with the duties of the general administration of the Plan, including, but not limited to, the following:

- (a) the discretion to determine all questions relating to the eligibility of Employees and Independent Contractors to participate or remain a Participant hereunder and to receive benefits under the Plan;
- (b) determine the amounts to be contributed to each Participant Account;
- (c) to authorize and direct the Provider with respect to all disbursements to which a Participant is entitled under the Plan;
- (d) to maintain all necessary records for the administration of the Plan;
- (e) to maintain practices and procedures necessary to administer the Plan as are consistent with the terms hereof;
- (f) to determine the type of any Investment Product to be purchased from the Provider; and
- (g) to assist any Participant regarding his rights, benefits, or elections available under the Plan.

5.5 Records and Reports

The Administrator will keep a record of all actions taken and will keep all other books of accounts, records, and other data that may be necessary for proper administration of the Plan and will be responsible for supplying all information and reports to the Internal Revenue Service, Participants, Beneficiaries and others as required by law.

5.6 Appointment of Advisors

The Administrator may appoint/employ such agents, attorneys, actuaries, accountants, auditors, investment counsel, and clerical assistants, and other persons as the Administrator deems necessary or desirable in connection with the administration of this Plan.

5.7 Information from the Employer

To enable the Administrator to perform his functions, the Employer will supply the necessary information to the Administrator on a timely basis regarding the Participants under the Plan, including but not limited to Compensation, date of hire, date of death, Severance from Employment, and such other pertinent facts and data as the Administrator may require. The Administrator may rely upon such information as is supplied by the Employer and will have no duty or responsibility to verify such information.

5.8 Payment of Expenses

All expenses of administration will be paid by the Employer. Such expenses will include any expenses incident to the functioning of the Administrator, including, but not limited to, fees of accountants, counsel, and other specialists and their agents, and other costs of administering the Plan.

5.9 Discontinuance of Provider

Notwithstanding Section 3.9, if any Provider ceases to be eligible to receive Deferrals under the Plan, the Administrator may direct that both existing amounts under Participant Accounts that were invested with such Provider and any future contributions be transferred to the Investment Products of those Providers which are currently approved to receive Deferrals under the Plan.

ARTICLE VI AMENDMENT AND TERMINATION

6.1 Amendment

(a) The Employer will have the right at any time to amend this Plan subject to the limitations of this Section. Any such amendment will become effective as provided therein upon its execution.

(b) No amendment to the Plan will be effective if it authorizes or permits any part of the Investment Product (other than such part as is required to pay taxes and administration expenses) to be used for or diverted to any purpose other than for the exclusive benefit of Participants or Beneficiaries; or causes any reduction in the amount credited to the account of any Participant or Beneficiary; or causes or permits any portion of the Investment Product to revert to or become property of the Employer.

6.2 Termination

(a) The Employer will have the right at any time to terminate the Plan by resolution of its governing board. In addition, the Employer must deliver written notice of discontinuance of the Investment Product to the Provider.

(b) Upon the full termination of the Plan, the Employer will direct the distribution of the assets to Participants and Beneficiaries in a manner which is consistent with and satisfies the provisions of Article IV as soon as administratively practicable after termination of the Plan.

6.3 Transfer of Entire Plan Assets to Another Eligible Plan Within the Same State

Subject to this Section, the Employer may direct the transfer of all assets of the Plan to another plan under Code Section 457(e)(1)(A) and that is located in the same state, provided that the requirements of Code Section 457(b) and Section 1.457(b)-10 (b)(3) of the Income Tax Regulations are satisfied. If Roth 457(b) Contributions are transferred, the receiving plan must permit Designated Roth contributions as defined in Code Section 402A.

ARTICLE VII MISCELLANEOUS

7.1 Assets For Exclusive Benefit Of Participants And Beneficiaries

All amounts in the Participant Accounts under this Plan, all property and rights which may be purchased with such amounts and all income attributable to such amounts, property or rights will be held in trust (or a custodial account or annuity contract described in Code Section 401(f)) for the exclusive benefit of Participants and their Beneficiaries. All such amounts will not be subject to the claims of the Employer's general creditors.

7.2 Participant Rights

This Plan will not be deemed to constitute a contract between the Employer and any Participant or to be a consideration or an inducement for the employment of any Participant, Employee, or Independent Contractor. Nothing contained in this Plan will be deemed to give any Participant, Employee, or

Independent Contractor the right to be retained in the service of the Employer or to interfere with the right of the Employer to discharge any Participant, Employee or Independent Contractor at any time regardless of the effect which such discharge will have upon him as a Participant in this Plan.

7.3 Alienation

Subject to applicable state law (and Code Section 401(g) if the Investment Product consists of an annuity contract) and except as provided in Section 7.4, no benefit which will be payable to any person (including a Participant or his Beneficiary) will be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, or charge, and any attempt to anticipate, alienate, sell, transfer, assign, pledge, encumber, or charge the same will be void; and no such benefit will in any manner be liable for, or subject to, the debts, contracts, liabilities, engagements, or torts of any such person, nor will be subject to attachment or legal process for or against such person, and the same will not be recognized except to such extent as may be required by law.

7.4 Recognition of Approved Domestic Relations Orders

Notwithstanding Section 7.3, if a judgment, decree or order (including approval of a property settlement agreement) that relates to the provision of child support, alimony payments, or the marital property rights of a spouse or former spouse, child, or other dependent of a Participant is made pursuant to the domestic relations law of any State ("domestic relations order") and Code Section 414(p), then the amount of the Participant Account will be paid in the manner and to the person or persons so directed in the domestic relations order. Such payment will be made without regard to whether the Participant is eligible for a distribution of benefits under the Plan. The Administrator will establish reasonable procedures for determining the status of any such decree or order and for effectuating distribution pursuant to the domestic relations order.

7.5 IRS Levy

Notwithstanding Section 7.3, if a Participant or Beneficiary is entitled to a distribution in accordance with Section 5, the Administrator may pay from a Participant's or Beneficiary's Account the amount that the Administrator finds is lawfully demanded under a levy issued by the Internal Revenue Service with respect to that Participant or Beneficiary or is sought to be collected by the United States Government under a judgment resulting from an unpaid tax assessment against the Participant or Beneficiary.

7.6 Distribution for Minor Beneficiary or Incompetent

If a Participant or Beneficiary entitled to receive any benefits hereunder is a minor or is adjudged to be legally incapable of giving valid receipt and discharge for such benefits, or is deemed so by the Administrator, benefits will be paid to such person as the Administrator may designate for the benefit of such Participant or Beneficiary. Such payments shall be considered a payment to such Participant or Beneficiary and shall, to the extent made, be deemed a complete discharge of any liability for such payments under the Plan.

7.7 Mistaken Contributions

If any contribution (or any portion of a contribution) is made to the Plan by a good faith mistake of fact, then within one year after the payment of the contribution, and upon receipt in good order of a proper request approved by the Administrator, the amount of the mistaken contribution (adjusted for any income or loss in value, if any, allocable thereto) will be returned directly to the Participant or, to the extent required or permitted by the Administrator, to the Employer.

7.8 Procedure When Distributee Cannot Be Located

The Administrator shall make all reasonable attempts to determine the identity and address of a Participant or Beneficiary entitled to benefits under the Plan. For this purpose, a reasonable attempt means (a) the mailing by certified mail of a notice to the last known address shown on the Employer's or the Administrator's records, (b) notification sent to the Social Security Administration or the Pension Benefit Guaranty Corporation (under their program to identify payees under retirement plans), and (c) the payee has not responded within 6 months. If the Administrator is unable to locate such a person entitled to benefits hereunder, or if there has been no claim made for such benefits, the funding vehicle shall continue to hold the benefits due such person.

7.9 Governing Law

The Plan will be construed, administered and enforced according to the Code and the laws of the state in which the Employer has its principal place of business.

7.10 Headings

Headings of the Plan have been inserted for convenience of reference only and are to be ignored in any construction of the provisions hereof.

7.11 Gender

Pronouns used in the Plan in the masculine or feminine gender include both genders unless the context clearly indicates otherwise.

MAYOR'S ANNOUNCEMENTS

November 17, 2014

Committee meetings scheduled for the next two weeks:

Prairie Village Arts Council	11/19/2014	7:00 p.m.
Council Committee of the Whole	12/01/2014	6:00 p.m.
City Council	12/01/2014	7:30 p.m.

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The Prairie Village Arts Council is pleased to present a mixed media exhibit by Jhulan Mukharji and Ada Koch in the R. G. Endres Gallery during the month of November.

The Northeast Johnson County Chamber of Commerce 2014 Annual Gala will be held on Saturday, November 22, 2014 at the Overland Park Marriott.

Save the date for the Mayor's Holiday Tree Lighting on Thursday, December 4, 2014 from 6 p.m. to 7 p.m.

The annual Gingerbread House decorating parties on Sunday, December 7, 2014 at 1:30 p.m. OR 3:00 p.m.

City offices will be closed on Thursday, November 27th & November 28th for the Thanksgiving Holiday.

Deffenbaugh will observe the Thanksgiving Day holiday. Regular trash pickup for Thursday and Friday will be on Friday and Saturday.

Due to the winter holidays, the Environment/Recycle Committee will combine their November and December meetings into a single meeting on Wednesday, December 3rd at 7 p.m. in the MPR.

INFORMATIONAL ITEMS
November 17, 2014

1. Council Committee of the Whole Minutes - November 3, 2014
2. Board of Zoning Appeals Minutes - October 7, 2014
3. Planning Commission Minutes - October 7, 2014
4. Sister City Committee Minutes
5. Park & Recreation Committee Minutes
6. Mark Your Calendar

COUNCIL COMMITTEE OF THE WHOLE
November 3, 2014

The Council Committee of the Whole met on Monday, November 3, 2014 at 6:00 p.m. in the Council Chambers. The meeting was called to order by Council President Ashley Weaver with the following members present: Mayor Ron Shaffer, Jori Nelson, Ruth Hopkins, Steve Noll, Eric Mikkelson, Andrew Wang, Laura Wassmer, Brooke Morehead, Dan Runion, David Morrison, Ted Odell and Terrence Gallagher.

Staff Members present: Wes Jordan, Chief of Police; Keith Bredehoeft, Director of Public Works; Katie Logan, City Attorney; Quinn Bennion, City Administrator; Kate Gunja, Assistant City Administrator; Nolan Sunderman, Assistant to the City Administrator; Lisa Santa Maria, Finance Director and Joyce Hagen Mundy, City Clerk.

Kate Gunja introduced the City's new Building Official Mitch Dringman. Mr. Dringman formerly worked for the City of Olathe.

Introduction of Teen Council members

Laura Wassmer welcomed the following Prairie Village Teen Council members: Bailey Riecker, Denise Butas, Kyle Baker, Gabe Altenbernd, Ali Dast Jerdi and Max Keeter. City Clerk Joyce Hagen Mundy swore in the 2014-2015 Prairie Village Teen Council and members took their place at the dais.

Consider the award and funding of the 75th Street Project 75ST0001: State Line Road to Mission Road

Keith Bredehoeft noted that Project 75ST0001, 75th Street- Stateline Road to Mission Road was selected by the Mid-America Regional Council (MARC) to receive Federal Funds in 2011. The Kansas Department of Transportation (KDOT) administers the Federal Funds for local communities in Kansas. This project was initiated by the City and coordinated through KDOT. George Butler Associates (GBA) was hired by the City as the design consultant and the 75th Street Committee provided input into the project design.

The following bids were received and opened for this project by KDOT on October 22, 2014:

<u>Contractor-</u>	<u>Bid Amount-</u>
Amino Brothers	\$3,885,520.70
O'Donnell and Son's	\$3,913,026.50
Kansas Heavy Const.	\$4,025,217.60
JM Fahey Const.	\$4,200,042.02
Miles Excavating	\$4,344,043.44
GBA Est.	\$2,721,911.85

Mr. Bredehoeft advised that the low bid is approximately \$1,200,000 over what was budgeted for the construction of this project. KDOT will not release specific bid prices

until a decision is made to award the project. The City Charter allows the acceptance of bids received up to 10 percent above the engineer's estimate. KDOT feels the low bid is reasonable based on their engineer estimate.

Keith Bredehoeft reviewed the following two options available to the City:

Option 1- Recommend that KDOT awards the project for \$3,885,520. If this option is selected the City would have to change priorities for the 2015 Budget and reallocate additional funds to this project.

Mr. Bredehoeft presented the following possible funding options:

- Utilize \$500,000 in unspent street rehabilitation funds from CIP projects closed out in 2014 as shown below. These funds would have otherwise been reallocated with the 2016 budget process for projects in 2016.
 - 2013 CARS- Somerset Drive \$100,000
 - 2013 Paving- \$400,000
- Reallocate funds from the 2015 Street Program in the amount of \$400,000. That would leave \$915,000 for the 2015 Paving Program.
- Reallocate 2015 Drainage Repair Program funds. Originally \$110,000 in drainage funds were allocated to this project. Actual drainage items included with this project total over \$500,000. An additional \$300,000 in drainage funds could be allocated to this project which would be an appropriate use of drainage funds. That would leave about \$120,000 in the Drainage Repair Program for 2015.

The above changes total \$1,200,000 and would provide a possible way to move forward with the project as designed.

Option 2- Recommend that KDOT rejects all bids. Under this scenario the scope of the project would be modified to reduce construction costs. At this time all possibilities to reduce cost have not been explored with KDOT, but the most obvious part of the project to change would be the addition of sidewalk on the south side of 75th Street from Canterbury to State Line Road. Adding this sidewalk was an option during design and if costs would have been fully understood, it probably would not have included in the final design. The sidewalk removal would reduce project costs by about \$500,000. Items removed by eliminating this new sidewalk would include sidewalk, grading, retaining walls, and railings. While removing this portion of the project is not ideal, the city would still have the improved pedestrian corridor on the north side of 75th which includes a widened contiguous sidewalk.

Laura Wassmer asked what was spent in 2013 on the street program and if the reducing the proposed budget were provide adequate maintenance. Mr. Bredehoeft responded \$750,000 was spent the past year and a reduction in the proposed budget would not provide adequate maintenance. Ms. Wassmer asked if the bid could be rejected and the project resubmitted. She asked why our engineer's estimate was so much lower. Mr. Bredehoeft that he could not give a definitive answer until he was able to view the actual bid. He was not informed of any discrepancies in the bid.

Ruth Hopkins asked if he had spoken with GBA and if the City had any recourse. Mr.

Bredehoeft stated he had spoken with GBA. He was uncertain of any recourse available to the City, noting that engineer's estimates are estimates and are sometimes lower or higher than actual bids.

Ted Odell stated he felt the scope of the work needed to be reduced and asked what items could be removed for the rebid in order to get a lower bid. Mr. Bredehoeft responded that some of the items will remain the same, but he felt in order to get a lower bid there needed to be a dramatic change in the scope. This could be a general scaling back, the removal of the sidewalk on the south side or realignment of the intersection. Mr. Odell confirmed the current project included the rework at Belinder. Mr. Bredehoeft stated he feels it will be a challenge to bring the costs down to \$2.7 million and that the low to mid \$3 million range is more reasonable noting this is still over the budgeted amount for the project.

Andrew Wang asked how much federal funding was being received and if those funds would be lost if the city did not move forward with the project or if it would be possible to keep the project as planned however do some of the work in future years. Mr. Bredehoeft responded \$1.6 million and the project would need to meet grant criteria. Some items could be delayed; however, the work in future years would need to be city funded. Eric Mikkelson questioned if the delayed construction of the sidewalks would increase the costs. He suggested possibly doing a shorter segment of the project but doing it as proposed and goes all the way from State Line Road to Mission Road. Mr. Bredehoeft responded that this may be a possible option, but he would need to confirm with KDOT.

Mr. Mikkelson stated he would like further information on the large discrepancies between the bid and the GBA estimate. Mr. Bredehoeft responded he would bring that information back to the Council after he has the opportunity to learn more about the bids.

Jori Nelson asked how GBA was selected for this project. Mr. Bredehoeft replied the standard process was followed with "Requests for Qualifications" submitted with the top candidates making presentations and being interviewed. Ms. Nelson asked if this agreement was only for this project or if it included other projects. Mr. Bredehoeft answered the agreement is specifically for this project.

Laura Wassmer noted the City has been discussing 75th Street improvements for more than 15 years. This is a huge project and she is not willing to do it half-way. The project provides for greater safety and beautification of one of the primary entrances to the City. She would like to find funding to go forward with the project as proposed without taking funds from budgeted street projects and noted that if it can't be done, the Council needs to seriously consider a mill levy increase in 2016 to fund infrastructure maintenance as we continue to try to catch up on infrastructure repair.

Steve Noll asked what impact the rejection of the bids would have on the project timeline. Mr. Bredehoeft replied additional time would be needed to revise plans. If the project could be rebid in January construction could begin in March as planned.

Terrence Gallagher stated he was very disappointed with the inaccurate estimate and is concerned with rebidding early in the year. He noted that whatever is done now on this segment will establish future work on the remaining segments of Mission Road. The city needs to prioritize what is important, look for any duplication in the project that could be removed at this time and completed in the future without negatively impacting the design of the project. Keith Bredehoeft noted \$200,000 was included in the project budget for aesthetic items. Mr. Gallagher asked if the aesthetic items could be removed without impairing the quality of the design and if the project has been overdesigned. Mr. Bredehoeft noted that KDOT has more design requirements than the city would normally do for a project, including the purchase of right-of-way. Quinn Bennion added that this project has had substantial public input and committee involvement.

Ted Odell stated he became involved over two years ago and noted a big part of this project is aesthetics, improved traffic flow and increased walkability. He is reluctant to remove items and feels it is an all or nothing.

Eric Mikkelson agreed that there are critical elements and their removal would defeat the purpose of the project. He asked if diminishing some of the aesthetic items would negatively impact the ability to get funding. Mr. Bredehoeft responded KDOT would not be concerned with these; however, the project still needs to meet the criteria of the MARC grant.

Jori Nelson expressed her disappointment that the city has been placed in this position on a project that goes all the way back to Village Vision with many residents giving their input on the development of 75th Street. This is not a project to be piecemealed together but a project to be done correctly from the start.

Bryan Blizzard, with George Butler Associates, stated the answers to why the discrepancy will be revealed when the actual bids are reviewed. He noted that in preparing their engineer's estimate they used historical data from other similar projects that they had bid. He added that this project was more complicated due to the right-of-way acquisition and the age of the corridor. Economics at the time of the bid also enters into bid prices. There is currently a great deal of construction being done in the Kansas City Metro area.

Laura Wassmer asked if it would be an option to take money from the contingency fund or the fund balance and if such action would impact the 2015 budget. Lisa Santa Maria stated if the city were to spend more than it budgeted an amendment to the budget would need to be made.

Ruth Hopkins suggested taking funds from the Economic Development Fund. Quinn Bennion explained the Economic Development Fund creation for the benefit of new council members. Lisa Santa Maria noted that when the budget is created funds are transferred from the general fund to the CIP. If the amount of the transfer is less than \$1M, it can be done without a budget amendment.

Laura Wassmer moved the City Council move forward with the project as proposed and fund with available unused project funds without removing any 2015 budgeted street project funds. The motion died for the lack of a second.

Ted Odell would like to know the different pieces of the project costs. He feels it is best to go back and look at options and rebid.

Ted Odell made the following motion, which was seconded by Ruth Hopkins:

**MOVE THE CITY COUNCIL REJECT ALL BIDS RECEIVED
FOR PROJECT 75ST0001: 75TH STREET - STATE LINE
ROAD TO MISSION ROAD**

Eric Mikkelson requested information from city staff regarding possible funding sources to proceed with this project as proposed. He asked if it would be possible to fund the project in full from State Line Road to Windsor for \$3M and if the timetable for rebidding with changes was possible. Keith Bredehoeft responded that would depend on the level of detail required by the changes - more changes would require more time. He feels it is possible to get bid documents ready for a January rebid.

Mr. Mikkelson asked if action on this could be delayed to the next meeting. Mr. Bredehoeft responded KDOT needs action on the awarding of the bid now and action cannot be delayed.

Laura Wassmer asked if the city was required to make changes to rebid the project, noting that she does not want to remove any elements from the project. Mr. Bredehoeft replied he did not know how KDOT would react to a resubmittal without changes. Ted Odell noted that some of the elements could be bid as alternates.

Brooke Morehead asked how much additional engineering costs are going to be incurred or would GBA cover the costs for resubmittal. Mr. Blizzard with GBA stated that request was outside his authority but he would relay the request.

Keith Bredehoeft noted that KDOT felt that this would be a difficult project to construct in an urban environment and that the amount of work currently being done regionally may have impacted the bid costs.

Laura Wassmer stated she is not sure what is to be gained from rebidding. She does not want any elements removed from the project. She confirmed approximately \$400,000 was needed in order not to remove 2015 CIP Street funds.

Ted Odell stated he doesn't like moving forward with a project without funding in place and that it makes more sense to reject the bids and rebid.

Dan Runion asked what money would be spent on 75th Street for maintenance if the project was not done. Mr. Bredehoeft responded approximately \$20,000 annually is

spent on maintenance.

Jori Nelson called for the question. The motion for calling the question passed.

The City Clerk restated the motion as follows:

**MOVE THE CITY COUNCIL REJECT ALL BIDS RECEIVED FOR
PROJECT 75ST0001: 75TH STREET - STATE LINE ROAD TO
MISSION ROAD**

**COUNCIL ACTION TAKEN
11/03/2014**

Review of the Proposed RV Storage Regulations and Public Comment

Kate Gunja reviewed the latest history on this issue which was brought to the Council by a resident December 16, 2013. Staff was directed to research other cities' regulations and these were presented to the council committee on January 21st along with the results of a survey of local homes associations regarding their restrictions. The issue was sent to the Planning Commission as the regulations are currently part of the zoning regulations. The Planning Commission reviewed the regulations on March 4th and recommended revising the temporary parking provisions to, "not exceed 7 days total in a 30-day period," and also agreed with the staff recommendation to move the regulations from the Zoning Regulations to the Municipal Code.

The recommendation of the Planning Commission was presented to the Council Committee of the Whole on April 7th. The Council was interested in moving forward with the Planning Commission recommendation and other possible changes. A work group including Council members Weaver, Wassmer and Gallagher was formed to investigate the matter further.

The work group met four times, with the meetings open to the public. The work group was comfortable with the recommended change to the temporary storage regulations and focused on permanent storage. They considered screening provisions, setback provisions, parking on hard surface and limiting storage by height, length, weight or class.

The work group came up with four options with the City Council selecting Option C. This was presented to the Planning Commission who held a public hearing on October 7, 2013 on the removal of Chapter 19.38 "Recreational Vehicles and Equipment - Parking and Storage" from the Zoning Regulations.

The new regulations to be added as Article 15 of Chapter XI "Public Offenses and Traffic" contain the following provisions:

- All RVs must be parked on a hard surface
- Items shall not be permanently parked in front of the front building line or in front of the front building line of the properties directly adjacent.
- Five feet away from the rear lot line

- Five feet away from the side lot line
- In all instances, an RV must be at least 15 feet from the street
- RVs must be fully screened up to six feet
- All covers must be custom fit to the contours of the boat, RV or trailer (Note, covers are not required, only applicable when a cover is present.)

Ms. Gunja noted the following language changes to the existing regulations to incorporate the proposed revisions:

In Section 11-1502 “Definitions” #5 the words “seven (7) days in a thirty (30) day period” replaced “the seventy-two hours:.. In #13 addressing Temporary Parking the end of last sentence reads “not to exceed **seven (7) days** within any **thirty** day period.”

Under 11-1503 “Parking and Storage in A. the word “recreational” was added before vehicle and equipment. A new final sentence was added that reads “Recreational vehicles and recreational equipment shall not be permanently parked in front of the front building line of the property in which the recreational vehicle or recreational equipment resides, or in front of the front building line of properties directly adjacent.”

Paragraph B was added to read: “Recreational vehicles and recreational equipment shall be fully screened up to six (6) feet. For the purpose of this Article, full screening shall be, at minimum, the use of evergreen plantings to substantially screen the recreational vehicle or recreational equipment from public and ground level view from neighboring property.”

Paragraph F changes the period for repair from seventy-two hours within any 14 day period to “seven days within any thirty day period.”

A new Paragraph F was added to read: “All covers for any item (if present) must be custom fit to the contours of the recreational vehicle or recreational equipment. No tarps or other non-custom fit covers, or ready-fit or semi-custom covers may be used. A custom fit cover is designed, manufactured or tailored to closely fit the body style and size group of the specific make, model and year of the item to be covered.”

Council President Ashley Weaver opened the meeting for public comment on this issue.

Don Goldenbaum, 5300 West 67th Street, spoke in support of the proposed regulations to maintain the livable and residential character of Prairie Village.

No one else spoke on this issue.

Kate Gunja stated the specific ordinance with the proposed language changes will be presented to the City Council for action on November 17th.

Eric Mikkelson questioned the wording of paragraph B suggested it be worded “fully screened up to six feet”. He also questioned the language reflecting that it be “fully screened with evergreen”. Ms. Gunja noted that language came directly from the City of

Leawood's regulations. Katie Logan stated the revision suggested by Mr. Mikkelson could be made. Mr. Mikkelson stated he would be glad to work with staff on the changes.

Ted Odell asked if the proposed ordinance covered buses. Kate Gunja replied she and Chief Jordan are still discussing that issue and it will also come before the City Council on November 17th.

ADJOURNMENT

With no further business to come before the Council Committee of the Whole, Council President Ashley Weaver adjourned the meeting at 7:25 p.m.

Ashley Weaver
Council President

**BOARD OF ZONING APPEALS
CITY OF PRAIRIE VILLAGE, KANSAS
MINUTES
TUESDAY, OCTOBER 7, 2014**

ROLL CALL

The meeting of the Board of Zoning Appeals of the City of Prairie Village, Kansas was held on Tuesday, October 7, 2014 in the Council Chambers of the Municipal Building at 7700 Mission Road. Chairman Randy Kronblad called the meeting to order at 6:30 p.m. with the following members present: Bob Lindeblad, Nancy Vennard, Nancy Wallerstein, Gregory Wolf, Larry Levy (arrived late) and Jim Breneman. Also present in their advisory capacity to the Board of Zoning Appeals were: Ron Williamson, Planning Consultant, Kate Gunja, Assistant City Administrator and Joyce Hagen Mundy, Board Secretary.

APPROVAL OF MINUTES

Nancy Wallerstein moved the minutes of the March 4, 2014 meeting of the Board of Zoning Appeals be approved as written. The motion was seconded by Nancy Vennard and passed by a vote of 5 to 0 with Jim Breneman abstaining.

Chairman Randy Kronblad reviewed the procedures for the public hearings. The Secretary confirmed that the Notices of Public Hearing were published in the Johnson County Legal Record on Tuesday, September 16, 2014 and all property owners within 200' were mailed notices of the hearing.

Randy Kronblad called upon the applicant to present the application.

**BZA2014-04 Request for a Variance from P.V.M.C. 19.44.020(C4) "Yard
Exceptions" to increase the projection of the porta cochere
5115 West 81st Street**

Gerald Mancuso, 5115 West 81st Street, stated he is requesting a six foot variance at the front of his home. He noted his architect was unable to be present due to illness, but his neighbor and architect would be presenting his application.

Mike Clay, 5300 West 81st Street, stated he has resided in the neighborhood since 1976. The north side of the street is the Corinth Hills subdivision with house built in the 50's and having a standard front setback. The homes on the south side of the street, although unplatted, have homes that a setback significantly from the street. Mr. Mancuso is asking for a six to seven foot variance into the setback as determined by the code.

Bob Lindeblad asked Mr. Clay if he was aware of the criteria required by state statute to grant a variance. He responded he was not. A copy of the staff report and review of the criteria was given to Mr. Clay.

Mr. Mancuso in his submittal stated the property was unique in that it is approximately 1.3 acres. There is only one other property that exists on the block of that size, which is immediately adjacent to the west. Because of the size, the property could afford to support the variance requested of seven feet to accommodate a future porte cochère which would protect the Northern exposed front entry. Mr. Mancuso in addressing the Board also expressed concern because of his handicap for his safety in entering the home in the winter without the porte cochère. He added his 92 year old mother-in-law who owns the home wants to return to the home and would also need the proposed porte cochère for her safety in entering the home. Mr. Mancuso stated the code allows him to extend out 15 feet, which lands four feet into the driveway, He noted the house is setback 80 feet from the street with the porte cochère setback 62.5 feet while the homes on the other side of the street are only setback 45 feet. He does not see any disadvantage to anyone on the street and feels his improvements will increase the values of other homes in the neighborhood. Mr. Mancuso stated he is spending over \$400,000 on the renovation of this home. The additional footage would provide the necessary space for a ramp to be added for his mother-in-law.

Mike Clay, stated the 1950 split level has been redesigned as a ranch requiring additional depth to the home and thus the canopy extension requires additional footage into the front setback.

Joe Elder, 2705 West 51st Street, Westwood, addressed the need for the elderly accommodation from Mrs. Mancuso noting the distance needed for a van drop chair needs to drop onto a ramp. Mr. Elder referenced the First Suburb Coalition, of which the City is a member, which strongly supports the retrofitting of existing homes to meet the needs of the elderly.

Sergei Snapkovsky, 5401 West 81st Street, spoke in support of the application and views the proposed improvements as a benefit to the neighborhood.

Darin Heyen, 5208 West 81st Street, resides directly across the street and noted there is a slight elevation to Mr. Mancusco's property and stated he supports the proposed variance.

Eric Kirchhofer, 5215 West 81st Street, supports the variance and views the proposed improvements as an asset to the neighborhood.

Barbara Wheeler, 5204 West 81st Street, stated that she had cared for Mrs. Goldsich when she lived in the home and knows that it is very important to Mrs. Goldsich that she be able to return to her home. She noted her only concern with Mr. Mancuso's renovation was the possible loss of trees and no trees are being removed.

Paul Gatzoulis, 5101 West 81st Street, spoke in support of the variance and stressed the need to provide the desired accommodation for both Mr. and Mrs. Mancuso.

Jim Wheeler, 5204 West 81st Street, resides across the street from the property and spoke in support of the requested variance.

Mike Clay, 5300 West 81st Street, addressed the Board as a neighbor and noted that he purchased his home because of the uniqueness of this neighborhood and supports the requested variance.

Chairman Randy Kronblad closed the public hearing at 7:01.

Ron Williamson stated according to the plans, the existing home sets back 74 feet from 81st Street. Therefore, the porte cochère would project into the front yard setback 20 feet. In checking the dimensions in the field, the existing circular driveway is 4.5 feet from the porch and the asphalt driveway is 15 feet in width. Therefore, the width of the porte cochère should be reduced from 17' 4" to 15 feet. The distance from the porch to the outside column of the porte cochère would be 4.5 feet plus 15 feet (driveway width) plus 18" (width of the column) for a total of 21 feet, less 2 feet for the setback, or 19 feet. If the travel way under the porte cochère were reduced another two feet the projection could be reduced to 17 feet. The distance between the columns is 17' 4" which appears to be greater than needed. A typical car width is six feet with doors fully open at 42" each for a total width of 13 feet. Typically a porte cochère is only as wide as the driveway and a single-lane driveway is typically nine or ten feet; however, this one is much wider at 15 feet. The porte cochère could be reduced to 13 feet in width.

The applicant held a neighborhood meeting on Saturday, September 27th, and one person attended the meeting. No concerns were expressed.

Mr. Williamson noted the hearing was advertised for an extension of less than what was requested; however, because of the notice referenced that the plans being on file, the City Attorney believes that the hearing can be held.

Chairman Randy Kronblad led the Board in the following review of the conditions required for the granting of a variance:

A. Uniqueness

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

The lot is rectangular in shape, 150-foot wide by 358-foot deep, and is not unique in shape or form. The house was built in 1959 and sets back much further from the street than many other homes in the neighborhood, but is typical of homes on the south side of 81st Street. The existing circular driveway is 15 feet in width and is 4.5 feet from the front porch.

Nancy Wallerstein moved the Board find that the variance does arise from a condition unique to this property. The motion was seconded by Larry Levy.

Bob Lindeblad stated he does not see any uniqueness for this property noting the properties on the south side of the street are all large lots with larger than average front setbacks. Nancy Vennard does not view the width of the driveway as a unique factor.

Randy Kronblad noted the setback on the north side of the street is considerably less than on the south side but this property is not unique.

The motion passed by a vote of 4 to 3 with Vennard, Breneman and Lindeblad voting in opposition

B. Adjacent Property

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

The proposed porte cochère will be an open, unenclosed structure and although it will project into the front yard further than adjacent properties, the lot is very large and should not adversely affect the rights of adjacent property owners. The porte cochère will be approximately 80 feet from the west property line and 50 feet from the east property line.

Nancy Wallerstein moved the Board find that the variance does not adversely affect the rights of adjacent property owners or residences. The motion was seconded by Gregory Wolf and passed by a vote of 7 to 0.

C. Hardship

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

The applicant has pointed out in his statement that he has a disability and the porte cochère would provide protected access for him to enter the house during inclement weather. It should be noted that a garage bay is being added on the west side of the house that would provide protection during inclement weather. The driveway is already in place and the granting of the variance would eliminate the need to remove and rebuild it.

Nancy Vennard stated the drawings submitted do not reflect a hardship. She noted the other garage on the west side of the house would be accessible.

Bob Lindeblad noted the question is does the accessibility need to be covered access. Nancy Vennard questioned the need for the porte cochère to accommodate every type of vehicle. A regular passenger van could be accommodated within the code requirements. The rendering of the porte cochère looks like that of a country club in size.

Jim Breneman noted the plans do not reflect it was designed to accommodate accessibility.

Nancy Wallerstein noted that without the architect present the original intent of the design cannot be verified.

Joe Elder referenced the letter submitted by Christopher Castrop where he stated "it was requested by Mr. Mancuso that he would like to have a porte cochère or covered

drive-thru at the entry due to future possibility of inclement weather and his and wife's accessibility into their house from the front entry."

Nancy Vennard confirmed the accessibility was not being constructed to ADA requirements as it was for private use.

Randy Kronblad would like to have the drawing show the actual elevation changes from the driveway to the front door and include a medical van.

Joe Elder noted there are multiple styles of ramps and that access can be provided with the wideness of the driveway.

Gregory Wolf expressed concern with the ability to find in favor of the hardship factor without the clearer drawings referenced by Mr. Kronblad and moved to continue the application to the November 4th meeting to allow the applicant to present additional information. The motion was seconded by Jim Breneman.

Nancy Wallerstein noted that the applicant is in the middle of a renovation project and a one month delay may not be acceptable.

The motion was voted on and passed by a vote of 4 (Levy, Wolf, Wallerstein, Kronblad) to 3 (Lindeblad, Breneman, Vennard).

Nancy Wallerstein confirmed that if the size was reduced the porte cochère could be built. Mr. Mancuso responded that with a reduced size a vehicle door would hit to post upon opening.

OTHER BUSINESS

There was no other business to come before the Board.

ADJOURNMENT

Chairman Randy Kronblad adjourned the meeting of the Board of Zoning Appeals at 7:40 p.m.

Randy Kronblad
Chairman

PLANNING COMMISSION MINUTES
October 7, 2014

ROLL CALL

The Planning Commission of the City of Prairie Village met in regular session on Tuesday, October 7, 2014, in the Municipal Building Council Chambers at 7700 Mission Road. Chairman Bob Lindeblad called the meeting to order at 7:30 p.m. with the following members present: Nancy Vennard, Nancy Wallerstein, Larry Levy, Jim Breneman, Randy Kronblad and Gregory Wolf.

The following persons were present in their advisory capacity to the Planning Commission: Ron Williamson, City Planning Consultant; Kate Gunja, Assistant City Administrator and Joyce Hagen Mundy, City Clerk/Planning Commission Secretary. Also present was Council Liaison Terrence Gallagher.

APPROVAL OF MINUTES

Randy Kronblad moved the approval of the Planning Commission minutes of September 9, 2014 with a correction on page 12 bullet 3 inserting the word “at” with the sentence to read (Screening means that at a minimum the use of evergreen plantings to substantially shield the RV from the view of neighboring properties on all sides.) The motion was seconded by Jim Breneman and passed with Nancy Vennard, Nancy Wallerstein and Larry Levy abstaining.

PUBLIC HEARINGS

PC2014-06 Consider Ordinance Revisions to the Prairie Village Zoning Regulations Chapter 19.48 entitled “Signs” Section 19.48.011 entitled “Definitions”

Ron Williamson stated that after conversations with the City Attorney, other sections may need to be amended as well. This item has been withdrawn for further study by Staff.

PC2014-07 Consider Ordinances Revisions to the Prairie Village Zoning Regulations removing Chapter 19.38 entitled “Recreational Vehicles and Equipment - Parking and Storage”

Kate Gunja stated that at the December 16, 2013 Council Meeting, the City Council heard a number of resident comments regarding recreational vehicle storage. Council directed staff to place the item on a future agenda for discussion. The item was placed on the January 21 Committee of the Whole Meeting. At the City Council’s direction, staff researched neighboring cities’ restrictions regarding their parking and storage of recreational vehicles. Staff also sent a survey to all HOAs to inquire if they had specific provisions regulating RV storage.

At the January 21 Committee of the Whole Meeting, there was extensive discussion by the City Council ranging from leaving the ordinance as it currently is, to implementing further restrictions. On a 6 to 2 vote, the Council requested the Planning Commission evaluate the issue. This was presented to the Planning Commission on February 10th with the Commission requesting more information on temporary parking and the size of different RVs.

Staff provided this information at the March 4 Planning Commission Meeting. The PC recommended revising the temporary parking provisions to, “not to exceed 7 days total in a 30 day period,” from “not to exceed 72 hours within any 14 day period,” and also agreed with a staff recommendation to move from the Zoning Regulations to the Municipal Code. The PC requested to see the proposed changes prior to holding a Public Hearing to remove the section from the Zoning Regulations.

A Work Group of three Council members was formed to discuss moving the RV parking and storage provisions to the Municipal Code and to look at possible revisions. The Work Group met four times between May 7 and July 23. Their findings and recommendation was presented to the City Council on August 18th with the Council voting 11 to 1 to move forward with the revisions as presented.

The current provisions and recommended changes/additions are shown below with the revisions in **bold text**:

- All RVs must be parked on a hard surface
- **Items shall not be stored in front of the front building line or the line of the building as it extends to each side of the property.**
- Five feet away from rear lot line
- Five feet away from side lot line
- In all instances, an RV must be at least 15 feet from the street.
- **RV must be fully screened up to 6 feet**
- **All covers must be custom fit to the contours of the boat, RV or trailer (Note, covers are not required, only if one is present).**

The Work Group also agreed with the March 4 PC recommendations noted above regarding revisions to the temporary storage time limit.

Kate Gunja stated the proposed ordinance before the Commission removes the Recreational Vehicle Parking and Storage provisions from the Zoning Regulations. It does not make any changes to the current provisions. The City Council will consider an Ordinance incorporating the revisions and moving the regulations to the Municipal Code. The current regulations will stay active until the new regulations are passed by the City Council.

Bob Lindeblad opened with public hearing. With no one present to address the Commission the public hearing was closed at 7:50

Larry Levy moved the Planning Commission recommend the Governing Body adopt the proposed ordinance removing Chapter 19.38 entitled "Recreational Vehicles and Equipment - Parking and Storage" from the Zoning Regulations. The motion was seconded by Gregory Wolf and passed unanimously.

NON-PUBLIC HEARINGS

PC2014-117 Site Plan Approval for Construction of New Carwash 9440 Mission Road

Chris Hafner with Davidson Architecture 4301 Indian Creek Parkway, Overland Park, addressed the Commission on behalf of the property owner who is seeking Site Plan Approval to replace an existing carwash building. The existing carwash will be removed and replaced with a new building, which will be in the same location as the existing building. The proposed carwash building includes restrooms, a storage room, an equipment room, and a one bay carwash which are the same uses included in the existing carwash with the restrooms meeting ADA requirements.

Ron Williamson noted according to the Johnson County Appraiser data the existing carwash is 1,242 sq. ft. and the proposed carwash is 1,250 sq. ft., so it is essentially an exact size replacement. The existing service station was building in 1963. In 1992 the City approved a Special Use Permit for the service station for a period of 30 years. Because the proposed project is simply the replacement of an existing carwash building, and commercial uses are on all four sides, a neighborhood meeting was not required.

Bob Lindeblad led the Planning Commission in consideration of the following criteria for site plan approval:

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

The site adequately accommodates the building, parking and drives at this time and the proposed project will just replace the existing building.

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

The site is currently serviced with utilities which adequately serve the buildings.

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

No additional impervious surface will be created so the runoff will be the same as it is currently.

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

No changes are planned for the traffic circulation and parking.

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

The Site Plan will not change. The carwash is accessed from the west side and there is adequate vehicle stacking on the west side of the service station.

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

The applicant is proposing to use the same materials as the existing buildings so that both buildings will be compatible in appearance.

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

One of the principles of the Village Vision was to focus on redevelopment and reinvestment in the community. These issues have become primary goals for the City and this project represents a step in that direction.

Larry Levy moved the Planning Commission approve PC2014-117 granting Site Plan Approval for the proposed site plan for the new carwash at 9440 Mission Road in accordance with the plans dated 09/05/2014 specifying that the material used will be the same as the existing service station. The motion was seconded by Gregory Wolf and passed unanimously.

OTHER BUSINESS

Consider 2015 Meeting and Deadline Schedule

Joyce Hagen Mundy reviewed the proposed 2015 meeting and deadline schedule noting a change in the July filing deadline due to the July 4th holiday. It was noted that the April and November meetings conflict with general elections. The Commission decided to meet on those dates and no change was made to the proposed calendar.

Randy Kronblad moved to approve the 2015 meeting and deadline schedule as submitted. The motion was seconded by Jim Breneman and passed unanimously.

Update on Noise Ordinance

Kate Gunja stated that in January and February the Planning Commission considered the site plan for improvements to the Village Presbyterian Church. One of the concerns raised at the meetings was the noise of the HVAC equipment for the neighboring residential properties on the east. The Planning Commission set as a condition of approval a 65 decibel rating at the property line. The current city noise ordinance does not contain any decibel rating requirements. Mrs. Gunja stated she has spoken with Chief Jordan regarding the ordinance which is enforced by the Police Department. He feels the ordinance is effective as it is written.

Upon visiting with the City Attorney regarding the enforcement of the ordinance it was discovered that the current ordinance allows the city attorney to prosecute a violation of the ordinance as a nuisance. Mrs. Gunja stated she visited with Mr. Nearing, a neighboring resident, and he was comfortable with not making any change to the code with the knowledge that it could be enforced.

Robert Koeing with the Village Presbyterian Church was in attendance and advised the Commission that the church was purchasing a new HVAC unit with the proposed improvements which they have been told will meet the required decibel reading.

Planning Conference

Bob Lindeblad reported that he recently attended the Kansas Association of Planners Conference at Wichita. The conference included several work session specifically for Planning Commission members. He noted that the 2015 conference will be in the Kansas City metropolitan area and encouraged planning commission members to attend if possible. He also announced that MARC is revisiting providing planning workshops.

Building Official

Kate Gunja announced that a new Building Official has been hired and will begin work on Monday, October 20th. He was formerly with the City of Olathe and has already picked up the Village Presbyterian Plans for review. He will be attending the next Planning Commission meeting.

Next Meeting

An application has been filed with the Board of Zoning Appeals appealing a decision of the Building Official for signage at 2310 West 75th Street. An application has been filed for an amendment to the Special Use Permit for Highlawn Montessori at 3531 Somerset for an addition of a second floor on the West building to accommodate two additional classrooms and a multi-purpose room.

Commission members asked for updates on Homestead and Meadowbrook. Ron Williamson responded that he expects Homestead to be on the December 2nd agenda for an amendment to their Special Use Permit and a replatting of the property.

Meadowbrook Country Club will no longer be operating as a club after October 31st. VanTrust is in contact with city staff and they anticipate a plan for development will be presented to the Planning Commission early next year.

Council Actions

Ron Williamson reported that neither item forwarded to the City Council was approved. Terrence Gallagher explained that there was a discrepancy in the proposed ordinance vs. the Planning Commission minutes making Council members hesitant to adopt the ordinance presented.

The Off-Street Parking ordinance was supported by the City Council; however, they did not support the change from “gross floor area” to “net leasable floor area” and asked that that language be removed and the ordinance be brought back for reconsideration at their next meeting.

ADJOURNMENT

With no further business to come before the Commission, Chairman Bob Lindeblad adjourned the meeting at 8:05 p.m.

Bob Lindeblad

Chairman

Prairie Village Sister City Committee Minutes
8 September, 2014

Members present: Jim Hohensee, Cindy Dwigans, Bob McGowan, Vera Glywa, Peter Jarosewicz, Jori Nelson, Mayor Shaffer

Also attending: Courtney Brooks from GlobalTiesKC, AJ Hoyt, Kate Gunja

Minutes from the previous meeting were approved on motion by Vera, seconded by Peter.

Courtney provided a briefing on the upcoming Open World visit. The theme is government accountability.

The committee discussed ways to help insure a smooth visit and events happening during the visit that might be of interest. The 25th was proposed as a day to sponsor a reception for the Ukrainian delegation.

A discussion of the Ukrainian independence day party was held. All the receipts are in. Turnout was very good.

The meeting was adjourned on Cindy's motion, seconded by Bob.

Notes from non-quorum meeting, October 13, 2014

Present: Jim Hohensee, Cindy Dwigans, Carole Mosher, Jori Nelson

Also present: AJ Hoyt, Nolan Sunderman

The Ukrainian Open World Delegation will visit Prairie Village on the 29th. The Ukraine flag will be flying.

Sunday the 26th at 5:30 we will host a reception in the Community Center. We will do the same thing we did for the independence celebration. Jori noted that the Ukrainian Club should be invited. Everyone should bring a side dish but not all desserts.

Carole proposed the reception for foreign students for November. She is working out the details for the next meeting.

PARKS AND RECREATION COMMITTEE

October 8, 2014

7:00 PM

City Hall

Minutes

The Parks and Recreation Committee met at 7:00 PM in the Council Chambers. In attendance: Laura Wassmer, Chair, Eric Mikkelson, Vice Chair, Kevin Letourneau, Bill Sanderson, Peggy Couch, Kellie O'Toole, Matt Geary, Diane Mares, Dan Searles, and Clarence Munsch. Staff: Nolan Sunderman and Bill Billings.

Ms. Wassmer called the meeting to order at 7:00 PM and asked the Committee members to introduce themselves.

Public Participation

- There were no public participation comments.

Consent Agenda

1. Minutes from September 14, 2014

It was moved and seconded to approve the minutes from the September 10, 2014 meeting. The motion passed unanimously.

Reports

1. Public Works Report

Mr. Billings reviewed a list of the Park and Recreation related accomplishments since Labor Day. Ms. Mares had a question regarding the underground utilities at McCrum Park. Mr. Billings also reported the Dog Swim will be planned for 2015. Mr. Sanderson asked about the skate park condition and future renovation plans. The current state of the skate park concrete was discussed. The Committee discussed attempting to meet with the skating community. Mr. Searles stated he would reach out to some of his contacts to discuss the skate park. Mr. Geary mentioned his experience with the Roeland Park Skate Park and having the same concerns.

2. Recreation Report

Mr. Sunderman updated the Committee on the 2014 Annual Recreation Report. It should be finalized for the November meeting. Mr. Sunderman discussed the 2015 Johnson County Track & Field Day scheduled for May 2, 2015. Ms. O'Toole volunteered her efforts to assist at the event. The Committee discussed the estimated costs and felt like the estimated \$150 expenditure would not be an issue. As more details are finalized, Mr. Sunderman will keep the Committee updated.

Mr. Sunderman then discussed the disc golf course and the potential for introductory lessons and purchasing a loaner disc or set of discs. The Committee felt like this was a

good direction and more work will continue to finalize these plans. It was also discussed that maybe the YMCA would be the location to check the discs out since they have extended hours. Mr. Sunderman then discussed the idea for a Pickleball League. The concerns were the length of the season and making sure there were no other programs that would be impacted as well as the use for the general public.

The Synchronized Swim Team plans for 2015 were discussed. Due to not having a team for the last two years, it was discussed on whether we would offer the program in 2015. Mr. Sunderman reported on his discussions internally with staff and the lack of interest from participants for the 2014 season. The Committee would like to try to find a qualified coach to lead this effort. It was requested that Mr. Sunderman reach out to former staff to identify potential candidates for the coaching position.

Mr. Sunderman introduced the topic of slacklining and the potential for a guideline or policy for the City. Additional information will be discussed at the November meeting.

3. Chairperson's Report

Ms. Wassmer discussed the new Prairie Village Teen Council and their future involvement in the City.

New Business

- There was no new business introduced.

Old Business

1. Animal Control Dog-Friendly Event

Ms. Wassmer discussed the response for the dog event. It has moved to Overland Park. Mr. Searles and Ms. Mares stated they may have been thinking of another event that was held recently by the Animal Control Officer. There was no interest from the Committee in leading another event.

Information Items

- Next Meeting – November 12, 2014 at 7:00 p.m. Ms. Wassmer stated she will not be in attendance at the next meeting and requested Mr. Mikkelsen fulfill her role during that meeting.

Adjournment

- The meeting was adjourned at 8:05 p.m.

**Council Members
Mark Your Calendars
November 17, 2014**

November 2014 Jhulan Mukharji and Ada Koch mixed media exhibit in the R. G. Endres Gallery
November 18-22 National League of Cities Conference, Austin, TX
November 22 NEJC Chamber Gala
November 27 City offices closed in observance of Thanksgiving
November 28 City offices closed in observance of Thanksgiving

December 2014 Kathleen Manning photography exhibit in the R. G. Endres Gallery
December 1 City Council Meeting
December 4 Mayor's Holiday Tree Lighting
December 7 Gingerbread House Decorating Parties
December 12 Artist reception in the R. G. Endres Gallery 6:30 - 7:30 p.m.
December 13 Volunteer Appreciation Holiday Party - Meadowbrook Country Club
December 15 City Council Meeting
December 25 City offices closed in observance of Christmas

January 2015
January 1 City offices closed in observance of New Year's Day
January 3 City Council Meeting
January 17 City offices closed in observance of Martin Luther King, Jr. Holiday
January 18 City Council Meeting