

CITY OF PRAIRIE VILLAGE

January 20, 2015

Council Committee Meeting 6:00 p.m.

City Council Meeting 7:30 p.m.



COUNCIL COMMITTEE OF THE WHOLE
Council Chambers
January 20, 2015
6:00 PM

AGENDA

DAVID MORRISON, ACTING COUNCIL PRESIDENT

AGENDA ITEMS FOR DISCUSSION

- COU2014-44 Consider approval of animal control ordinance including bee keeping provisions
Chief Jordan
- Discuss definition of "start of construction" related to the Mission Chateau SUP ordinance
- *COU2014-47 Consider the awarding and funding of the 75th Street project from State Line Road to Mission Road, Project 75ST0001
Keith Bredehoeft
- *COU2015-04 Consider approval of KDOT Form 1309 - Authority to Award for Project 75ST0001: 75th Street - State Line Road to Mission Road
Keith Bredehoeft
- *COU2015-05 Consider approval of a three party non federal aid agreement between KDOT, Prairie Village, and TranSystems for Project 75ST0001: 75th Street- Stateline Road to Mission Road
Keith Bredehoeft
- *COU2015-06 Consider approval of the construction administration agreement with TranSystems for the 75th Street Project from Mission Road to State Line Road, Project 75ST0001
Keith Bredehoeft
- Update on Northeast Johnson County Rock Creek Watershed study
Keith Bredehoeft

*Council Action Requested the same night



POLICE DEPARTMENT

Council Meeting Date: January 20, 2015

COU2014-44

Consider Amendments to Chapter II. Animal Control and Regulation - Article 1.

RECOMMENDATION

Staff recommends the City Council approve proposed amendments to Chapter II Ordinances governing Animal Control and Regulation.

COUNCIL ACTION REQUESTED ON:

February 2, 2015

SUGGESTED MOTION

Move to approve proposed amendments as specified to Chapter II - Animal Control and Regulation - Article 1.

BACKGROUND

The Department decided to make necessary updates to Animal Control and Regulations in conjunction to changing the appeal mechanism from the Animal Control Board to the Governing Body. The Department also added a beekeeping provision (2-145) as directed by Council. All collective changes/amendments are color highlighted. The Department believes the following explanations by Ordinance will provide clarity to the appeal process, update necessary changes to improve enforcement efforts, and enhance public safety: NOTE: The following chart only addresses changes of significance. All additional changes are also color highlighted throughout the attached revision.

- 2-102: Expanding definition of “dangerous animals.”
- 2-103: Strengthening language and guidelines of (a) when to classify or deem an animal to be “dangerous” and (b) specifying an animal declared “dangerous” in another jurisdiction cannot be relocated to Prairie Village. However, Animal Control will evaluate pending requests to ensure the designation in another jurisdiction was based on equivalent factors.
- 2-108 Provides guidelines to engage witnesses to assist in providing evidence to substantiate complaints.
- 2-120 To list the City as a certificate holder on insurance policies for dangerous dogs...so the City is notified when the insurance policy is due for renewal.

- 2-121 If a person receives a permit to keep a dangerous animal, staff recommends the added safeguards in conjunction with physical barrier requirements as applicable: added warning signs, Microchip identification, Mandatory Spay or Neuter, and behavior modification training.
- 2-127 Authority to grant/deny appeals and matters of welfare and control is changed from the Animal Control Committee to the Governing Body.
- 2-130 Expands on language concerning when an owner is in violation of not having their dog or cat under their immediate control.
- 2-131 Allows owners to control their pets on their property with electronic fences and collars.
- 2-132 Tethering guidelines, restrictions, and time limits to improve animal welfare.
- 2-139 Includes a procedure at the end of animal bite observation periods to provided the animal control officer the authority to require a veterinarian to access the animal's health. Court fines and animal disposal options are specified for Municipal Judges.
- 2-142 The animal control officer is not responsible for removing dead animals from private property.
- 2-145 New language to now allow Beekeeping.

PREPARED BY

Wes Jordan
Chief of Police
Date: January 14, 2015

Attachment

CHAPTER II. ANIMAL CONTROL AND REGULATION

ARTICLE 1. GENERAL PROVISIONS

2-101 PURPOSE

The purpose of this chapter is to promote harmonious relationships in the interaction between man and animal by:

- (a) Protecting animals from improper use, abuse, neglect, exploitation, inhumane treatment and health hazards;
- (b) Delineating the responsibility of the animal's owner, keeper, or harbinger for the acts and behavior of his or her animal at all times;
- (c) Providing regulations that foster a reduced risk to residents from annoyance, intimidation, injury and health hazards by animals; and
- (d) Encouraging responsible pet ownership.

2-102 DEFINITIONS

- (a) Abandon includes the leaving of an animal by its owner or other person responsible for its care or custody without making effective provisions for its proper care.
- (b) Animal is any living creature, other than humans.
- (c) Animal Bite is any contact between an animal's mouth, teeth, or appendages and the skin of a bite victim that causes any visible puncture, scratch or break to the skin
- (d) Animal Control Officer is a duly authorized person employed by the City who is charged with the duties of enforcing this chapter and/or related ordinances.
- (e) At-large is to be off the owner's property, except when the animal is taken off the owner's property on a leash, in a cage, or other conveyance.
- (f) City or "The City" is a reference to the City of Prairie Village, Kansas and its corporate limits.
- (g) Confined to the Premises applies to Chapter II regarding Dangerous Animals; Permits, Provisions and/or Requirements to Keep Dangerous Animal(s); Animal Bite Procedures; and/or Disease Control. When used in Chapter II, "Confined to the Premises" means confined or restricted either inside the residential structure of the owner, keeper or harbinger; or if outside the residential structure, confined or restricted to the backyard of the premises by being physically restrained on a chain or leash or within a suitable fence or other proper method of physical restraint from which the animal cannot escape.
- (h) Dangerous Animal shall include:
 - (1) Any animal, which is wild by nature and of a species which, due to size, vicious nature or other characteristics, would constitute a danger to human life, physical well-being, or property, including but not limited to lions, tigers, leopards, panthers, bears, wolves, wolf hybrids, apes, gorillas, monkeys of a species whose average adult weight is 20 pounds or more, foxes, elephants, alligators, crocodiles, and snakes which are poisonous or otherwise present a risk or serious physical harm or death to human beings as a result of their nature or physical makeup, including all constrictors;

- (2) Any other animal that is determined to be a dangerous animal by the Animal Control Officer or the Chief of Police. Factors to be considered in this determination are: At the time of any bite or attack, did the person or domestic animal so bitten have permission to be on the property of the person who owns or harbors such animal? Does the animal have a known propensity, tendency or disposition to attack, cause injury to, or otherwise threaten the safety of human beings or domestic animals? Has the animal aggressively bitten, attacked, endangered, or inflicted severe injury on a human being on public or private property? Does the animal have any prior history of bites or attacks?
- (3) Any animal owned or harbored primarily or in part for the purpose of fighting, or any animal trained for fighting.
 - (i) Domesticated Cat or Dog is a cat or dog that tends to possess reliability of temperament, tractability, docility, predictability and trainability, and has adapted to life among humans.
 - (j) Harborer is any person who provides food and shelter for any domesticated animal.
 - (k) Impound means taking any animal into the confinement, care, or custody of the City.
 - (l) Owner is the keeping or harboring of any animal referred to in this chapter. Any person keeping any animal in the City for three consecutive days shall be conclusively presumed to be the owner of such animal.
 - (m) Person is any natural person, association, firm, partnership, organization, or corporation.
 - (n) Service / Work Dog is any guide dog, signal dog or other dog that is individually trained to do and is doing the work of performing tasks for the benefit of an individual with a disability, or a dog that is utilized by law enforcement personnel.
 - (o) Vicious Bite is any unprovoked attack by any animal, which results in *serious physical injury or death to a human and/or other domestic animal* in which the attacking animal uses its teeth and/or claws.

2-103 AUTHORITY TO DETERMINE AN ANIMAL TO BE DEEMED DANGEROUS

- (a) Where City records indicate a dog or cat has attacked or bitten any person and/or domestic animal without provocation, all known facts shall be considered in determining whether the dog or cat is a “dangerous animal”. The Animal Control Officer or the Chief of Police of the City shall have the authority to determine whether or not any animal in the City should be classified as a “dangerous animal.” Factors to consider in making this determination are: At the time of the bite or attack, did the person or domestic animal so bitten have permission to be on the property of the person who owns or harbors such dog or cat? Does the cat or dog have a known propensity, tendency or disposition to attack, cause injury to, or otherwise threaten the safety of human beings or domestic animals? Has the cat or dog aggressively bitten, attacked, endangered, or inflicted severe injury on a human being on public or private property? Does the cat or dog have any prior history of bites or attacks?
- (b) A dog or cat that has been adjudicated by another governmental jurisdiction based on its behavior to be dangerous, vicious or a comparable designation shall not be relocated to Prairie Village. Animal Control will evaluate pending requests to ensure the designation was based on equivalent factors by definition.
- (c) The Animal Control Officer or the Chief of Police is authorized to permanently remove or euthanize animal(s) in cases of severe injury and/or viciousness. This measure is only allowed when the risk factors associated to unpredictability and aggressive behavior necessitates this decision to ensure public welfare is not endangered.

2-104 KEEPING OF LIVESTOCK, POULTRY, AND FOWL PROHIBITED

- (a) It shall be unlawful for any person to own, keep or harbor livestock, poultry or fowl on any premises within the City and no special or temporary permit will be issued for these. For the purpose of this section, livestock, poultry, and fowl include, but are not limited to: cows, pigs, horses, donkeys, mules, sheep, goats, chickens, ducks, geese, guinea fowl, peacocks, pigeons, swans and those animals considered miniature or pygmy breeds, e.g., pot-bellied pigs, miniature donkeys, miniature horses, and pygmy goats.
- (b) The following persons or organization shall be allowed to own, harbor, or have charge, custody, control or possession of any livestock, poultry and fowl:
 - (1) The keeping of such animals in zoos, bona fide educational or medical institutions, museums or any other place where there are kept live specimens for the public to view or for the purpose of instruction or study;
 - (2) The keeping of such animals for exhibition to the public of such animals by a circus, carnival or other exhibit or show;
 - (3) The keeping of such animals in a bona fide, licensed veterinary hospital for treatment; and
 - (4) Commercial establishments processing such animals for the purpose of sale or display.

2-105 HARBORING OR KEEPING OF ANIMALS

- (a) No person shall keep, harbor or allow to be kept without a permit, as described in this chapter, any dangerous animal(s) or any safe animal. The following animals are the only animals allowed without a permit with the exception of cat(s) and dog(s), which if deemed as a dangerous animal, then a permit is required for said cat or dog:
 - (1) Domestic dog (*Canis familiaris*);
 - (2) Domestic cat (*Felis domesticus*);
 - (3) Gerbils (*Tateriltus gracillio*);
 - (4) Hamsters (*Critecus critecus*);
 - (5) Rabbits (*Lepus Cunicullus*);
 - (6) Domestic Mice (*Mus musculus*);
 - (7) Domestic Rat (*Rattus norvegicus*), and
 - (8) Any animal, usually tame and commonly sold at pet stores, including: Ferrets (*Mustela furo*), Chinchillas (*Chinchillidae*), Canaries (*Serinus canaria*), Cockatoos, Macaws, Parakeets, and Parrots (*Psittacines*).
- (b) Any person who harbors any animal without a permit, except as exempted by this section, shall be charged with a misdemeanor and upon conviction thereof, shall be subject to the penalties in section 2-146.

2-106 PIT BULL DOG – KEEPING PROHIBITED

It shall be unlawful to keep, harbor, own or in any way possess within the corporate limits of the City of Prairie Village, Kansas, any pit bull dog. Pit bull dog for the purposes of this chapter shall include:

- (a) The Staffordshire Bull Terrier breed of dog;
- (b) The American Pit Bull Terrier breed of dog;

- (c) The American Staffordshire Terrier breed of dog, or
- (d) Any dog having the appearance and characteristics of being predominately of the breeds of Staffordshire pit bull terrier, American pit bull terrier, American Staffordshire bull terrier; or a combination of any of these breeds.

2-107 UNLAWFUL TO HARBOR OR KEEP ANY ANIMAL WITHOUT PROPER AND NECESSARY PRECAUTIONS

- (a) Any person who owns, harbors, or keeps any animal within the City shall take all proper and necessary precautions to ensure and promote conditions that restrict the animal to the owner's property and prevent injury to other humans, domestic animals and/or damage to property.
- (b) It is unlawful for the owner or harborer of any animal to negligently, carelessly, willfully or maliciously permit such animal to cause a disturbance of peace or permit such animal to create a noise disturbance so as to constitute a disturbance of the peace.
- (c) No owner, keeper or harborer of an animal shall fail to provide the animal with adequate care, adequate food, adequate water, adequate health care, and adequate shelter. Such shelter should be clean, dry, and compatible with the condition, age and species. An animal must also have the opportunity for adequate daily exercise. This requires that an owner or harborer must offer some freedom from continuous chaining and tethering. **[moved to new tether section 2-132]**

2-108 PUBLIC NUISANCE

- (a) A Public Nuisance is any animal that:
 - (1) Molests or chases vehicles or persons;
 - (2) Damages private or public property;
 - (3) Scatters refuse that is bagged or otherwise contained, or
 - (4) Excessively barks, whines, howls, or creates any other disturbance which is continuous or untimely (disturbance factors include, but not limited to, time of day, volume, length of time, etc.). If the violation is not witnessed by the Animal Control Officer and/or Law Enforcement Officer, the complainant making such statement must agree to sign a complaint and testify in court if requested.
- (b) It is unlawful for the owner or harborer of any animal to negligently, carelessly, willfully or maliciously permit such animal to become a public nuisance.
- (c) Anyone having the authority of an Animal Control Officer, including but not limited to Law Enforcement Officers, is given the authority to seize and impound any animal which is a public nuisance as defined by this section.

2-109 CRUELTY TO ANIMALS

Shall be defined as:

- (a) Intentionally killing, injuring, maiming, torturing, mutilating, beating, or overworking any animal; this includes, but is not limited to, administering any poisonous substance with the intent that the same shall be taken or swallowed by any animal;
- (b) Acting or failing to act when the act or failure to act causes or permits pain or suffering to such animal;
- (c) Abandoning or leaving any animal in any place or releasing or dumping an animal from a vehicle without making provisions for its proper care; in addition, "abandon" means for the owner or keeper to leave an animal without demonstrated or apparent intent to recover or resume custody; to leave an animal for more than twenty-four hours without providing adequate food and shelter for the duration of the absence; or to turn out or release an animal for the purpose of causing it to be impounded;
- (d) Failing to provide adequate care, adequate food, adequate health care, adequate shelter, or adequate water; or
- (e) Failing to provide veterinary care when needed to treat injury or illness unless the animal is promptly destroyed in a humane manner.

The provisions of this section shall not apply to:

- (1) Normal or accepted veterinary practices;
- (2) Bona fide experiments carried on by recognized research facilities;
- (3) Killing, attempting to kill, trapping, catching or taking of any animal in accordance with the provisions of chapter 32 or chapter 47 of the Kansas Statutes Annotated;
- (4) Rodeo practices accepted by the Rodeo Cowboys' Association;
- (5) The humane killing of an animal which is diseased or disabled beyond recovery for any useful purpose, or the humane killing of animals for population control, by the owner thereof or the agent of such owner residing outside of a City or the owner thereof within a City if no animal shelter, pound or licensed veterinarian is within the City, or by a licensed veterinarian at the request of the owner thereof, or by any officer or agent of any incorporated humane society, the operator of an animal shelter or pound, public health officer or licensed veterinarian three business days following the receipt of any such animal at such society, shelter or pound;
- (6) With respect to farm animals, normal or accepted practices of animal husbandry;
- (7) The killing of any animal by any person at any time which may be found outside of the owned or rented property of the owner or custodian of such animal and which is found injuring or posing an immediate threat to any person, farm or domestic animal or property, or
- (8) An animal control officer trained in the use of a tranquilizer gun, using such gun with the estimated dosage for the size of the animal, when such animal is vicious or could not be captured after reasonable attempts using other methods.

2-110 AUTHORITY OF ANIMAL CONTROL OFFICER OR LAW ENFORCEMENT OFFICER TO RESCUE AN ENDANGERED ANIMAL

- (a) Whenever an animal is found confined and/or unattended in a motor vehicle or other location, which subjects it to certain weather conditions that endangers its life as determined by the Animal Control Officer or Law Enforcement Officer, the Animal Control Officer may enter such vehicle or property with the assistance from the police for the purpose of rescuing such animal, and transporting it to a shelter house designated by the Governing Body for treatment, boarding,

or care. A written notice shall be left on or in the motor vehicle or other applicable property advising that the animal has been removed under authority of this section and the location where the animal has been impounded.

- (b) Nothing in this section shall be deemed to prevent the Animal Control Officer or Law Enforcement Officer from entering upon property without consent when the condition or animal is found in plain sight and not within a private structure or under conditions constituting an emergency.
- (c) No Animal Control Officer or Law Enforcement Officer shall be held criminally or civilly liable for action under this section, provided the officer acts lawfully, in good faith, on probable cause and without malice.

2-111 REGISTRATION – TAGS

The owner of any dog and/or cat, which is harbored or kept within the City, shall cause the same to be registered at the office of the City Clerk. The registration shall contain the name, address and phone number of the animal's owner, the animal's breed, name, sex, whether neutered, color and description and such other information as may be deemed necessary by the City Clerk. Subject to the provisions of section 2-115, the City Clerk or authorized assistant shall upon payment of the license fee as provided in section 2-112, issue a permanent tag, bearing a number and Prairie Village, KS.

2-112 LICENSE FEE – DESIGNATED

- (a) In addition to any permit fees required by this chapter, there is a levied and imposed annual license fee upon the owner of each dog and cat of the age of over six months, attaining such age during the license year. The license fee shall be adopted by the Governing Body and the amount of the fee will be kept on record in the office of the City Clerk.
- (b) The license year shall be for a twelve (12) month period commencing on the date the animal is first licensed. The license is valid for one year from issuance of license or until the expiration of rabies vaccination whichever is greater. The fee shall be payable within 60 days of the expiration of the license. An animal for which a licensed fee is required as set forth in this section; over six months of age should be licensed within thirty days of being brought into the City or attaining six months of age.

2-113 LICENSE FEE – OVERDUE

- (a) If the license fee required in section 2-112 is not paid within the time provided in this section, penalties will apply in addition to the normal license fee. The amount and dates penalty will be charged shall be adopted by the Governing Body and on record in the Office of the City Clerk.
- (b) After 60 days after the due date, if the fee imposed and required to be paid by section 2-112 remains unpaid, the City Clerk shall issue a complaint against the owner, keeper or harbinger for violation of section 2-111.

2-114 LICENSE FEE – EXEMPTIONS

Any person owning, keeping, or harboring a service/work dog shall be exempt from the license fee payment upon submittal of adequate proof that the dog is fully trained as a service/work dog and is current for the year on its rabies vaccination.

2-115 INOCULATION AGAINST RABIES REQUIRED

- (a) No City license tag required by this section shall be issued until the owner or harborer of a dog or cat shall furnish to the City Clerk a current inoculation certificate signed by a registered veterinarian, showing thereon that the dog or cat has been vaccinated against rabies. The inoculation certificate shall be deemed current if it has not expired before the owner or harborer submits it to the City along with the application for license.
- (b) It shall be the responsibility of the owner or harborer of the dog or cat to ensure that the animal's inoculation against rabies is maintained throughout the license period.

2-116 COLLAR OR HARNESS REQUIRED

The owner of any dog or cat shall cause the same to wear a collar or harness outside the dwelling of the owner or harborer. The tag required in section 2-111 shall be securely affixed to the collar or harness of each dog and cat registered. The tags shall be situated on the collar or harness in such a manner that it may at all times be easily visible to Law Enforcement Officers or Animal Control Officers of the City. Replacement tags shall be issued for a fee which is recorded in the City Clerk's office and may be changed from time to time.

2-117 PERMIT REQUIRED FOR DANGEROUS ANIMALS

- (a) Permits allowing persons to own, harbor or have possession of a dangerous animal shall be issued only for domestic cats and domestic dogs, subject to the provisions of this chapter.
- (b) No person owning, harboring or having charge, custody, control or possession of any dangerous animal shall allow such animal to remain within the City unless and until he/she has first secured and renewed a permit in accordance with this chapter to do so and complies with all terms and conditions of such permit; and, in addition thereto, such animal shall at all times be so confined, controlled and restrained in such a manner so the life, limb or property of any person lawfully entering into premises shall not be endangered.
- (c) Failure to obtain a permit as required by subsection (b), after written notification by any Animal Control Officer or Law Enforcement Officer, shall be adequate grounds for the officer to impound the animal until a permit is obtained. If no permit is obtained within five days of receipt of such notice and no appeal is pending, the animal will be subject to destruction or removal from the City in the manner provided in section 2-133.
- (d) The following persons or organization shall be allowed to own, harbor, or have charge, custody, control or possession of any dangerous animal without securing permit as required by this chapter:
 - (1) The keeping of such animals in zoos, bona fide educational or medical institutions, museums or any other place where there are kept live specimens for the public to view or for the purpose of instruction or study;

- (2) The keeping of such animals for exhibition to the public of such animals by a circus, carnival or other exhibit or show;
- (3) The keeping of such animals in a bona fide, licensed veterinary hospital for treatment;
- (4) Commercial establishments processing such animals for the purpose of sale or display.

2-118 EXEMPTIONS

The provisions of this section shall not apply to the transportation of dangerous animals through this City when such transport has taken adequate safeguards to protect the public and has notified the local law enforcement agency of the proposed route of transportation and the time thereof.

2-119 ISSUANCE OF PERMIT

No person shall have, keep, maintain or have in his/her possession or his/her control within the City any dangerous animal without first applying to and receiving a permit from the City Clerk as hereinafter provided. No permit shall be granted except with such conditions attached as shall, in the opinion of the person or agency approving such permit, reasonably ensure the public health, safety and general welfare, and in any event no permit shall be granted for any animal at any particular location except upon an explicit finding by an Animal Control Officer or a Law Enforcement Officer that the issuance thereof will not be contrary to the public health, safety and general welfare.

2-120 APPLICATION FOR PERMIT

An application for any permit required pursuant to this chapter shall be made to the City Clerk in writing upon a form furnished by the City Clerk. Said application shall be verified by the person who desires to have, keep, maintain or have in his/her possession or under his or her control, in the City, the animal for which a permit is required, and shall set forth the following:

- (a) Name, address and telephone number of the applicant
- (b) The applicant's interest in such animal;
- (c) The proposed location, and the name, address and telephone number of the owner of such location, and of the lessee, if any;
- (d) The number and general disposition of all animals for which the permit is being sought;
- (e) Any information known to the applicant concerning vicious or dangerous propensities of said animals;
- (f) Housing arrangements for all said animals with particular details as to the safety, structure, locks, fences, warning sign, etc.
- (g) Safety precautions proposed to be taken;
- (h) Noises or odors anticipated in the keeping of such animals;
- (i) Prior history of incidents involving the public health or safety involving any of said animals;
- (j) Proof of liability insurance in the minimum amount of \$500,000 per occurrence covering any damage or injury which may be caused by such dangerous animal. The City shall be listed as certificate holder, and shall be required to be notified of any cancellation, termination or expiration of the liability insurance policy. The owner shall maintain the liability insurance required by this subsection at all times, unless and until the owner shall cease to own the dangerous animal.

- (k) A statement, signed by the applicant, indemnifying the City and its agents and employees for any and all injuries that may result from the animal;
- (l) Any additional information required by the Animal Control Officer or Law Enforcement Officer authorized by the Governing Body to enforce the provisions of this chapter at the time of filing such application or thereafter.
- (m) When a permit is issued in accordance with this chapter and it is for a cat, the requirement(s) will include, but not be limited to such cat being confined within the residential structure at all times, except when secured on a leash or in a carrier and while on the cat owner's property or for transport to the veterinarian.

2-121 PROVISIONS AND/OR REQUIREMENTS FOR KEEPING A DANGEROUS ANIMAL

The keeping of dangerous animals in the City shall be subject to, but not be limited to the following provisions and/or requirements:

- (a) Leash and muzzle. A dog that is a dangerous animal and is kept in this City will be required to be securely leashed with a leash no longer than four feet in length and be muzzled by a muzzling device sufficient to prevent such dog from biting persons or other animals when it is taken outside of its area of confinement.
- (b) Confinement. All dangerous animals shall be securely confined indoors or in a securely enclosed and locked pen or kennel; or in a fenced yard, except when leashed and muzzled as above provided. Such pen, kennel or structure must have secure sides and a secure top attached to the sides. All structures used to confine dangerous animals must be locked with a key or combination lock when such animals are within the structure. All such structures must be adequately lighted and ventilated and kept in a clean and sanitary condition.
- (c) Confinement indoors. No dangerous animal may be kept on a porch, patio or in any part of a house or structure that would allow the animal to exit such building on its own volition. In addition, no such animal may be kept in a house or structure when the windows are open or when screen windows or screen doors are the only obstacles preventing the animal from exiting the structure.
- (d) Signs. All owners, keepers or harborers of a dog that is a dangerous animal must display in a prominent place on their premises a sign easily readable by the public using the words "Beware of Dog." In addition, a similar sign is required to be posted on the kennel or pen of such animal, and on the fence gates of fences that will be used to confine the dog.
- (e) Identification Photographs. All owners, keepers, or harborers of a dangerous animal must provide to the City Clerk two color photographs of such animal clearly showing the color and approximate size of the animal.
- (f) Microchip Identification. The owner, keeper or harborer of a dangerous dog must have a microchip implanted in the dog for identification, and the name of the microchip manufacturer and the identification number of the microchip must be provided to the City Clerk.
- (g) Mandatory Spay and Neuter. All dangerous dogs shall be required to be spayed or neutered.
- (h) Training. All dangerous dogs shall be required to be enrolled in a behavior modification program administered by a licensed animal behaviorist. Upon successful completion of said program, verification must be provided to the City Clerk.

- (i) Reporting requirements. All owners, keepers or harborers of dangerous animals must within ten days of the incident, report the following information in writing to the Prairie Village City Clerk as required hereinafter:
 - (1) The removal from the City or death of such animal. If the animal is removed from the City, the new owner contact information must be provided.
 - (2) The birth of offspring of such animal.
 - (3) The new address of such animal's owner should the owner move within the corporate City limits.
- (j) Sale or Transfer of Ownership Prohibited. No person shall sell, barter or in any other way dispose of a dangerous animal to any person within the City unless the recipient person resides permanently in the same household and on the same premises as the registered owner of such animal; provided that the registered owner of such animal may sell or otherwise dispose of such animal to persons who do not reside within the City.

2-122 PERMIT FEE

The fee for a permit application shall be adopted by the Governing Body and on record in the Office of the City Clerk. The fee will be based upon the number of dangerous animals and be non-refundable. The fee shall be payable to the City Clerk at the time of application. Accretions by natural birth shall not require additional permits during the period of a valid permit.

2-123 TERM OF RENEWAL OF PERMIT

No permit required by this chapter shall be granted for a period in excess of one year. An application for renewal of any permit shall be made not less than forty-five days prior to the expiration thereof, and shall be accompanied by the same fee as required upon making the original application.

2-124 INSPECTIONS FOR RENEWAL

Prior to the annual renewal of any permit issued hereunder, an Animal Control Officer or Law Enforcement Officer shall inspect the premises subject to such permit to determine whether the person to whom it has been issued is continuing to comply with all of the conditions specified in this chapter and also reassess the animal that is subject to the permit. If the Animal Control Officer or Law Enforcement Officer determines during any such inspection that any of the conditions therein specified are being violated, the officer shall recommend denial of a renewal of any such permit or shall recommend revocation of such permit in the event that such violation is not corrected within such period of time as the officer shall direct. Additionally, if the Animal Control Officer or Law Enforcement Officer determines that the animal subject to the permit should no longer be deemed a dangerous animal, it shall be documented in a written report, which shall be reviewed by the Chief of Police. The owner of such animal will be notified if and when their animal is no longer deemed a dangerous animal.

2-125 TEMPORARY PERMITS FOR DANGEROUS ANIMALS – POWERS OF ANIMAL CONTROL OFFICER OR CHIEF OF POLICE

An Animal Control Officer or Chief of Police may, following application for a permit and pending final disposition of the same, grant a temporary permit for the maintenance within the City of any such animal

upon such conditions as he or she shall, in his or her sole discretion, require when, in his or her opinion, there is no reasonable doubt as to the consistency thereof with the public health, safety and general welfare, that no such animal shall be otherwise kept or maintained within the City or permitted to occupy any premises within the City, except while such a regular or temporary permit is in full force and effect; provided, however, that any Law Enforcement Officer or Animal Control Officer shall take possession of any dangerous animal for which a permit has not been issued and keep the same until the proper permit has been secured by the owner or keeper thereof and shall release the same to the owner or keeper when all fees and costs have been paid and all laws and permit conditions complied with.

2-126 REVOCATION OF PERMITS

The City Clerk, upon recommendation of an Animal Control Officer or any Law Enforcement Officer, may, for good cause, revoke any permit or modify any terms or provisions thereof and may, in the event it is reasonably necessary to protect against an immediate threat or danger to the public health or safety, suspend any permit or portion thereof without hearing, for a period not to exceed thirty days. Failure to comply with any of the provisions of this chapter shall be sufficient grounds for revocation.

2-127 APPEALS – FEES

- (a) Any person aggrieved by or dissatisfied with any of the following decisions, rulings, actions or findings may, within ten days thereafter, file a written notice or statement of appeal from said decision, ruling, action or finding to the Governing Body.
 - (1) The determination by the Animal Control Officer or the Chief of Police that an animal is a “dangerous animal” under section 2-102;
 - (2) The denial of a permit required under sections 2-117 and 2-119;
 - (3) The denial of a renewal of a previously issued permit required under section 2-123;
 - (4) The revocation of a previously issued permit under section 2-126, and
 - (5) The temporary suspension of any permit or portion thereof under section 2-125; provided, however, that the filing of an appeal under this subsection shall not stay such order or temporary suspension.
- (b) In exercising the appeal function, the Governing Body shall have the authority to grant or deny said appeals and also include but not be limited to matters of animal welfare and control.
- (c) An administrative fee shall be adopted by the Governing Body and be on record in the office of the City Clerk. The administrative fee shall be paid to the City Clerk and is required for each appeal to the Governing Body, and no appeal shall be placed on the agenda of any meeting of the Governing Body until such fee has been paid.

2-128 ENUMERATION OF ANIMALS

The Governing Body may require the annual enumeration of all dogs and cats owned within the City. The enumeration shall account for the number and ownership of all dogs and cats. For purposes of determining whether or not a person owns, keeps or harbors any animal referred to in this chapter, it shall be conclusively presumed that any person keeping any animal in the City for three consecutive days shall be conclusively presumed to be the owner of such animal.

2-129 LIMITATIONS ON NUMBER OF ANIMALS

No person, residential premises or household within this City shall have, hold, maintain or contain more than a combined total of four dogs and cats over three months of age; provided, however, that in no event shall the combination of dogs or cats exceed three dogs or three cats. Any violation of this section is, upon conviction thereof, a misdemeanor and subject to the penalties provided in this chapter.

2-130 DOG AND CAT CONTROL

- (a) All cats must be under the control of their owner, keeper or harborer at all times. For the purpose of this Section, a cat shall be considered not under control and in violation of this Section in the following situations:

 - (1) If a neighbor complains orally or in writing to the owner, keeper or harborer of a cat, that the cat is entering upon the neighbor’s property, then the cat’s presence on the neighbor’s property at any time subsequent to the neighbor’s complaint shall constitute a violation of this Section;
 - (2) If a cat causes injury to persons or animals.
 - (3) If a cat causes damage to property off its owner’s, keeper’s or harborer’s property to include, but not limited to, breaking, bruising, tearing up, digging up, crushing or injuring any lawn, garden, flower bed, plant, shrub or tree in any manner or defecating or urinating upon any private property.
- (b) It is unlawful for the owner, keeper or harborer of any dog to permit such dog to run at large within the City. For the purpose of this Section, a dog shall be considered running at large and in violation of this Section in the following situations:

 - (1) If a dog is off the owner’s, keepers or harborers property and is not firmly attached to a hand-held leash and under the physical control of its owner, keeper or harborer. Electronic collars may not be used to control a dog when it is off its owner’s, keepers or harborers property.
 - (2) If a dog is off the owner’s, keepers or harborers property and is not prevented from making uninvited contact with humans or others animals. This includes a situation when a dog is secured on a leash.
- (c) It is lawful for any Law Enforcement Officer or other person designated by the Governing Body to pursue and capture same; provided, further, however, that no such dog shall be held to be running at large when said dog is merely passing along or through such property while in a cage or other conveyance.

2-131 ELECTRONIC FENCES AND ELECTRONIC COLLARS

Dogs may be confined to the residential property of their owner by an electronic fence or an electronic collar. An electronic fence or electronic collar is defined as a fence or collar that controls the movement of the dog by emitting an electrical shock when the animal wearing the collar nears the boundary of the owner’s property. Dogs confined to residential property by an electronic fence or collar shall at all times be required to wear the collar or other required device which must be functional, and shall not be permitted to be nearer than 10 feet from any public walkway or street. All owners who use an electronic fence or an electronic collar shall clearly post their property to indicate to the public that such a fence or

collar is in use. Electronic collars may not be used to control a dog when it is off its owner's property. An electronic fence or electronic collar shall not be used to confine a dangerous dog.

2-132 TETHERING

- (a) It is unlawful to attach chains or other tethers, restraints or implements directly to a dog without the proper use of a collar, harness or other device designed for that purpose and made from a material that prevents injury to the dog.
- (b) It is unlawful for any person to:
 - (1) Continuously tether a dog for more than one continuous hour. A dog may be tethered 3 hours total within a 24 hour time period providing there is a 3 hour break between each period of tethered time. For the purpose of tethering a dog, a chain, leash, rope or tether must be at least ten feet in length.
 - (2) Use a chain, leash, rope, collaring device, tether, which restricts the free movement of the animal (i.e. the device should not weigh more than one-eighth of the animal's body weight).
 - (3) Tether a dog in such a manner as to cause injury or strangulation, or entanglement of the dog on fences, trees, posts or other manmade or natural obstacles.
 - (4) Tethered for any length of time anywhere in the City when they are off the owners, keepers or harborer's property.
 - (5) Tether without providing adequate care, food, shelter, and water as outlined in sections 2-107 and 2-109.

2-133 SEIZURE

- (a) Any Animal Control Officer, Law Enforcement Officer or other person designated by the Governing Body of the City is authorized to capture any dog found running at large in violation of section 2-130 and any cat which is not under control as defined in section 2-130 and place them in a shelter house designated by the Governing Body for that purpose. If the owner or harborer of any such dog or cat does not redeem the same within five days after such impounding by the payment to the City Clerk then such dog or cat shall be disposed of in some humane manner as provided in section 2-135. If such animal is to be redeemed, the owner or harborer must make payment to the animal shelter prior to receiving their pet. In addition to or in lieu of seizing the dog or cat, an Animal Control Officer or Law Enforcement Officer of the City may charge said owner or harborer for being in violation of section 2-130.
- (b) An Animal Control Officer or Law Enforcement Officer shall forthwith cause to be seized and impounded any dangerous animal, where the person owning, keeping or harboring any such animal has failed to comply with the notice sent pursuant to section 2-134. Upon seizure and impoundment, said animal shall be delivered to a place of confinement, which may be with any organization, which is authorized by law to accept, own, keep or harbor such animals.
- (c) If during the course of seizing and impounding any such animal, the animal poses a risk of serious physical harm or death to any person, or the animal is considered a dangerous animal by the Animal Control Officer or any Law Enforcement Officer, they may render said animal immobile by means of tranquilizers or other safe drugs; or if that is not safely possible, then said animal may be destroyed.

- (d) Any reasonable costs incurred by an Animal Control Officer or Law Enforcement Officer in seizing, impounding, confining or disposing of any dangerous or wild animal, pursuant to the provisions of this section, shall be charged against the owner, keeper or harbinger of such animal and shall be collected by the City Clerk.
- (e) Whenever an Animal Control Officer or Law Enforcement Officer seizes and impounds any such animal under the provisions of this section, the officer shall attempt to notify the owner of such animal of the seizure, however, such notice attempt shall be required only if the animal is wearing a valid and updated registration tag or, in the case of a dangerous animal, the animal is seized on the owner's property. Such notice should be in writing and should be delivered to the owner's residence within three days of seizure of the animal. The notice shall state the reasons for seizure and impoundment. Notice attempt may also include the leaving of voice message(s) on the listed phone of the animal's owner, keeper or harbinger.
- (f) After receipt of such notice as described in subsection (e) of this section, the owner of any animal, which has been seized and impounded, is entitled to request a hearing before the Governing Body by filing written request for hearing with the City Clerk. The purpose of this hearing shall be to determine whether probable cause existed to seize and impound the animal. Request for this hearing must be made within five days of receipt of the notice of seizure and impoundment, or the hearing shall be waived. If a hearing is requested, it shall be held within ten days from the filing of the request. If, at such hearing, the Governing Body finds that no probable cause existed for such seizure and impoundment, the animal shall be released, no fees or costs for care of the animal shall be assessed against its owner, and the City shall pay the costs accrued in boarding the animal.
- (g) The owner, keeper or harbinger of any animal who has been found to have violated this section or section 2-129 of this chapter, which animal is not properly licensed by the City, may be assessed an additional penalty the amount of which shall be determined by resolution by the Governing Body on file with the City Clerk.

2-134 NOTICE OF KEEPING DANGEROUS ANIMALS

Upon the written or verbal complaint of any person that a person owns or is keeping or harboring a dangerous animal in violation of this chapter in the City, an Animal Control Officer or Law Enforcement Officer shall forthwith cause the matter to be investigated; and if after investigation the facts indicate that such person named in the complaint is in fact the owner or is keeping or harboring any such "dangerous animal" in the City as finally determined by the Animal Control Officer or the Chief of Police without a proper permit, the officer shall forthwith notify such owner, keeper or harbinger in writing requiring such person to safely remove said animal from the City within three days of the date of the notice. Notice as herein provided shall not be required where such dangerous animal has previously caused serious physical harm or death to any person or who has escaped and is at large, in which case the Animal Control Officer or Law Enforcement Officer shall cause said animal to be immediately seized and impounded, or destroyed if seizure or impoundment are not possible without risk of serious physical harm or death to any person. The Animal Control Officer may exercise discretion by allowing such person up to ten days to safely remove said animal, provided no urgency is apparent.

2-135 DESTRUCTION OR REMOVAL FROM CITY OF CERTAIN ANIMALS

- (a) When City records indicate that a particular dog or cat has committed two or more vicious bites, as defined in section 2-102, the dog or cat shall be deemed a threat to public safety, except that it shall be a defense to such a finding that the person or domestic animal so bitten was on the property of the person who owns or harbors said dog or cat at the time of the bite or attack and did not have consent to be on the owner's property. Any Animal Control Officer or Law Enforcement Officer shall upon notification of a dog or cats second vicious bite, cause the animal to be seized. If no post-seizure hearing has been requested, the animal shall be destroyed or permanently removed from the City. The decision of whether to destroy said animal or remove it from the City shall be in the sole discretion of the Animal Control Officer or the Chief of Police.
- (b) Law Enforcement Officers or Animal Control Officers of the City or anyone having the authority of an Animal Control Officer, as designated by the Mayor or Chief of Police, may kill any animal without notice to the owner thereof whether it bears the tag provided for in this chapter or not if such animal is deemed by said officer to pose a risk of serious physical harm or death to persons or is injured severely with no apparent chance of survival, or is in such pain as to warrant humane destruction. When it is known that such animal has bitten or scratched a person or domestic animal, then the remains of that animal so destroyed shall be preserved by officers, to permit a test to be conducted for rabies.

2-136 PROCEDURE FOR FAILURE TO REDEEM

Any animal captured or apprehended under the terms and conditions of this chapter and for which no appeal under section 2-127 is pending shall be held for a period of five days and disposed of in a humane manner as shall from time to time be determined by the Governing Body of the City.

2-137 PRESENTATION OF ANIMAL

The owner, keeper or harbinger of any dog or cat shall physically produce the animal for observation, identification or inspection when requested to do so by an Animal Control Officer or Law Enforcement Officer investigating a violation of the animal control and/or welfare laws of the City, provided the officer has probable cause to believe a crime or violation of the animal control laws has been committed. Failure to do so is a violation of this section.

2-138 DUTY TO REPORT ANIMAL BITES AND SCRATCHES

When any animal, while within the City limits of Prairie Village, has bitten or attacked any person or domestic animal and has caused a break to the skin, or when an animal is suspected of having rabies; it shall be the duty of any person having knowledge of such facts to report the same immediately, or as soon as practicable, to the Police Department or the Animal Control Officer.

2-139 ANIMAL BITE PROCEDURE

- (a) Except as provided in subsection (e) of this section, an animal which bites or otherwise so injures a person as to cause an abrasion of the skin shall immediately, or as soon as practicable, be quarantined at the owner's expense with a licensed veterinarian of the owner's choice or with the City's impounding agent for a period of not less than ten days nor more than twelve days.

- (b) If the owner, keeper or harbinger of the animal cannot be immediately notified, City personnel shall immediately, or as soon as practicable, impound such animal with a City authorized impounding agent, at the owner's expense, for a period of not less than ten days nor more than twelve days. If the address of the owner of the animal can be determined, the Police Department shall make a reasonable effort to notify the owner that said animal is impounded under the provisions of this section and the owner has the right to redeem the animal at the expiration of confinement upon the payment of pound fees, any veterinarian fees, and any license and penalty fees then due and owing to the City.
- (c) In the event the original place of impoundment is not the choice of the owner, the owner may cause the animal's place of impoundment to be changed to a licensed veterinarian of the owner's choice; provided all other provisions of this chapter are complied with. The total period of confinement of the animal at the one or more locations is to be for a period of not less than ten days nor more than twelve days. Credit for any period the animal remains at large after the bite shall not be given.
- (d) The veterinarian or City-authorized impounding agent with whom the animal is impounded, shall give immediate written notice to the Chief of Police that such animal has been confined and will be confined for not less than ten days no more than twelve days. At the expiration of the aforesaid confinement period, the veterinarian or City-impounding agency shall give immediate written notice to the Chief of Police as to the health of such animal pertaining to the diagnosis of rabies.
- (e) In the event the investigating officer determines that the animal had an effective rabies inoculation, was duly licensed under this chapter at the time of the injury, and the animal was not running at large at the time of the bite, then the animal need not be impounded in accordance with subsection (a) of this section but the following alternative procedure shall be followed:
 - (1) If the injured person, his parent, or guardian desires that the animal be impounded and agrees in writing to pay for its board during the period of impoundment, it shall be so impounded for the period specified in subsection (a) of this section notwithstanding any other provision of this chapter.
 - (2) If the injured party, his parent, or guardian is unwilling to agree in writing to pay for the animal's board during the period of impoundment, the animal shall be permitted to remain confined in the residence or enclosed yard of its owner or keeper; provided no animal shall be allowed to remain on the property of its owner or keeper under this section unless such person signs a written agreement to keep the animal on the property in confinement for the period specified in subsection (a) of this section and further agrees to allow the animal to be examined periodically to determine its physical condition during the confinement period. At the end of the observation period, the Animal Control Officer may require that a licensed veterinarian examine the animal and furnish written notification to the Animal Control Officer regarding the animal's health. All costs associated with the exam are the responsibility of the owner, keeper or harbinger. If the owner or keeper is unwilling to sign such an agreement, the animal shall be immediately, or as soon as practicable, impounded in accordance with subsection (a) of this section.
- (f) If convicted of a violation of this chapter, the owner, keeper or harbinger of any dangerous animal that bites or otherwise so injures a person causing an abrasion of the skin, shall be punished by a fine of not less than \$100 but not more than \$500.

2-140 DISEASE CONTROL

- (a) When rabies or other communicable diseases associated with animals are known to exist in the community, or when they are known to exist in neighboring communities the Mayor may declare a quarantine of any or all animals. It shall be the duty of the owner of such animal to keep such animal confined to the premises of such owner or keeper and under control. For the purposes of this section, animals are not to be considered confined to the premises of the residential property of their owner, keeper or harbinger if the only restraining device is an invisible electric fence.
- (b) It shall be the duty of all Animal Control Officers or Law Enforcement Officers, or those having the authority of Law Enforcement Officers to enforce such quarantine. The Mayor and Chief of Police shall have a right to deputize school guards and other persons as needed. Such deputized persons need not seize such animals, but shall aid in determining the owner to the end that warrants of arrest can be issued against violating owners.

2-141 REMOVAL OF ANIMAL FECES

- (a) Any person in charge of an animal, when such animal is off the owner, keeper or harbinger's property, shall be responsible for the removal of any feces deposited by such animals on public walks, streets, recreation areas, or private property, and it shall be a violation of this provision for such person to fail to remove or provide for the removal of such feces before the animal leaves the immediate area where such defecation occurred.
- (b) It shall be unlawful for any person to dispose of removed feces by intentionally or recklessly depositing, or causing to be deposited, feces removed pursuant to this section into, upon or about any public place, or any private property without the consent of the owner or occupant of the property.

2-142 REMOVAL OF DEAD ANIMAL

It shall be the responsibility of the owner of a deceased animal to provide for its removal from private property.

2-143 FEES TO GENERAL FUND

All fees, charges and penalties paid to or collected by any officers of the City under or pursuant to the provisions of this chapter shall be paid over to the City Treasurer and credited to the general operating fund.

2-144 ENFORCEMENT

It is the duty of the Animal Control Officer or anyone having the authority of an Animal Control Officer, including but not limited to Law Enforcement Officers, to enforce the terms and provisions of this chapter and the Mayor or the Chief of Police may appoint by and with the consent of the Governing Body some suitable person to be known as an Animal Control Officer whose duties it shall be to assist in the enforcement of this chapter and to work under an immediate supervision and direction of the Police Department. Anyone having the authority of an Animal Control Officer is given the authority to seize any animal found outside the City limits when he/she has reasonable grounds to believe said

animal committed any act within the City which is prohibited by the provisions of this chapter or which subjects said animal to seizure if found within the City. Any private person may, upon signed complaint, bring charges against any owner of an animal for the violation of any of the provisions of this chapter.

2-145 BEEKEEPING

Any person keeping bees shall comply with the following:

- (a) Minimize swarming of bees;
- (b) Provide and maintain a source of water located on the premises;
- (c) Maintain no more than two (2) hives per property/lot;
- (d) Hives will be located only within a fenced back yard. The minimum height of fence will be 42 inches. A flyway structure/barrier (shrubby or fencing) is necessary if the exterior fence is less than 6 feet in height;
- (e) Hives will be maintained at least ten (10) feet from all property lines; and
- (f) Maintain and manage such boxes or hives so as not to create a nuisance by any of the following circumstances: unhealthy condition(s), interfere with the normal use and enjoyment of human or animal life, or interfere with the normal use and enjoyment of any public property or private property of others.
- (g) Remove hives if established guidelines are not maintained as determined by Codes or Animal Control Officers.

2-146 VIOLATION – PENALTY

- (a) Any person who fails to do anything required by this chapter or who does anything prohibited by this chapter is guilty of a violation thereof. Any person convicted of the violation of any provision of this chapter where a specific penalty is not otherwise prescribed shall be fined not more than five hundred dollars, or imprisoned for more than thirty days, or be both so fined and imprisoned.
- (b) Each day any violation of this chapter to which this penalty applies continues constitutes a separate offense.

2-147 SEVERABILITY

If any section, subsection, subdivision, paragraph, sentence, clause or phrase in this chapter or any part thereof, is for any reason held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this chapter or any part thereof.

ORDINANCE NO. 2325

AN ORDINANCE AMENDING CHAPTER II, ENTITLED “ANIMAL CONTROL AND REGULATION” OF THE PRAIRIE VILLAGE MUNICIPAL CODE BY REPEALING THE EXISTING CHAPTER II AND REPLACING IT WITH A NEW CHAPTER II

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

Section 1. Chapter II of the of the Prairie Village Municipal Code entitled “Animal Control and Regulation” is hereby amended by repealing Chapter II and enacting in lieu thereof a new Chapter II to read as follows:

CHAPTER II. ANIMAL CONTROL AND REGULATION

ARTICLE 1. GENERAL PROVISIONS

2-101 PURPOSE

The purpose of this chapter is to promote harmonious relationships in the interaction between man and animal by:

- (a) Protecting animals from improper use, abuse, neglect, exploitation, inhumane treatment and health hazards;
- (b) Delineating the responsibility of the animal’s owner, keeper, or harbinger for the acts and behavior of his or her animal at all times;
- (c) Providing regulations that foster a reduced risk to residents from annoyance, intimidation, injury and health hazards by animals; and
- (d) Encouraging responsible pet ownership.

2-102 DEFINITIONS

- (a) Abandon includes the leaving of an animal by its owner or other person responsible for its care or custody without making effective provisions for its proper care.
- (b) Animal is any living creature, other than humans.
- (c) Animal Bite is any contact between an animal’s mouth, teeth, or appendages and the skin of a bite victim that causes any visible puncture, scratch or break to the skin
- (d) Animal Control Officer is a duly authorized person employed by the City who is charged with the duties of enforcing this chapter and/or related ordinances.
- (e) At-large is to be off the owner’s property, except when the animal is taken off the owner’s property on a leash, in a cage, or other conveyance.
- (f) City or “The City” is a reference to the City of Prairie Village, Kansas and its corporate limits.

- (g) Confined to the Premises applies to Chapter II regarding Dangerous Animals; Permits, Provisions and/or Requirements to Keep Dangerous Animal(s); Animal Bite Procedures; and/or Disease Control. When used in Chapter II, “Confined to the Premises” means confined or restricted either inside the residential structure of the owner, keeper or harborer; or if outside the residential structure, confined or restricted to the backyard of the premises by being physically restrained on a chain or leash or within a suitable fence or other proper method of physical restraint from which the animal cannot escape.
- (h) Dangerous Animal shall include:
 - (1) Any animal, which is wild by nature and of a species which, due to size, vicious nature or other characteristics, would constitute a danger to human life, physical well-being, or property, including but not limited to lions, tigers, leopards, panthers, bears, wolves, wolf hybrids, apes, gorillas, monkeys of a species whose average adult weight is 20 pounds or more, foxes, elephants, alligators, crocodiles, and snakes which are poisonous or otherwise present a risk or serious physical harm or death to human beings as a result of their nature or physical makeup, including all constrictors;
 - (2) Any other animal that is determined to be a dangerous animal by the Animal Control Officer or the Chief of Police. Factors to be considered in this determination are: At the time of any bite or attack, did the person or domestic animal so bitten have permission to be on the property of the person who owns or harbors such animal? Does the animal have a known propensity, tendency or disposition to attack, cause injury to, or otherwise threaten the safety of human beings or domestic animals? Has the animal aggressively bitten, attacked, endangered, or inflicted severe injury on a human being on public or private property? Does the animal have any prior history of bites or attacks?
 - (3) Any animal owned or harbored primarily or in part for the purpose of fighting, or any animal trained for fighting.
- (i) Domesticated Cat or Dog is a cat or dog that tends to possess reliability of temperament, tractability, docility, predictability and trainability, and has adapted to life among humans.
- (j) Harborer is any person who provides food and shelter for any domesticated animal.
- (k) Impound means taking any animal into the confinement, care, or custody of the City.
- (l) Owner is the keeping or harboring of any animal referred to in this chapter. Any person keeping any animal in the City for three consecutive days shall be conclusively presumed to be the owner of such animal.
- (m) Person is any natural person, association, firm, partnership, organization, or corporation.
- (n) Service / Work Dog is any guide dog, signal dog or other dog that is individually trained to do and is doing the work of performing tasks for the benefit of an individual with a disability, or a dog that is utilized by law enforcement personnel.
- (o) Vicious Bite is any unprovoked attack by any animal, which results in *serious physical injury or death to a human and/or other domestic animal* in which the attacking animal uses its teeth and/or claws.

2-103 AUTHORITY TO DETERMINE AN ANIMAL TO BE DEEMED DANGEROUS

- (a) Where City records indicate a dog or cat has attacked or bitten any person and/or domestic animal without provocation, all known facts shall be considered in determining whether the dog or cat is a “dangerous animal”. The Animal Control Officer or the Chief of Police of the City shall have the authority to determine whether or not any animal in the City should be classified as a “dangerous animal.” Factors to consider in making this determination are: At the time of the bite or attack, did the person or domestic animal so bitten have permission to be on the property of the person who owns or harbors such dog or cat? Does the cat or dog have a known propensity, tendency or disposition to attack, cause injury to, or otherwise threaten the safety of human beings or domestic animals? Has the cat or dog aggressively bitten, attacked, endangered, or inflicted severe injury on a human being on public or private property? Does the cat or dog have any prior history of bites or attacks?
- (b) A dog or cat that has been adjudicated by another governmental jurisdiction based on its behavior to be dangerous, vicious or a comparable designation shall not be relocated to Prairie Village. Animal Control will evaluate pending requests to ensure the designation was based on equivalent factors by definition.
- (c) The Animal Control Officer or the Chief of Police is authorized to permanently remove or euthanize animal(s) in cases of severe injury and/or viciousness. This measure is only allowed when the risk factors associated to unpredictability and aggressive behavior necessitates this decision to ensure public welfare is not endangered.

2-104 KEEPING OF LIVESTOCK, POULTRY, AND FOWL PROHIBITED

- (a) It shall be unlawful for any person to own, keep or harbor livestock, poultry or fowl on any premises within the City and no special or temporary permit will be issued for these. For the purpose of this section, livestock, poultry, and fowl include, but are not limited to: cows, pigs, horses, donkeys, mules, sheep, goats, chickens, ducks, geese, guinea fowl, peacocks, pigeons, swans and those animals considered miniature or pygmy breeds, e.g., pot-bellied pigs, miniature donkeys, miniature horses, and pygmy goats.
- (b) The following persons or organization shall be allowed to own, harbor, or have charge, custody, control or possession of any livestock, poultry and fowl:
 - (1) The keeping of such animals in zoos, bona fide educational or medical institutions, museums or any other place where there are kept live specimens for the public to view or for the purpose of instruction or study;
 - (2) The keeping of such animals for exhibition to the public of such animals by a circus, carnival or other exhibit or show;
 - (3) The keeping of such animals in a bona fide, licensed veterinary hospital for treatment; and
 - (4) Commercial establishments processing such animals for the purpose of sale or display.

2-105 HARBORING OR KEEPING OF ANIMALS

- (a) No person shall keep, harbor or allow to be kept without a permit, as described in this chapter, any dangerous animal(s) or any safe animal. The following animals are the only animals allowed without a permit with the exception of cat(s) and dog(s), which if deemed as a dangerous animal, then a permit is required for said cat or dog:
 - (1) Domestic dog (*Canis familiaris*);
 - (2) Domestic cat (*Felis domesticus*);
 - (3) Gerbils (*Tateriltus gracillio*);
 - (4) Hamsters (*Critecus critecus*);
 - (5) Rabbits (*Lepus Cunicullus*);
 - (6) Domestic Mice (*Mus musculus*);
 - (7) Domestic Rat (*Rattus norvegicus*), and
 - (8) Any animal, usually tame and commonly sold at pet stores, including: Ferrets (*Mustela furo*), Chinchillas (*Chinchillidae*), Canaries (*Serinus canaria*), Cockatoos, Macaws, Parakeets, and Parrots (*Psittacines*).
- (b) Any person who harbors any animal without a permit, except as exempted by this section, shall be charged with a misdemeanor and upon conviction thereof, shall be subject to the penalties in section 2-146.

2-106 PIT BULL DOG – KEEPING PROHIBITED

It shall be unlawful to keep, harbor, own or in any way possess within the corporate limits of the City of Prairie Village, Kansas, any pit bull dog. Pit bull dog for the purposes of this chapter shall include:

- (a) The Staffordshire Bull Terrier breed of dog;
- (b) The American Pit Bull Terrier breed of dog;
- (c) The American Staffordshire Terrier breed of dog, or
- (d) Any dog having the appearance and characteristics of being predominately of the breeds of Staffordshire pit bull terrier, American pit bull terrier, American Staffordshire bull terrier; or a combination of any of these breeds.

2-107 UNLAWFUL TO HARBOR OR KEEP ANY ANIMAL WITHOUT PROPER AND NECESSARY PRECAUTIONS

- (a) Any person who owns, harbors, or keeps any animal within the City shall take all proper and necessary precautions to ensure and promote conditions that restrict the animal to the owner's property and prevent injury to other humans, domestic animals and/or damage to property.
- (b) It is unlawful for the owner or harborer of any animal to negligently, carelessly, willfully or maliciously permit such animal to cause a disturbance of peace or permit such animal to create a noise disturbance so as to constitute a disturbance of the peace.
- (c) No owner, keeper or harborer of an animal shall fail to provide the animal with adequate care, adequate food, adequate water, adequate health care, and adequate shelter. Such shelter should be clean, dry, and compatible with the condition, age and species. An

animal must also have the opportunity for adequate daily exercise. This requires that an owner or harbinger must offer some freedom from continuous chaining and tethering.

2-108 PUBLIC NUISANCE

- (a) A Public Nuisance is any animal that:
 - (1) Molests or chases vehicles or persons;
 - (2) Damages private or public property;
 - (3) Scatters refuse that is bagged or otherwise contained, or
 - (4) Excessively barks, whines, howls, or creates any other disturbance which is continuous or untimely (disturbance factors include, but not limited to, time of day, volume, length of time, etc.). If the violation is not witnessed by the Animal Control Officer and/or Law Enforcement Officer, the complainant making such statement must agree to sign a complaint and testify in court if requested.
- (b) It is unlawful for the owner or harbinger of any animal to negligently, carelessly, willfully or maliciously permit such animal to become a public nuisance.
- (c) Anyone having the authority of an Animal Control Officer, including but not limited to Law Enforcement Officers, is given the authority to seize and impound any animal which is a public nuisance as defined by this section.

2-109 CRUELTY TO ANIMALS

Shall be defined as:

- (a) Intentionally killing, injuring, maiming, torturing, mutilating, beating, or overworking any animal; this includes, but is not limited to, administering any poisonous substance with the intent that the same shall be taken or swallowed by any animal;
- (b) Acting or failing to act when the act or failure to act causes or permits pain or suffering to such animal;
- (c) Abandoning or leaving any animal in any place or releasing or dumping an animal from a vehicle without making provisions for its proper care; in addition, "abandon" means for the owner or keeper to leave an animal without demonstrated or apparent intent to recover or resume custody; to leave an animal for more than twenty-four hours without providing adequate food and shelter for the duration of the absence; or to turn out or release an animal for the purpose of causing it to be impounded;
- (d) Failing to provide adequate care, adequate food, adequate health care, adequate shelter, or adequate water; or
- (e) Failing to provide veterinary care when needed to treat injury or illness unless the animal is promptly destroyed in a humane manner.

The provisions of this section shall not apply to:

- (1) Normal or accepted veterinary practices;
- (2) Bona fide experiments carried on by recognized research facilities;
- (3) Killing, attempting to kill, trapping, catching or taking of any animal in accordance with the provisions of chapter 32 or chapter 47 of the Kansas Statutes Annotated;
- (4) Rodeo practices accepted by the Rodeo Cowboys' Association;

- (5) The humane killing of an animal which is diseased or disabled beyond recovery for any useful purpose, or the humane killing of animals for population control, by the owner thereof or the agent of such owner residing outside of a City or the owner thereof within a City if no animal shelter, pound or licensed veterinarian is within the City, or by a licensed veterinarian at the request of the owner thereof, or by any officer or agent of any incorporated humane society, the operator of an animal shelter or pound, public health officer or licensed veterinarian three business days following the receipt of any such animal at such society, shelter or pound;
- (6) With respect to farm animals, normal or accepted practices of animal husbandry;
- (7) The killing of any animal by any person at any time which may be found outside of the owned or rented property of the owner or custodian of such animal and which is found injuring or posing an immediate threat to any person, farm or domestic animal or property, or
- (8) An animal control officer trained in the use of a tranquilizer gun, using such gun with the estimated dosage for the size of the animal, when such animal is vicious or could not be captured after reasonable attempts using other methods.

2-110 AUTHORITY OF ANIMAL CONTROL OFFICER OR LAW ENFORCEMENT OFFICER TO RESCUE AN ENDANGERED ANIMAL

- (a) Whenever an animal is found confined and/or unattended in a motor vehicle or other location, which subjects it to certain weather conditions that endangers its life as determined by the Animal Control Officer or Law Enforcement Officer, the Animal Control Officer may enter such vehicle or property with the assistance from the police for the purpose of rescuing such animal, and transporting it to a shelter house designated by the Governing Body for treatment, boarding, or care. A written notice shall be left on or in the motor vehicle or other applicable property advising that the animal has been removed under authority of this section and the location where the animal has been impounded.
- (b) Nothing in this section shall be deemed to prevent the Animal Control Officer or Law Enforcement Officer from entering upon property without consent when the condition or animal is found in plain sight and not within a private structure or under conditions constituting an emergency.
- (c) No Animal Control Officer or Law Enforcement Officer shall be held criminally or civilly liable for action under this section, provided the officer acts lawfully, in good faith, on probable cause and without malice.

2-111 REGISTRATION – TAGS

The owner of any dog and/or cat, which is harbored or kept within the City, shall cause the same to be registered at the office of the City Clerk. The registration shall contain the name, address and phone number of the animal's owner, the animal's breed, name, sex, whether neutered, color and description and such other information as may be deemed necessary by the City Clerk. Subject to the provisions of section 2-115, the City Clerk or authorized assistant shall upon

payment of the license fee as provided in section 2-112, issue a permanent tag, bearing a number and Prairie Village, KS.

2-112 LICENSE FEE – DESIGNATED

- (a) In addition to any permit fees required by this chapter, there is a levied and imposed annual license fee upon the owner of each dog and cat of the age of over six months, attaining such age during the license year. The license fee shall be adopted by the Governing Body and the amount of the fee will be kept on record in the office of the City Clerk.
- (b) The license year shall be for a twelve (12) month period commencing on the date the animal is first licensed. The license is valid for one year from issuance of license or until the expiration of rabies vaccination whichever is greater. The fee shall be payable within 60 days of the expiration of the license. An animal for which a licensed fee is required as set forth in this section; over six months of age should be licensed within thirty days of being brought into the City or attaining six months of age.

2-113 LICENSE FEE – OVERDUE

- (a) If the license fee required in section 2-112 is not paid within the time provided in this section, penalties will apply in addition to the normal license fee. The amount and dates penalty will be charged shall be adopted by the Governing Body and on record in the Office of the City Clerk.
- (b) After 60 days after the due date, if the fee imposed and required to be paid by section 2-112 remains unpaid, the City Clerk shall issue a complaint against the owner, keeper or harbinger for violation of section 2-111.

2-114 LICENSE FEE – EXEMPTIONS

Any person owning, keeping, or harboring a service/work dog shall be exempt from the license fee payment upon submittal of adequate proof that the dog is fully trained as a service/work dog and is current for the year on its rabies vaccination.

2-115 INOCULATION AGAINST RABIES REQUIRED

- (a) No City license tag required by this section shall be issued until the owner or harbinger of a dog or cat shall furnish to the City Clerk a current inoculation certificate signed by a registered veterinarian, showing thereon that the dog or cat has been vaccinated against rabies. The inoculation certificate shall be deemed current if it has not expired before the owner or harbinger submits it to the City along with the application for license.
- (b) It shall be the responsibility of the owner or harbinger of the dog or cat to ensure that the animal's inoculation against rabies is maintained throughout the license period.

2-116 COLLAR OR HARNESS REQUIRED

The owner of any dog or cat shall cause the same to wear a collar or harness outside the dwelling of the owner or harborer. The tag required in section 2-111 shall be securely affixed to the collar or harness of each dog and cat registered. The tags shall be situated on the collar or harness in such a manner that it may at all times be easily visible to Law Enforcement Officers or Animal Control Officers of the City. Replacement tags shall be issued for a fee which is recorded in the City Clerk’s office and may be changed from time to time.

2-117 PERMIT REQUIRED FOR DANGEROUS ANIMALS

- (a) Permits allowing persons to own, harbor or have possession of a dangerous animal shall be issued only for domestic cats and domestic dogs, subject to the provisions of this chapter.
- (b) No person owning, harboring or having charge, custody, control or possession of any dangerous animal shall allow such animal to remain within the City unless and until he/she has first secured and renewed a permit in accordance with this chapter to do so and complies with all terms and conditions of such permit; and, in addition thereto, such animal shall at all times be so confined, controlled and restrained in such a manner so the life, limb or property of any person lawfully entering into premises shall not be endangered.
- (c) Failure to obtain a permit as required by subsection (b), after written notification by any Animal Control Officer or Law Enforcement Officer, shall be adequate grounds for the officer to impound the animal until a permit is obtained. If no permit is obtained within five days of receipt of such notice and no appeal is pending, the animal will be subject to destruction or removal from the City in the manner provided in section 2-133.
- (d) The following persons or organization shall be allowed to own, harbor, or have charge, custody, control or possession of any dangerous animal without securing permit as required by this chapter:
 - (1) The keeping of such animals in zoos, bona fide educational or medical institutions, museums or any other place where there are kept live specimens for the public to view or for the purpose of instruction or study;
 - (2) The keeping of such animals for exhibition to the public of such animals by a circus, carnival or other exhibit or show;
 - (3) The keeping of such animals in a bona fide, licensed veterinary hospital for treatment;
 - (4) Commercial establishments processing such animals for the purpose of sale or display.

2-118 EXEMPTIONS

The provisions of this section shall not apply to the transportation of dangerous animals through this City when such transport has taken adequate safeguards to protect the public and has notified the local law enforcement agency of the proposed route of transportation and the time thereof.

2-119 ISSUANCE OF PERMIT

No person shall have, keep, maintain or have in his/her possession or his/her control within the City any dangerous animal without first applying to and receiving a permit from the City Clerk as hereinafter provided. No permit shall be granted except with such conditions attached as shall, in the opinion of the person or agency approving such permit, reasonably ensure the public health, safety and general welfare, and in any event no permit shall be granted for any animal at any particular location except upon an explicit finding by an Animal Control Officer or a Law Enforcement Officer that the issuance thereof will not be contrary to the public health, safety and general welfare.

2-120 APPLICATION FOR PERMIT

An application for any permit required pursuant to this chapter shall be made to the City Clerk in writing upon a form furnished by the City Clerk. Said application shall be verified by the person who desires to have, keep, maintain or have in his/her possession or under his or her control, in the City, the animal for which a permit is required, and shall set forth the following:

- (a) Name, address and telephone number of the applicant
- (b) The applicant's interest in such animal;
- (c) The proposed location, and the name, address and telephone number of the owner of such location, and of the lessee, if any;
- (d) The number and general disposition of all animals for which the permit is being sought;
- (e) Any information known to the applicant concerning vicious or dangerous propensities of said animals;
- (f) Housing arrangements for all said animals with particular details as to the safety, structure, locks, fences, warning sign, etc.
- (g) Safety precautions proposed to be taken;
- (h) Noises or odors anticipated in the keeping of such animals;
- (i) Prior history of incidents involving the public health or safety involving any of said animals;
- (j) Proof of liability insurance in the minimum amount of \$500,000 per occurrence covering any damage or injury which may be caused by such dangerous animal. The City shall be listed as certificate holder, and shall be required to be notified of any cancellation, termination or expiration of the liability insurance policy. The owner shall maintain the liability insurance required by this subsection at all times, unless and until the owner shall cease to own the dangerous animal.
- (k) A statement, signed by the applicant, indemnifying the City and its agents and employees for any and all injuries that may result from the animal;
- (l) Any additional information required by the Animal Control Officer or Law Enforcement Officer authorized by the Governing Body to enforce the provisions of this chapter at the time of filing such application or thereafter.
- (m) When a permit is issued in accordance with this chapter and it is for a cat, the requirement(s) will include, but not be limited to such cat being confined within the residential structure at all times, except when secured on a leash or in a carrier and while on the cat owner's property or for transport to the veterinarian.

2-121 PROVISIONS AND/OR REQUIREMENTS FOR KEEPING A DANGEROUS ANIMAL

The keeping of dangerous animals in the City shall be subject to, but not be limited to the following provisions and/or requirements:

- (a) Leash and muzzle. A dog that is a dangerous animal and is kept in this City will be required to be securely leashed with a leash no longer than four feet in length and be muzzled by a muzzling device sufficient to prevent such dog from biting persons or other animals when it is taken outside of its area of confinement.
- (b) Confinement. All dangerous animals shall be securely confined indoors or in a securely enclosed and locked pen or kennel; or in a fenced yard, except when leashed and muzzled as above provided. Such pen, kennel or structure must have secure sides and a secure top attached to the sides. All structures used to confine dangerous animals must be locked with a key or combination lock when such animals are within the structure. All such structures must be adequately lighted and ventilated and kept in a clean and sanitary condition.
- (c) Confinement indoors. No dangerous animal may be kept on a porch, patio or in any part of a house or structure that would allow the animal to exit such building on its own volition. In addition, no such animal may be kept in a house or structure when the windows are open or when screen windows or screen doors are the only obstacles preventing the animal from exiting the structure.
- (d) Signs. All owners, keepers or harborers of a dog that is a dangerous animal must display in a prominent place on their premises a sign easily readable by the public using the words "Beware of Dog." In addition, a similar sign is required to be posted on the kennel or pen of such animal, and on the fence gates of fences that will be used to confine the dog.
- (e) Identification Photographs. All owners, keepers, or harborers of a dangerous animal must provide to the City Clerk two color photographs of such animal clearly showing the color and approximate size of the animal.
- (f) Microchip Identification. The owner, keeper or harborer of a dangerous dog must have a microchip implanted in the dog for identification, and the name of the microchip manufacturer and the identification number of the microchip must be provided to the City Clerk.
- (g) Mandatory Spay and Neuter. All dangerous dogs shall be required to be spayed or neutered.
- (h) Training. All dangerous dogs shall be required to be enrolled in a behavior modification program administered by a licensed animal behaviorist. Upon successful completion of said program, verification must be provided to the City Clerk.
- (i) Reporting requirements. All owners, keepers or harborers of dangerous animals must within ten days of the incident, report the following information in writing to the Prairie Village City Clerk as required hereinafter:
 - (1) The removal from the City or death of such animal. If the animal is removed from the City, the new owner contact information must be provided.
 - (2) The birth of offspring of such animal.

- (3) The new address of such animal's owner should the owner move within the corporate City limits.
- (j) Sale or Transfer of Ownership Prohibited. No person shall sell, barter or in any other way dispose of a dangerous animal to any person within the City unless the recipient person resides permanently in the same household and on the same premises as the registered owner of such animal; provided that the registered owner of such animal may sell or otherwise dispose of such animal to persons who do not reside within the City.

2-122 PERMIT FEE

The fee for a permit application shall be adopted by the Governing Body and on record in the Office of the City Clerk. The fee will be based upon the number of dangerous animals and be non-refundable. The fee shall be payable to the City Clerk at the time of application. Accretions by natural birth shall not require additional permits during the period of a valid permit.

2-123 TERM OF RENEWAL OF PERMIT

No permit required by this chapter shall be granted for a period in excess of one year. An application for renewal of any permit shall be made not less than forty-five days prior to the expiration thereof, and shall be accompanied by the same fee as required upon making the original application.

2-124 INSPECTIONS FOR RENEWAL

Prior to the annual renewal of any permit issued hereunder, an Animal Control Officer or Law Enforcement Officer shall inspect the premises subject to such permit to determine whether the person to whom it has been issued is continuing to comply with all of the conditions specified in this chapter and also reassess the animal that is subject to the permit. If the Animal Control Officer or Law Enforcement Officer determines during any such inspection that any of the conditions therein specified are being violated, the officer shall recommend denial of a renewal of any such permit or shall recommend revocation of such permit in the event that such violation is not corrected within such period of time as the officer shall direct. Additionally, if the Animal Control Officer or Law Enforcement Officer determines that the animal subject to the permit should no longer be deemed a dangerous animal, it shall be documented in a written report, which shall be reviewed by the Chief of Police. The owner of such animal will be notified if and when their animal is no longer deemed a dangerous animal.

2-125 TEMPORARY PERMITS FOR DANGEROUS ANIMALS – POWERS OF ANIMAL CONTROL OFFICER OR CHIEF OF POLICE

An Animal Control Officer or Chief of Police may, following application for a permit and pending final disposition of the same, grant a temporary permit for the maintenance within the City of any such animal upon such conditions as he or she shall, in his or her sole discretion, require when, in his or her opinion, there is no reasonable doubt as to the consistency thereof with the public health, safety and general welfare, that no such animal shall be otherwise kept or maintained within the City or permitted to occupy any premises within the City, except while

such a regular or temporary permit is in full force and effect; provided, however, that any Law Enforcement Officer or Animal Control Officer shall take possession of any dangerous animal for which a permit has not been issued and keep the same until the proper permit has been secured by the owner or keeper thereof and shall release the same to the owner or keeper when all fees and costs have been paid and all laws and permit conditions complied with.

2-126 REVOCATION OF PERMITS

The City Clerk, upon recommendation of an Animal Control Officer or any Law Enforcement Officer, may, for good cause, revoke any permit or modify any terms or provisions thereof and may, in the event it is reasonably necessary to protect against an immediate threat or danger to the public health or safety, suspend any permit or portion thereof without hearing, for a period not to exceed thirty days. Failure to comply with any of the provisions of this chapter shall be sufficient grounds for revocation.

2-127 APPEALS – FEES

- (a) Any person aggrieved by or dissatisfied with any of the following decisions, rulings, actions or findings may, within ten days thereafter, file a written notice or statement of appeal from said decision, ruling, action or finding to the Governing Body.
 - (1) The determination by the Animal Control Officer or the Chief of Police that an animal is a “dangerous animal” under section 2-102;
 - (2) The denial of a permit required under sections 2-117 and 2-119;
 - (3) The denial of a renewal of a previously issued permit required under section 2-123;
 - (4) The revocation of a previously issued permit under section 2-126, and
 - (5) The temporary suspension of any permit or portion thereof under section 2-125; provided, however, that the filing of an appeal under this subsection shall not stay such order or temporary suspension.
- (b) In exercising the appeal function, the Governing Body shall have the authority to grant or deny said appeals and also include but not be limited to matters of animal welfare and control.
- (c) An administrative fee shall be adopted by the Governing Body and be on record in the office of the City Clerk. The administrative fee shall be paid to the City Clerk and is required for each appeal to the Governing Body, and no appeal shall be placed on the agenda of any meeting of the Governing Body until such fee has been paid.

2-128 ENUMERATION OF ANIMALS

The Governing Body may require the annual enumeration of all dogs and cats owned within the City. The enumeration shall account for the number and ownership of all dogs and cats. For purposes of determining whether or not a person owns, keeps or harbors any animal referred to in this chapter, it shall be conclusively presumed that any person keeping any animal in the City for three consecutive days shall be conclusively presumed to be the owner of such animal.

2-129 LIMITATIONS ON NUMBER OF ANIMALS

No person, residential premises or household within this City shall have, hold, maintain or contain more than a combined total of four dogs and cats over three months of age; provided, however, that in no event shall the combination of dogs or cats exceed three dogs or three cats. Any violation of this section is, upon conviction thereof, a misdemeanor and subject to the penalties provided in this chapter.

2-130 DOG AND CAT CONTROL

- (a) All cats must be under the control of their owner, keeper or harbinger at all times. For the purpose of this Section, a cat shall be considered not under control and in violation of this Section in the following situations:
 - (1) If a neighbor complains orally or in writing to the owner, keeper or harbinger of a cat, that the cat is entering upon the neighbor's property, then the cat's presence on the neighbor's property at any time subsequent to the neighbor's complaint shall constitute a violation of this Section;
 - (2) If a cat causes injury to persons or animals.
 - (3) If a cat causes damage to property off its owner's, keeper's or harbinger's property to include, but not limited to, breaking, bruising, tearing up, digging up, crushing or injuring any lawn, garden, flower bed, plant, shrub or tree in any manner or defecating or urinating upon any private property.
- (b) It is unlawful for the owner, keeper or harbinger of any dog to permit such dog to run at large within the City. For the purpose of this Section, a dog shall be considered running at large and in violation of this Section in the following situations:
 - (1) If a dog is off the owner's, keepers or harborers property and is not firmly attached to a hand-held leash and under the physical control of its owner, keeper or harbinger. Electronic collars may not be used to control a dog when it is off its owner's, keepers or harborers property.
 - (2) If a dog is off the owner's, keepers or harborers property and is not prevented from making uninvited contact with humans or others animals. This includes a situation when a dog is secured on a leash.
- (c) It is lawful for any Law Enforcement Officer or other person designated by the Governing Body to pursue and capture same; provided, further, however, that no such dog shall be held to be running at large when said dog is merely passing along or through such property while in a cage or other conveyance.

2-131 ELECTRONIC FENCES AND ELECTRONIC COLLARS

Dogs may be confined to the residential property of their owner by an electronic fence or an electronic collar. An electronic fence or electronic collar is defined as a fence or collar that controls the movement of the dog by emitting an electrical shock when the animal wearing the collar nears the boundary of the owner's property. Dogs confined to residential property by an electronic fence or collar shall at all times be required to wear the collar or other required device which must be functional, and shall not be permitted to be nearer than 10 feet from any public walkway or street. All owners who use an electronic fence or an electronic collar shall clearly

post their property to indicate to the public that such a fence or collar is in use. Electronic collars may not be used to control a dog when it is off its owner's property. An electronic fence or electronic collar shall not be used to confine a dangerous dog.

2-132 TETHERING

- (a) It is unlawful to attach chains or other tethers, restraints or implements directly to a dog without the proper use of a collar, harness or other device designed for that purpose and made from a material that prevents injury to the dog.
- (b) It is unlawful for any person to:
 - (1) Continuously tether a dog for more than one continuous hour. A dog may be tethered 3 hours total within a 24 hour time period providing there is a 3 hour break between each period of tethered time. For the purpose of tethering a dog, a chain, leash, rope or tether must be at least ten feet in length.
 - (2) Use a chain, leash, rope, collaring device, tether, which restricts the free movement of the animal (i.e. the device should not weigh more than one-eighth of the animal's body weight).
 - (3) Tether a dog in such a manner as to cause injury or strangulation, or entanglement of the dog on fences, trees, posts or other manmade or natural obstacles.
 - (4) Tethered for any length of time anywhere in the City when they are off the owners, keepers or harborer's property.
 - (5) Tether without providing adequate care, food, shelter, and water as outlined in sections 2-107 and 2-109.

2-133 SEIZURE

- (a) Any Animal Control Officer, Law Enforcement Officer or other person designated by the Governing Body of the City is authorized to capture any dog found running at large in violation of section 2-130 and any cat which is not under control as defined in section 2-130 and place them in a shelter house designated by the Governing Body for that purpose. If the owner or harborer of any such dog or cat does not redeem the same within five days after such impounding by the payment to the City Clerk then such dog or cat shall be disposed of in some humane manner as provided in section 2-135. If such animal is to be redeemed, the owner or harborer must make payment to the animal shelter prior to receiving their pet. In addition to or in lieu of seizing the dog or cat, an Animal Control Officer or Law Enforcement Officer of the City may charge said owner or harborer for being in violation of section 2-130.
- (b) An Animal Control Officer or Law Enforcement Officer shall forthwith cause to be seized and impounded any dangerous animal, where the person owning, keeping or harboring any such animal has failed to comply with the notice sent pursuant to section 2-134. Upon seizure and impoundment, said animal shall be delivered to a place of confinement, which may be with any organization, which is authorized by law to accept, own, keep or harbor such animals.
- (c) If during the course of seizing and impounding any such animal, the animal poses a risk of serious physical harm or death to any person, or the animal is considered a dangerous animal by the Animal Control Officer or any Law Enforcement Officer, they may render

- said animal immobile by means of tranquilizers or other safe drugs; or if that is not safely possible, then said animal may be destroyed.
- (d) Any reasonable costs incurred by an Animal Control Officer or Law Enforcement Officer in seizing, impounding, confining or disposing of any dangerous or wild animal, pursuant to the provisions of this section, shall be charged against the owner, keeper or harborer of such animal and shall be collected by the City Clerk.
 - (e) Whenever an Animal Control Officer or Law Enforcement Officer seizes and impounds any such animal under the provisions of this section, the officer shall attempt to notify the owner of such animal of the seizure, however, such notice attempt shall be required only if the animal is wearing a valid and updated registration tag or, in the case of a dangerous animal, the animal is seized on the owner's property. Such notice should be in writing and should be delivered to the owner's residence within three days of seizure of the animal. The notice shall state the reasons for seizure and impoundment. Notice attempt may also include the leaving of voice message(s) on the listed phone of the animal's owner, keeper or harborer.
 - (f) After receipt of such notice as described in subsection (e) of this section, the owner of any animal, which has been seized and impounded, is entitled to request a hearing before the Governing Body by filing written request for hearing with the City Clerk. The purpose of this hearing shall be to determine whether probable cause existed to seize and impound the animal. Request for this hearing must be made within five days of receipt of the notice of seizure and impoundment, or the hearing shall be waived. If a hearing is requested, it shall be held within ten days from the filing of the request. If, at such hearing, the Governing Body finds that no probable cause existed for such seizure and impoundment, the animal shall be released, no fees or costs for care of the animal shall be assessed against its owner, and the City shall pay the costs accrued in boarding the animal.
 - (g) The owner, keeper or harborer of any animal who has been found to have violated this section or section 2-129 of this chapter, which animal is not properly licensed by the City, may be assessed an additional penalty the amount of which shall be determined by resolution by the Governing Body on file with the City Clerk.

2-134 NOTICE OF KEEPING DANGEROUS ANIMALS

Upon the written or verbal complaint of any person that a person owns or is keeping or harboring a dangerous animal in violation of this chapter in the City, an Animal Control Officer or Law Enforcement Officer shall forthwith cause the matter to be investigated; and if after investigation the facts indicate that such person named in the complaint is in fact the owner or is keeping or harboring any such "dangerous animal" in the City as finally determined by the Animal Control Officer or the Chief of Police without a proper permit, the officer shall forthwith notify such owner, keeper or harborer in writing requiring such person to safely remove said animal from the City within three days of the date of the notice. Notice as herein provided shall not be required where such dangerous animal has previously caused serious physical harm or death to any person or who has escaped and is at large, in which case the Animal Control Officer or Law Enforcement Officer shall cause said animal to be immediately seized and impounded, or destroyed if seizure or impoundment are not possible without risk of serious physical harm or

death to any person. The Animal Control Officer may exercise discretion by allowing such person up to ten days to safely remove said animal, provided no urgency is apparent.

2-135 DESTRUCTION OR REMOVAL FROM CITY OF CERTAIN ANIMALS

- (a) When City records indicate that a particular dog or cat has committed two or more vicious bites, as defined in section 2-102, the dog or cat shall be deemed a threat to public safety, except that it shall be a defense to such a finding that the person or domestic animal so bitten was on the property of the person who owns or harbors said dog or cat at the time of the bite or attack and did not have consent to be on the owner's property. Any Animal Control Officer or Law Enforcement Officer shall upon notification of a dog or cats second vicious bite, cause the animal to be seized. If no post-seizure hearing has been requested, the animal shall be destroyed or permanently removed from the City. The decision of whether to destroy said animal or remove it from the City shall be in the sole discretion of the Animal Control Officer or the Chief of Police.
- (b) Law Enforcement Officers or Animal Control Officers of the City or anyone having the authority of an Animal Control Officer, as designated by the Mayor or Chief of Police, may kill any animal without notice to the owner thereof whether it bears the tag provided for in this chapter or not if such animal is deemed by said officer to pose a risk of serious physical harm or death to persons or is injured severely with no apparent chance of survival, or is in such pain as to warrant humane destruction. When it is known that such animal has bitten or scratched a person or domestic animal, then the remains of that animal so destroyed shall be preserved by officers, to permit a test to be conducted for rabies.

2-136 PROCEDURE FOR FAILURE TO REDEEM

Any animal captured or apprehended under the terms and conditions of this chapter and for which no appeal under section 2-127 is pending shall be held for a period of five days and disposed of in a humane manner as shall from time to time be determined by the Governing Body of the City.

2-137 PRESENTATION OF ANIMAL

The owner, keeper or harbinger of any dog or cat shall physically produce the animal for observation, identification or inspection when requested to do so by an Animal Control Officer or Law Enforcement Officer investigating a violation of the animal control and/or welfare laws of the City, provided the officer has probable cause to believe a crime or violation of the animal control laws has been committed. Failure to do so is a violation of this section.

2-138 DUTY TO REPORT ANIMAL BITES AND SCRATCHES

When any animal, while within the City limits of Prairie Village, has bitten or attacked any person or domestic animal and has caused a break to the skin, or when an animal is suspected of having rabies; it shall be the duty of any person having knowledge of such facts to report the

same immediately, or as soon as practicable, to the Police Department or the Animal Control Officer.

2-139 ANIMAL BITE PROCEDURE

- (a) Except as provided in subsection (e) of this section, an animal which bites or otherwise so injures a person as to cause an abrasion of the skin shall immediately, or as soon as practicable, be quarantined at the owner's expense with a licensed veterinarian of the owner's choice or with the City's impounding agent for a period of not less than ten days nor more than twelve days.
- (b) If the owner, keeper or harbinger of the animal cannot be immediately notified, City personnel shall immediately, or as soon as practicable, impound such animal with a City authorized impounding agent, at the owner's expense, for a period of not less than ten days nor more than twelve days. If the address of the owner of the animal can be determined, the Police Department shall make a reasonable effort to notify the owner that said animal is impounded under the provisions of this section and the owner has the right to redeem the animal at the expiration of confinement upon the payment of pound fees, any veterinarian fees, and any license and penalty fees then due and owing to the City.
- (c) In the event the original place of impoundment is not the choice of the owner, the owner may cause the animal's place of impoundment to be changed to a licensed veterinarian of the owner's choice; provided all other provisions of this chapter are complied with. The total period of confinement of the animal at the one or more locations is to be for a period of not less than ten days nor more than twelve days. Credit for any period the animal remains at large after the bite shall not be given.
- (d) The veterinarian or City-authorized impounding agent with whom the animal is impounded, shall give immediate written notice to the Chief of Police that such animal has been confined and will be confined for not less than ten days no more than twelve days. At the expiration of the aforesaid confinement period, the veterinarian or City-impounding agency shall give immediate written notice to the Chief of Police as to the health of such animal pertaining to the diagnosis of rabies.
- (e) In the event the investigating officer determines that the animal had an effective rabies inoculation, was duly licensed under this chapter at the time of the injury, and the animal was not running at large at the time of the bite, then the animal need not be impounded in accordance with subsection (a) of this section but the following alternative procedure shall be followed:
 - (1) If the injured person, his parent, or guardian desires that the animal be impounded and agrees in writing to pay for its board during the period of impoundment, it shall be so impounded for the period specified in subsection (a) of this section notwithstanding any other provision of this chapter.
 - (2) If the injured party, his parent, or guardian is unwilling to agree in writing to pay for the animal's board during the period of impoundment, the animal shall be permitted to remain confined in the residence or enclosed yard of its owner or keeper; provided no animal shall be allowed to remain on the property of its owner or keeper under this section unless such person signs a written agreement to keep the animal on the property in confinement for the period specified in subsection (a) of this section and further agrees to allow the animal to be

examined periodically to determine its physical condition during the confinement period. At the end of the observation period, the Animal Control Officer may require that a licensed veterinarian examine the animal and furnish written notification to the Animal Control Officer regarding the animal's health. All costs associated with the exam are the responsibility of the owner, keeper or harbinger. If the owner or keeper is unwilling to sign such an agreement, the animal shall be immediately, or as soon as practicable, impounded in accordance with subsection (a) of this section.

- (f) If convicted of a violation of this chapter, the owner, keeper or harbinger of any dangerous animal that bites or otherwise so injures a person causing an abrasion of the skin, shall be punished by a fine of not less than \$100 but not more than \$500.

2-140 DISEASE CONTROL

- (a) When rabies or other communicable diseases associated with animals are known to exist in the community, or when they are known to exist in neighboring communities the Mayor may declare a quarantine of any or all animals. It shall be the duty of the owner of such animal to keep such animal confined to the premises of such owner or keeper and under control. For the purposes of this section, animals are not to be considered confined to the premises of the residential property of their owner, keeper or harbinger if the only restraining device is an invisible electric fence.
- (b) It shall be the duty of all Animal Control Officers or Law Enforcement Officers, or those having the authority of Law Enforcement Officers to enforce such quarantine. The Mayor and Chief of Police shall have a right to deputize school guards and other persons as needed. Such deputized persons need not seize such animals, but shall aid in determining the owner to the end that warrants of arrest can be issued against violating owners.

2-141 REMOVAL OF ANIMAL FECES

- (a) Any person in charge of an animal, when such animal is off the owner, keeper or harbinger's property, shall be responsible for the removal of any feces deposited by such animals on public walks, streets, recreation areas, or private property, and it shall be a violation of this provision for such person to fail to remove or provide for the removal of such feces before the animal leaves the immediate area where such defecation occurred.
- (b) It shall be unlawful for any person to dispose of removed feces by intentionally or recklessly depositing, or causing to be deposited, feces removed pursuant to this section into, upon or about any public place, or any private property without the consent of the owner or occupant of the property.

2-142 REMOVAL OF DEAD ANIMAL

It shall be the responsibility of the owner of a deceased animal to provide for its removal from private property.

2-143 FEES TO GENERAL FUND

All fees, charges and penalties paid to or collected by any officers of the City under or pursuant to the provisions of this chapter shall be paid over to the City Treasurer and credited to the general operating fund.

2-144 ENFORCEMENT

It is the duty of the Animal Control Officer or anyone having the authority of an Animal Control Officer, including but not limited to Law Enforcement Officers, to enforce the terms and provisions of this chapter and the Mayor or the Chief of Police may appoint by and with the consent of the Governing Body some suitable person to be known as an Animal Control Officer whose duties it shall be to assist in the enforcement of this chapter and to work under an immediate supervision and direction of the Police Department. Anyone having the authority of an Animal Control Officer is given the authority to seize any animal found outside the City limits when he/she has reasonable grounds to believe said animal committed any act within the City which is prohibited by the provisions of this chapter or which subjects said animal to seizure if found within the City. Any private person may, upon signed complaint, bring charges against any owner of an animal for the violation of any of the provisions of this chapter.

2-145 BEEKEEPING

Any person keeping bees shall comply with the following:

- (a) Minimize swarming of bees;
- (b) Provide and maintain a source of water located on the premises;
- (c) Maintain no more than two (2) hives per property/lot;
- (d) Hives will be located only within a fenced back yard. The minimum height of fence will be 42 inches. A flyway structure/barrier (shrubbery or fencing) is necessary if the exterior fence is less than 6 feet in height;
- (e) Hives will be maintained at least ten (10) feet from all property lines; and
- (f) Maintain and manage such boxes or hives so as not to create a nuisance by any of the following circumstances: unhealthy condition(s), interfere with the normal use and enjoyment of human or animal life, or interfere with the normal use and enjoyment of any public property or private property of others.
- (g) Remove hives if established guidelines are not maintained as determined by Codes or Animal Control Officers.

2-146 VIOLATION – PENALTY

- (a) Any person who fails to do anything required by this chapter or who does anything prohibited by this chapter is guilty of a violation thereof. Any person convicted of the violation of any provision of this chapter where a specific penalty is not otherwise

prescribed shall be fined not more than five hundred dollars, or imprisoned for more than thirty days, or be both so fined and imprisoned.

- (b) Each day any violation of this chapter to which this penalty applies continues constitutes a separate offense.

2-147 SEVERABILITY

If any section, subsection, subdivision, paragraph, sentence, clause or phrase in this chapter or any part thereof, is for any reason held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this chapter or any part thereof.

Section 2. All ordinances and parts thereof that are inconsistent with any provision of this Ordinance are hereby repealed.

Section 3. This ordinance shall become effective upon approval by the Governing Body of the City of Prairie Village and publication as provided by law.

Approved by the Governing Body of the City of Prairie Village this ____ day of _____, 2015.

Acting Mayor Ashley Weaver

ATTEST:

Joyce Hagen Mundy
City Clerk

APPROVED AS TO FORM:

Catherine P. Logan
City Attorney



Discuss definition of “start of construction” related to the Mission Chateau SUP

BACKGROUND:

At the January 5 City Council Meeting, Councilmember Laura Wassmer requested that an item be added to the next Committee of the Whole agenda to discuss the start of construction related to the Mission Chateau SUP specifically related to condition #4. Condition #4 and the language in question is highlighted below in yellow. A full copy of the SUP Ordinance is attached to this memo.

4. *That the Special Use Permit not have a termination or expiration time established for it; however, if construction has not begun within twenty-four (24) months from the approval of the Special Use Permit by the Governing Body, the permit shall expire unless the applicant shall reappear to the Planning Commission and Governing Body to receive an extension of time prior to the expiration.*

Councilmember Wassmer requested that staff check with other cities regarding this definition. In response, staff visited with other cities regarding this item and researched other sources regarding possible applicable definitions. In general, when visiting with Planning Departments, most cities did not have a general definition of “commencement/start of construction.” Some cities offered that this definition is more commonly found in Development Agreements and/or tied to specific projects. A summary of the information obtained from several cities in Johnson County is provided below.

Lenexa - Offered the following language that is commonly found in Development Agreements:

“If construction of the Project is not commenced (defined to mean vertical construction and not mere site grading) within sixty (60) days after issuance of building permit, unless extended by the City and Developer in writing and thereafter diligently pursued to completion (defined to mean maintaining an active building permit) then, within thirty (30) days of invoice from the City, Developer shall...”

Olathe – Offered that the definition is contained in their Development Ordinances, specifically in the floodplain section. Olathe reported that it would still apply to any new construction.

"Start of Construction" includes substantial-improvements, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition placement, or other improvements were within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slabs or footings, the installation of piles, the construction of columns, any work beyond the stage of excavation, or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling, the installation of streets and/or walkways, excavation for a basement,

footings, piers, foundations, the erection of temporary forms, nor installation on the property of accessory structures, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial-improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

Also offered that in Development Agreements, the definition of commencement of construction is generally tied to a specific development calendar and held to a completion date.

Shawnee – Offered the following language that is found in their Prairie Pines Redevelopment Agreement.

Section 4.01. Commencement. Subject to 9.06, the Project Improvements will be completed in accordance with the Development Schedule. For the purposes of the Development Schedule, commencement of construction shall be defined to mean the commencement of site work. The Developer shall notify the City in writing of the date of that commencement of construction.

Leawood – Offered that the definition would be project specific.

City Bond Counsel – The City’s bond counsel offered the following definition stating that this is typical language used as a starting point for Development Agreements:

“Commencement of Construction” means the occurrence of (1) the Developer has been issued all Permits necessary for the Developer to commence construction of the Project, (2) the issuance by the Developer to the general contractor of a notice to proceed under the principal construction contract and (3) construction of the footings and foundations for the Project.

Prairie Village Shops CID – The following information is contained in the PV Shops CID Document:

Section 2.01. Developer CID Projects....Before commencement of construction of development of any buildings, improvements, structures or other work or improvement included in the Developer CID Projects, the Developer shall obtain any and all permits which may be required by the City and any other governmental agency having jurisdiction as to such construction, development or work.

Section 2.03. Project A Schedule. Subject to Excusable Delays, it is the intention of the parties that Project A be commenced and substantially completed as set for on the Project A Schedule attached as Exhibit F.

Exhibit F. Commencement: within 24 months of full execution of this Agreement

At the October 15, 2012 Council Meeting, the Developer requested an extension to Commencement of Project A. Project A was Mission Lane modifications and did not include construction of any buildings. At that meeting, this term was briefly discussed as it related to the CID project and the meeting minutes from that discussion are attached to this memo.

Definitions from **FEMA**, the **IRS** and **U.S. Census** are also attached for reference.

At the January 5, 2015 Council Meeting, it was also suggested that the Planning Commission provide input on this topic. This item was raised by staff for discussion at their January 6 Meeting. Staff stated that this was not a formal recommendation but rather informal discussion and input from the Commission. Planning Commission members offered a wide range of suggestions. Councilmember Gallagher is the Planning Commission liaison and is prepared to provide an overview of that discussion.

For the benefit of the discussion, a construction process document providing a general summary of the steps of construction for any project is also attached.

City Attorney Katie Logan will be prepared to discuss legal items at the meeting.

ATTACHMENTS:

- SUP Ordinance for Mission Chateau
- Excerpt of Minutes from October 15, 2012 Council Meeting
- Definitions from FEMA, IRS, U.S. Census
- Construction process overview

PREPARED BY:

Kate Gunja
Assistant City Administrator
Date: January 14, 2015

ORDINANCE 2301

AN ORDINANCE APPROVING A SPECIAL USE PERMIT FOR THE OPERATION OF AN ADULT SENIOR DWELLING COMMUNITY CALLED MISSION CHATEAU AT 8500 MISSION ROAD, PRAIRIE VILLAGE, KANSAS

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

Section I. Planning Commission Recommendation. At their regular meeting of December 3, 2013, the Prairie Village Planning Commission held a public hearing. Based on the information presented at the public hearings and the official record, the Planning Commission found the findings of fact to be favorable and recommended that the Governing Body approve a Special Use Permit for the operation of an Adult Senior Dwelling Community known as Mission Chateau at 8500 Mission Road. The findings of fact are contained in the December 3rd Planning Commission Staff report. The Planning Commission recommended approved of the SUP subject to the following conditions:

1. That the Senior Dwelling project be approved for a maximum of 84 Skilled Nursing Units; 36 Memory Care Units; 136 Independent Living Units; and 54 Assisted Living Units. The maximum number of residents shall not exceed 378.
2. That the Skilled Nursing/Memory Care facility not exceed 97,550 sq. ft.
3. That the project not exceed the building height or square footage and the buildings shall not be setback closer to the property lines than shown on the plans dated October 4, 2013.
4. That the Special Use Permit not have a termination or expiration time established for it; however, if **construction has not begun** within twenty-four (24) months from the approval of the Special Use Permit by the Governing Body, the permit shall expire unless the applicant shall reappear to the Planning Commission and Governing Body to receive an extension of time prior to the expiration.
5. That prior to the issuance of a building permit for the Skilled Nursing/Memory Care facility the owner shall provide evidence of financing for the entire project. That prior to the issuance of a certificate of occupancy for the Skilled Nursing/Memory Care facility, construction shall commence on the Independent Living/Assisted Living facility including material completion of construction including foundations, structural framing, three floors and roof enclosed.
6. Upon approval of the Special Use Permit, the applicant shall prepare a final landscape plan for the entire project which shall be reviewed and approved by the Planning Commission and the Tree Board.
7. That the applicant relocate the pedestrian crosswalk and signal if required by the City.
8. That the applicant plat the property in accordance with the subdivision regulations and record the final plat prior to obtaining a building permit including the nine single-family lots adjacent to the south boundary of the application area.
9. That the applicant meet all the conditions and requirements of the Planning Commission for approval of the Site Plan.
10. That the applicant submit a final outdoor lighting plan after building plans have been finalized for review and approval by Staff prior to obtaining a building permit.
11. That the applicant provide adequate guest parking on holidays and special events so that parking does not occur on public streets in residential areas including 85th Circle.

12. That the minimum parking shall be established by the drawing dated October 4, 2013. If parking becomes an issue, the applicant will work with the City to resolve the parking problem. Possible solutions could include, but not limited to, providing more spaces on site, providing employee parking at an off-site location or sharing parking with other uses in the area. If additional on-site parking is proposed, the applicant shall submit an amended Site Plan for review and approval by the Planning Commission.
13. That the trails and sidewalks will be open to the public, but the owner may establish reasonable rules for its use and hours of operation.
14. If the applicant violates any of the conditions of approval or the zoning regulations and requirements as a part of the Special Use Permit, the permit may be revoked by the Governing Body.

Section II. Findings of the Governing Body. At its meeting on January 6, 2014, the Governing Body adopted by specific reference the findings as contained in the minutes of the Planning Commission meeting of December 3, 2013, and the recommendations of the Planning Commission and approved the Special Use Permit as docketed PC2013-11.

Section III. Granting of the Special Use Permit. Be it therefore ordained that the City of Prairie Village grant a Special Use Permit for an Adult Senior Dwelling Community at 8500 Mission Road, Prairie Village, Kansas subject to the 14 specific conditions listed in Section I.

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

PASSED AND ADOPTED THIS 6th DAY OF JANUARY, 2014.

CITY OF PRAIRIE VILLAGE, KANSAS

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

ATTEST:

/s/ Joyce Hagen Mundy
Joyce Hagen Mundy, City Clerk

APPROVED AS TO FORM:

/s/ Catherine P. Logan
Catherine P. Logan, City Attorney

Excerpt of October 15, 2012 City Council Meeting Minutes

CITY COUNCIL
CITY OF PRAIRIE VILLAGE
October 15, 2012

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NEW BUSINESS

Consider request from PV Retail Partners, LLC to amend the Village Community Improvement District Development Agreement for the Prairie Village Shopping Center

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

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

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

The Developer is requesting an extension of the commencement date for Project A (Mission Lane Improvements) to provide for a more cost-efficient use of CID funds and reduce the impact on merchants and patrons of the center. The Planning Commission has approved a small portion of Phase I Mission Lane improvements (intersection of Mission Lane and Tomahawk Road) which would allow the Developer to be in compliance with the existing provisions of the agreement.

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

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

Charles Clark asked if the item would need to go back to Planning Commission if the City holds the developer to Mission Ln. Dennis stated the item would not need to go back because there is already an existing easement.

Ted Odell noted the Planning Commission discussed the extension request and in order to commence construction by November, the developer would be required to complete some landscaping. He stated he does not have a problem with extending the commencement date. Michael Kelly asked what commence means. Dennis Enslinger stated it is the start of construction/issuance of a building permit for an approved project. Laura Wassmer noted she is okay with pushing back the deadline.

Curt Petersen with Polsinelli Shughart addressed the council. He appreciates that staff supports the extension. The project could begin with the landscaping but there would be a more efficient use of CID funds if the project waited until spring. He noted PV Retail Partners understood the pedestrian trail to be a full extension of the hike/bike trail. The ownership group does not feel it is safe to have a bike/hike trail on Mission Ln in the middle of the shopping center. The ownership group began to look at Mission Road as an alternative but due to space constraints it is not a viable option. He noted he spoke with the designer and ownership group prior to the meeting coming to the understanding that the easement is for a pedestrian trail. The

ownership group would be happy to provide the pedestrian easement of approximately six feet. Making it larger would reduce parking or the size of the road.

Laura Wassmer stated she is okay with a six foot pedestrian trail. Charles Clark requested the opinion of staff on the six feet trail. Dennis Enslinger stated an eight foot trail is ideal for two way traffic and the number of parking spaces that would be lost is not significant.

Michael Kelly asked what the thought process was when the initial agreement was crafted. Curt Petersen stated the concept plan conceived of the layout of a trail but did not figure in size and the Mission Lane improvements had not been fully designed yet. Michael Kelly asked why the project has not commenced in two years. Owen Buckley stated there were many loose ends that finally came together recently when Hen House committed to their current location. The Mission Lane improvement hinged on the different pieces. Mr. Buckley noted they are trying to make deliberate, efficient decisions. Laura Wassmer asked what the plan is for US Bank. Owen Buckley stated their lease goes on for a long time but there is some thought to doing exterior improvements to update the building.

David Morrison stated he is concerned about the nuance of approximately six feet and would like a commitment to at least six feet. Owen Buckley asked the council to have confidence in staff to negotiate the size of the trail. Mr. Buckley noted the sidewalk will be widened on the west side of Mission Lane as well. Dennis Enslinger stated it is possible to have an 8 foot sidewalk; it is just a matter of losing parking spaces. Laura Wassmer noted those extra parking spaces could be important. Dennis Enslinger said it is a competing interest between the size of the street, parking space and a pedestrian trail.

Michael Kelly asked if people are using the existing trails for biking. Dennis Enslinger replied it is predominately kids bicycles and pedestrians. Ted Odell said the biggest concern of the tenants regarding the new development is parking spaces. Mr. Odell stated he is okay with a 6 foot sidewalk. David Belz said if the council wants an 8 foot trail, he believes the developer can find a way to work it out.

Laura Wassmer asked how many parking spaces would be lost. Owen Buckley estimated eight spaces across the front. Curt Petersen noted quick access to the grocery store has been an important issue. Laura Wassmer stated that overall functionality of the shopping center has to be the first priority and parking spaces are critical. Michael Kelly stated the developer should live up to the responsibility of the initial agreement. Curt Petersen noted there is no definition of trail regarding size in the agreement. Katie Logan confirmed that the size of the Mission Lane trail was never discussed. She noted it is within council discretion to override the staff recommendation on the size of the trail but she does not think it is reasonable to remove the trail from the plan.

Laura Wassmer moved the Governing Body accept the amendment to allow them to build a pedestrian pathway that is a minimum of six feet wide on the east side of Mission Lane. Curt Petersen noted the ownership group cannot commit to a minimum of six feet. Laura Wassmer withdrew her motion.

Laura Wassmer moved the Governing Body approve the First Amendment to the Development Agreement for the Village Community Improvement District, excluding paragraph two, moving the commencement date for Project A to May 2, 2013. Ted Odell seconded the motion.

Brooke Morehead stated she heavily disagrees with extending the timeframe and believes the City should negotiate for other things. David Morrison agreed that the City should negotiate for something in return.

Mayor Shaffer called the question. The motion passed nine to two with Kelly and Morehead voting "no".

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Start of Construction

- [Definition/Description](#)
- [NFIP Requirement](#)
- [Related Keywords](#)

Definition/Description

This definition is used to determine whether proposed construction must meet new requirements when National Flood Insurance Program (NFIP) maps are issued or revised and Base Flood Elevation's (BFEs) increase or zones change. Start of construction includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation.

Permanent construction does not include land preparation, such as clearing, grading, and filling, nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

For determining if new construction and substantial improvements within the Coastal Barrier Resources System (CBRS) can obtain flood insurance, a different definition applies.

National Flood Insurance Program (NFIP) Requirement

- [59.1 - Definition of Lowest Floor](#)

Related Keywords

- [Coastal Barrier Resources System \(CBRS\)](#)

IRS Defines Start of Construction

by Keith Martin and John Marciano, in Washington

The Internal Revenue Service explained today what developers must do this year to be considered to have started construction of new renewable energy projects.

The IRS adopted roughly the same definition for start of construction as under the Treasury cash grant program.

Wind, geothermal, biomass, landfill gas, incremental hydro-electric and ocean energy projects that are under construction by December 2013 will qualify for 10 years of production tax credits on the electricity output or an investment tax credit upon project completion for 30% of the project cost.

There is no deadline to complete projects that start construction this year.

The IRS departed from the Treasury cash grant rules in one significant respect.

There are two ways to show that a project is under construction in time.

One is by showing that "physical work of a significant nature" commenced at the site or at a factory that is making equipment for the project. Work at the factory counts only if done after the project has placed a binding equipment order with the manufacturer.

The other is by showing that the developer "incurred" at least 5% of the total project cost. Costs are not usually "incurred" merely by spending money; the developer must take delivery or title to services or equipment.

Many developers gravitated toward the 5% test under the Treasury grant program because anyone relying on the physical work test had to show a continuous pattern of construction after work started. There was no similar requirement for the 5% test. This let tax equity investors and lenders determine with more certainty at the outset whether a project was under construction in time.

The IRS said it will require developers relying on the 5% test to show "continuous efforts" in the future on a project. Developers relying on the physical work test will have to show "continuous construction."

The IRS guidance is in Notice 2013-29.

The IRS said that it will treat each wind farm as a single

project so that work on any part of the project will qualify as the start of construction of the entire project. This is good news for wind developers and was probably the largest open issue for that industry. The IRS has treated each turbine, pad and tower at a wind farm in the past as a separate power plant for production tax credit purposes.

Some renewable energy developers had urged the IRS to adopt a special rule under which anyone completing a project by a deadline would be considered automatically to have started construction in time. The IRS had signaled from the start that it did not feel it had the legal authority to adopt such a provision.

Developers of projects with long construction periods of two years or more had asked for a special rule under which their projects would be treated as under construction if they had obtained all the permits and entered into contracts to start construction, closed on the construction financing or paid at least a fixed dollar amount of costs. The IRS did not make any special provision for such projects.

The IRS addressed several issues that came up during the Treasury cash grant program.

A developer is considered to have started physical work of a significant nature if work is done at a factory on equipment for the project. However, the equipment must be custom made. The IRS said parts that are normally held in inventory will not count.

The IRS confirmed that a developer buying equipment under a master frame agreement can assign its contract rights to the equipment later to a special-purpose project subsidiary and still have the project qualify for tax credits.

The IRS changed the 5% test to "at least" 5% of the project cost. It was "more than" 5% under the Treasury cash grant program. ©

April 15, 2013

Residential Building – A residential building is a building consisting primarily of housing units. In a new building combining residential and nonresidential floor areas, every effort is made to include the residential units in these statistics, even if the primary function of the entire building is for nonresidential purposes.

Back to top

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Seasonally Adjusted Annual Rate – Seasonal adjustment is the process of estimating and removing seasonal effects from a time series to better reveal certain non-seasonal features such as underlying trends and business cycles. Seasonal adjustment procedures estimate effects that occur in the same calendar month with similar magnitude and direction from year to year. In series whose seasonal effects come primarily from weather, the seasonal factors are estimates of average weather effects for each month. Seasonal adjustment does not account for abnormal weather conditions or for year-to-year changes in weather. Seasonal factors are estimates based on present and past experience. Future data may show a different pattern.

Most of the seasonally adjusted series are shown as seasonally adjusted annual rates (SAAR). The seasonally adjusted annual rate is the seasonally adjusted monthly value multiplied by 12. The benefit of the annual rate is that not only can one monthly estimate be compared with another, monthly data can also be compared with an annual total. The seasonally adjusted annual rate is neither a forecast nor a projection; rather it is a description of the rate of building permits, housing starts, housing completions, or new home sales in the particular month for which they are calculated.

Data labeled "Not Seasonally Adjusted" refers to the fact that the data are not adjusted for seasonality using seasonal adjustment and not shown at an annual rate.

Detailed information on seasonal adjustment can be found at: <https://www.census.gov/cdu/www/x12a/>

Single-Family House – The single-family statistics include fully detached, semidetached (semidetached, side-by-side), row houses, and townhouses. In the case of attached units, each must be separated from the adjacent unit by a ground-to-roof wall in order to be classified as a single-family structure. Also, these units must not share heating/air-conditioning systems or utilities, such as water supply, power supply, or sewage disposal lines.

Units built one on top of another and those built side-by-side that do not have a ground-to-roof wall and/or have common facilities (i.e., attic, basement, heating plant, plumbing, etc.) are not included in the single-family statistics.

Speculatively-built Houses – See Built for Sale Houses.

Standard Error – Measure of the variation among the estimates from all possible samples; measure of the precision with which an estimate from a particular sample approximates the average results of all possible samples; square root of the sampling variance.

Start – Start of construction occurs when excavation begins for the footings or foundation of a building. All housing units in a multifamily building are defined as being started when this excavation begins. Beginning with data for September 1992, estimates of housing starts include units in structures being totally rebuilt on an existing foundation.

Structure, Type of – The statistics, by type of structure, refer to the structural characteristics of the building.

The one-unit structure category is a single-family home. It includes fully detached, semidetached (semidetached, side-by-side), row houses, and townhouses (see "Single-Family House".)

Multifamily structures are classified by the number of housing units in the structure.

Data are tabulated for 2 units, 3 and 4 units combined, and 5 or more unit structures.

Back to top

T

Timeshare – A timeshare is a form of ownership or right to the use of a property. These can be either single-family or multifamily structures.

Turnkey Housing – Units in structures built by private developers with partial public subsidies or that are for sale upon completion to local public housing authorities.

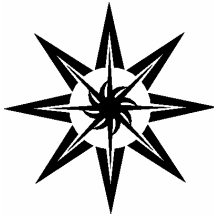
Back to top

U

City of Prairie Village
General overview of construction process

Action	Description of Work	Permit Required	Permitting Office in City
Demolition	Removing structure and infrastructure	Demolition Permit	Codes Administration
*Land Disturbance/Site Grading	Moving/removing earthen material for the objective of meeting approved elevations	Drainage Permit	Public Works
*Site Development/Utilities and Streets	Installation of utilities including water, sewer, stormsewer and/or electrical and gas and installation of streets	ROW/Drainage Permit	Public Works
Construction of building	Excavation for foundation, install footings and foundation, building walls, structure roof, interior finishes	Building Permit/Drainage Permit	Codes Administration/Public Works

* The Drainage and ROW Permits for this work have been historically issued at the same time as the Building Permit. This could be modified for larger development projects.



PUBLIC WORKS DEPARTMENT

Council Committee Meeting Date: January 20, 2015

Council Meeting Date: January 20, 2015

DISCUSS THE AWARDING AND FUNDING OF THE 75TH STREET PROJECT FROM STATELINE ROAD TO MISSION ROAD, PROJECT 75ST0001.

RECOMMENDATION

Recommend that the Kansas Department of Transportation award Project 75ST0001 to O'Donnell and Son's Construction Company for \$3,494,951.00 and approve the transfer of funds to this project as listed in this memo.

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 originally opened for this project by KDOT on October 22, 2014. These bids were higher than expected. Changes were made to the plans and the project was rebid.

Bids were opened again for this project by KDOT on January 14, 2015. A summary of the bids are shown below.

<u>Contractor-</u>	<u>Bid Amount-</u>
O'Donnell and Son's	\$3,494,951.00
Amino Brothers	\$3,494,990.00
Emery Sapp & Son's	\$3,777,144.00
Kansas Heavy Const.	\$3,808,386.00
Miles Excavating	\$3,910,485.00
Freeman Concrete	\$4,279,223.00

KDOT determines the final Engineer's Estimate and it is not known to the City. KDOT has reviewed the bids and are within 10% of the Engineer's Estimate and has found them to be acceptable.

The low bid is **\$778,951.00** over what was budgeted for the construction of this project. This will require funding modifications to projects in the 2015 Budget as well as reallocating other funds.

Proposed funding changes are shown below.

1. Utilize **\$500,000** in unspent Paving and CARS project street rehabilitation funds from CIP projects closed out in 2014. These funds would have otherwise been reallocated with the 2016 budget process for projects in 2016.

2. Reallocate **\$300,000** from 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. This additional \$300,000 in drainage funds allocated to this project is an appropriate use of drainage funds. That would leave about \$120,000 in the Drainage Repair Program for 2015.

The above changes total **\$800,000** and will be reallocated to the 75th Street Project.

FUNDING SOURCE

Funds are available in the 75th Street Project- 75ST0001 including the transfers to Project 75ST0001 as shown below.

Funds transferred to 75ST0001 as summarized above-

1- Unspent Prior Year Street Funds-	\$500,000
2- 2015 Drainage Program-	\$300,000
Total-	\$800,000

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

January 14, 2015



PUBLIC WORKS DEPARTMENT

Council Committee Meeting Date: January 20, 2015

Council Meeting Date: January 20, 2015

CONSIDER KDOT FORM 1309- AUTHORITY TO AWARD CONTRACT FOR PROJECT 75ST0001: 75TH STREET- STATELINE ROAD TO MISSION ROAD.

RECOMMENDATION

Authorize Mayor to sign KDOT Form 1309- Authority to Award for Project 75ST0001: 75th Street- Stateline Road to Mission Road.

BACKGROUND

Project 75ST0001, 75th Street- Stateline Road to Mission Road was selected by the Mid-America Regional Council(MARC) to receive Federal Funds. The Kansas Department of Transportation(KDOT) administers the Federal Funds for local communities in Kansas.

As part of their process KDOT Form 1309 must be executed by the City. This form states that the City will submit to KDOT the City funding portion of the project or \$1,950,000.00. This form also states that the low bidder, O'Donnell and Son's, has submitted satisfactory bids and that the contract will be awarded to them.

FUNDING SOURCE

Funds will be available in CIP Project 75ST0001.

RELATION TO VILLAGE VISION

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

ATTACHMENTS

KDOT form 1309

PREPARED BY

Keith Bredehoeft, Public Works Director

January 15, 2015

**AUTHORITY TO AWARD CONTRACT
COMMITMENT OF CITY FUNDS**

January 14, 2015

2 Copies to City

Project Number: 46 N-0581-01

STP-N058(101)

City of Prairie Village

WHEREAS bids were received at Topeka, Kansas on 1/14/2015 for the performance of work covered by plans on the above numbered project, and

WHEREAS the bidder and the low bid or bids on work covered by this project were:

CONTRACTOR	TYPE OF WORK	AMOUNT
O'DONNELL & SONS CONSTRUCTION COMPANY INC AND JLMB LLC 15301 BROADMOOR ST OVERLAND PARK, KS 66223-3142	Grading and Surfacing	\$ 3,494,951.15

WHEREAS bids are considered satisfactory and have been recommended by the Secretary of Transportation of the State of Kansas, hereinafter referred to as the SECRETARY, for consideration and acceptance of the work on this project as covered by such bid or bids.

A combination of the bid plus an estimated \$69,920.02 for construction engineering less \$1,616,800.00 of Maximum Federal Funds = \$1,950,000.00 matching City Funds.

BE IT FURTHER RESOLVED that City funds in the amount of \$1,950,000.00 which are required for the matching of Maximum Federal Funds are hereby pledged by the City to be remitted to the Chief of Fiscal Services of the Department of Transportation of the State of Kansas on or before 3/5/2015 for use by the SECRETARY in making payments for construction work and engineering on the above designated project with final cost being determined upon completion and audit of the project.

Adopted this ____ day of _____, _____, at _____, Kansas.

Recommended for Approval:

City Engineer

_____, Mayor

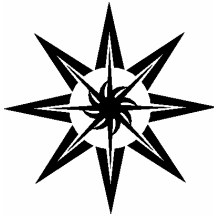
Attest:

(Seal)

_____, Member

_____, Member

City Clerk



PUBLIC WORKS DEPARTMENT

Council Committee Meeting Date: January 20, 2015

Council Meeting Date: January 20, 2015

CONSIDER THREE PARTY NON FEDERAL AID AGREEMENT BETWEEN KDOT, PRAIRIE VILLAGE, AND TRANSYSTEMS FOR PROJECT 75ST0001: 75TH STREET-STATELINE ROAD TO MISSION ROAD.

RECOMMENDATION

Approve three party non federal aid agreement between KDOT, Prairie Village, and TranSystems for Project 75ST0001: 75th Street- Stateline Road to Mission Road.

BACKGROUND

Project 75ST0001, 75th Street- Stateline Road to Mission Road was selected by the Mid-America Regional Council (MARC) to receive Federal Construction Funds. The Kansas Department of Transportation (KDOT) administers the Federal Funds for local communities in Kansas.

The agreement describes the responsibilities related to the construction engineering inspection services that TranSystems will provide for this project. This is a Non-Federal Aid agreement and the inspection costs will be fully funded by the City.

FUNDING SOURCE

N/A

RELATION TO VILLAGE VISION

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

CFS3a. Ensure streets and sidewalks are in good condition by conducting maintenance and repairs as needed.

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

ATTACHMENTS

1. Non federal aid agreement between KDOT, Prairie Village, and TranSystems

PREPARED BY

Keith Bredehoeft, Public Works Director

January 14, 2015

**STATE'S
ORIGINAL**

Agreement No. 524-14

**CONTRACT FOR
FEDERAL-AID ROAD CONSTRUCTION
ENGINEERING BY CONSULTANT
(CONSULTANT-NON FEDERAL-AID AGREEMENT)**

**PROJECT NO. 46 N-0581-01
CITY OF PRAIRIE VILLAGE
JOHNSON COUNTY**

THIS AGREEMENT entered into and is effective the date signed by the Secretary of designee, by and between city of Prairie Village, Kansas, hereinafter referred to as the "LPA" (Local Public Authority), as principal, and the consulting engineering firm of TranSystems Corporation, hereinafter called the "Consultant," and the Secretary of Transportation of the State of Kansas acting by and through the Kansas Department of Transportation, hereinafter referred to as the "Secretary." The Secretary acts as agent for the LPA pursuant to authority vested in K.S.A. 68-402b and K.S.A. 68-401 et seq. and an agreement between them dated January 13, 2014. The Consultant's address is 2400 Pershing, Road, Suite 400, Kansas City, Missouri 64108. The LPA, the Consultant, and the Secretary are collectively referred to as the "Parties."

WITNESSETH:

WHEREAS, the FEDERAL GOVERNMENT through its Department of Transportation and the FHWA, pursuant to Title 23, U.S. Code, has established a program of Federal-Aid to the States designated as the Federal-Aid Program, with a general purpose to increase the safety and capacity of roads in the United States, and

WHEREAS, the LPA desires to accomplish this Federal-Aid "Project," consisting of 1.2 miles of Grading and Surfacing located 75th Street, from Mission Road to State Line Road, with the aid of funds provided under Federal-Aid highway programs and the rules and regulations promulgated by said U.S. Department of Transportation in the Federal-Aid Policy Guide, and

WHEREAS, the LPA does not have sufficient qualified engineering employees to accomplish the Construction Engineering Services on this Project within a reasonable time and the LPA deems it advisable and is desirous of engaging the professional services and assistance of a qualified consulting engineering firm to do the necessary construction engineering, and

WHEREAS, the Consultant has represented and by entering into this Agreement now represents, it is in full compliance with the statutes of the State of Kansas for registration of professional engineers and all personnel to be assigned to perform the services required under this Agreement are fully qualified to perform the services in a competent and professional manner, and

WHEREAS, the Consultant has indicated it desires to perform the services set forth in the Agreement upon the terms and conditions set forth below, and

WHEREAS, the approved plans and specifications for said Project are available in KDOT Headquarters in Topeka, and

WHEREAS, the LPA, Consultant, and the Secretary desire to set forth in this instrument their understanding and agreements relating to the construction engineering and allocation of costs for the said Project.

NOW, THEREFORE, in consideration of the covenants of the Parties and to give this Agreement full force and effect in providing the benefits hereinbefore mentioned, the Parties hereto mutually agree as follows:

I. SCOPE OF SERVICES

A. DEFINITIONS

- (1) The term "LPA" shall mean the City and its authorized employees.
- (2) The term "KDOT" shall mean the Kansas Department of Transportation and its authorized representatives.
- (3) The term "Consultant" shall mean the consulting engineering firm and its authorized employees who will be performing the work required under this Agreement.
- (4) The term "FHWA" shall mean the Federal Highway Administration and its authorized representatives.
- (5) The term "Contractor" shall mean the individual, partnership, joint ventures, corporation, or agency undertaking the performance of the work designated under the terms of the construction contract.
- (6) The term "Specifications" shall mean the current Standard Specifications for Road and Bridge Construction of the Kansas Department of Transportation, as incorporated in the construction contract specifications and supplementals thereto.
- (7) The term "Construction Contract Proposal" shall mean the offer of the bidder or Contractor on the Project, on the prescribed form, to perform the work and to furnish the labor and materials at the prices quoted.
- (8) The term "Special Provisions" shall mean the directions or requirements peculiar to a project and not otherwise thoroughly or satisfactorily included in the Specifications, and which are contained in the Construction Contract Proposal.
- (9) The term "Plans" shall mean the approved plans, profiles, typical cross sections, working drawings and supplemental drawings, or exact reproductions thereof, which show the location, character, dimensions, and details of the work to be done by the contractor.

- (10) The term "Contract Documents" shall mean the Specifications, Construction Contract Proposal, Special Provisions and Plans, as defined above.
- (11) The term "Manual" shall mean the Construction Manual, the Forms and Documentation Manual and all other publications of data and information produced by KDOT for the instruction of its employees and furnished in bound or collected form.
- (12) The term "Field Engineer" shall for the administrative control of this Agreement be considered to mean Metro Engineer, Field Engineering Administrator and/or Area Engineer.

B. GENERAL RESPONSIBILITIES AND DUTIES

- (1) The Consultant shall perform engineering services necessary and incidental to the accomplishment of the Project to the satisfaction of KDOT, and as more fully detailed in Special Attachment - Specific Construction Provisions.
- (2) The Consultant will require all personnel comply with the high visibility apparel requirements of the *KDOT Safety Manual*, Chapter 4, Section 8, Fluorescent Vests, as a minimum, while inspection is being performed.
- (3) The Consultant shall furnish services, labor, materials, equipment, supplies and incidentals, other than those hereinafter designated to be furnished by KDOT, necessary to conduct and complete the services.
- (4) The services performed under this Agreement shall at all times be subject to the review and approval of KDOT.
- (4) The Consultant and/or LPA's principal contact with the KDOT shall be through the construction field office.
- (5) The services performed under this Agreement shall comply with all applicable federal and state laws and regulations.
- (6) The FHWA shall have the right to participate in all conferences and reviews.

C. CONTROL AND AUTHORITY

- (1) The authorized representative of KDOT will be designated by the District's Construction Engineer and will be titled the Field Engineer.
- (2) The Field Engineer will delegate to a construction office the overseeing of the Project where a Construction Engineer/Construction Coordinator will be assigned to monitor and coordinate all Project related activity to assure compliance with applicable Federal and State requirements of services performed under this Agreement and all construction activities performed under the Contract Documents.

- (3) The Consultant will designate a Project Engineer/Project Manager and other inspection personnel who are certified by KDOT in the appropriate classification to inspect all work performed and materials furnished. The Consultant may designate a Chief Inspector who will perform the duties and have the responsibilities of the Project Engineer/Project Manager. The Project Engineer/Project Manager is not authorized to alter or waive the provisions of the Specifications or the Construction Contract Proposal. The Project Engineer/Project Manager is not authorized to issue instructions contrary to the Plans and Specifications, or to act as foreman for the Contractor, however, the Project Engineer/Project Manager shall have the authority to reject work or materials until any questions at issue can be referred to and be decided by the Field Engineer.
- (4) The Project Engineer/Project Manager shall serve as field supervisor of all Consultant personnel and services performed under this Agreement, and to act as liaison between the Consultant and KDOT.
- (5) The Project Engineer/Project Manager shall transmit all reports and paperwork to, and communicate and coordinate with the Construction Engineer/Construction Coordinator.
- (6) Orders or instructions issued by the Field Engineer will be transmitted through the Construction Engineer/Construction Coordinator and will in turn be transmitted through the Project Engineer/Project Manager to the Contractor. If in the absence of the Project Engineer/Project Manager a matter needs prompt attention, the Construction Engineer/Construction Coordinator will give the necessary orders and then notify the Project Engineer/Project Manager.
- (7) In the event of a controversy, the Project Engineer/Project Manager shall confer with the Construction Engineer/Construction Coordinator to determine proper course of action. In the event the Construction Engineer/Construction Coordinator and the Project Engineer/Project Manager cannot agree the Construction Engineer/Construction Coordinator will promptly contact the Field Engineer or the District Construction Engineer of KDOT who will determine the necessary course of action.

D. AGENCY COORDINATION AND COOPERATION

- (1) Contact and coordination with all affected local, state and federal agencies (including the FHWA), the general public, utilities, railroad companies, and private consultants and contractors shall be the responsibility of KDOT.
- (2) The Consultant shall cooperate fully with KDOT, all affected local, state and federal agencies (including the FHWA), the general public, utilities, railroad companies, and private consultants and contractors when so directed by KDOT. Such cooperation may include attendance at conferences.

E. MEETINGS AND CONFERENCES

- (1) Conferences as may be necessary for the discussion and review of the services under this Agreement shall be scheduled between the Consultant and KDOT. These conferences may include field review of the Project.
- (2) Conferences may be held upon the request of the Consultant or KDOT.

II. PROSECUTION AND PROGRESS

A. GENERAL

- (1) Written authority to proceed with the services on any construction Project under this Agreement will be given by KDOT to the Consultant. KDOT will not be responsible for any services performed by the Consultant prior to such authorization.
- (2) Services performed under this Agreement will commence with attendance at a formal Construction Conference by the Consultant and KDOT, unless otherwise stated elsewhere in the Agreement or at the direction of the Construction Engineer/Construction Coordinator during an informal Construction Conference. Attendees at a formal Construction Conference shall include representatives of KDOT's Area Engineer and the Construction office (Construction Engineer/Construction Coordinator) and Consultant's Project Engineer/Project Manager and such other representatives as may be designated by each party to the Agreement. KDOT will notify the Consultant of the location, date and time and will make necessary arrangements for the conference. Topics for discussion shall include scope of the Contractor's construction operations and anticipated schedule, review of necessary staffing by the Consultant, lines of communication and authority, equipment needs, standard practices of KDOT, and related subjects.
- (3) The Consultant shall attend the formal Construction Conference held between KDOT, the Contractor and involved utilities and agencies, unless otherwise stated elsewhere in the Agreement.
- (4) The Consultant shall have KDOT Certified Inspector(s) of the appropriate classification on the project or plant site at all times when work which requires inspection is being performed. The inability of a Consultant to provide appropriately certified inspectors for a project may at the Secretary's discretion, give cause for termination of this Agreement.
- (5) The Agreement shall be considered completed upon notice of written release from KDOT therefore unless previously terminated as provided in Section II.
- (6) Should KDOT deem it necessary for the Consultant to render additional services for review of contract items, conditions, claims or litigation matters after completion of the Agreement, the Consultant agrees to cooperate and render

such requested services. Such services shall be paid for in the amount and manner mutually agreed upon by the LPA and the Consultant.

- (7) Close-Out Conference may be held upon completion of this Agreement to evaluate the performance of the Consultant. Attendees shall include the Field Engineer, representatives of the construction office (including Construction Engineer/Construction Coordinator) and Consultant's Project Engineer/Project Manager and such other representatives as may be designated by each party to the Agreement. KDOT will notify the Consultant of the location, date and time and will make necessary arrangements for the conference. The evaluation shall consider the quality of the Consultant's work, adequacy of staffing, extent of corrections, cooperation and related subjects.

B. DELAYS AND EXTENSIONS

- (1) Delays caused through no fault of the Consultant may be cause for extension of time in completion of the work. Time extensions may be granted by the LPA upon reasonable claim and justification by the Consultant. Approved time extensions may also be cause for consideration of adjustments in payment, where warranted and approved by the LPA.

C. TERMINATION OF AGREEMENTS

- (1) The right is reserved by KDOT to terminate all or part of this Agreement at any time upon written notice to the Consultant. Such notice shall be sent not less than ten (10) days in advance of the termination date stated in the notice.
- (2) The Consultant may terminate this Agreement, in the event of substantial failure of other parties to perform in accordance with the terms hereof, upon ten (10) days written notice in advance of the effective date of such termination received by all Parties to this Agreement.
- (3) In the event the Agreement is terminated by KDOT without fault on the part of the Consultant, the Consultant shall be paid for the work performed or services rendered under the terms agreed to by the LPA.
- (4) In the event the services of the Consultant are terminated by KDOT for fault including but not limited to: unreasonable delays in performance; failure to respond to KDOT requests; and/or unsatisfactory performance on the part of the Consultant, the Consultant shall be paid under the terms agreed to by the LPA. The value of the services performed, rendered and delivered will be determined by the LPA.
- (5) In the event of the death of any member or partner of the Consultant's firm, the surviving members shall complete the services, unless otherwise mutually agreed upon by the LPA and KDOT and the survivors, in which case the Consultant shall be paid under terms agreed to by the LPA.

D. SUBLETTING OR ASSIGNMENT OF CONTRACT

- (1) The Consultant shall not sublet or assign all or any part of the services under this Agreement without the prior written approval of KDOT. Consent by KDOT to assign, sublet or otherwise dispose of any portion of the Agreement shall not be construed to relieve the Consultant of any responsibility for the fulfillment of the Agreement.
- (2) All the applicable terms of this Agreement remain in force and are a condition to any services approved to be sublet or assigned.

III. BASIS OF PAYMENT

A. GENERAL

- (1) The Consultant will be paid under the terms agreed to by the LPA. The extra work will be paid for separately and in addition to the foregoing amount as approved by the LPA.
- (2) Final payment of any balance due the Consultant by the LPA will be made promptly upon completion of the work under this Agreement and acceptance by KDOT, and upon receipt of the survey notes, records, reports, final estimates, record drawings, Manuals, Contract Documents, guides, and other documents required to be returned or to be furnished under this Agreement.

IV. WORK ORDERS, EXTRA WORK, OR DECREASED WORK

- (1) Written orders regarding the services to be performed will be given by KDOT. Orders that do not change the scope of services in the Agreement, but increase or decrease the quantity of labor or materials or the expense of the services, shall not annul or void this Agreement.
- (2) The Consultant must proceed with the services as directed by furnishing the necessary labor, equipment, materials and professional services to complete the services within the time limits specified in schedules or as adjusted by agreement of the Parties.

V. MISCELLANEOUS PROVISIONS

A. CONSTRUCTION ENGINEERING STANDARDS

- (1) All services performed under this Agreement shall be done in accordance with the current standard practices of KDOT as contained in the Contract Documents, Manuals, guides and written instructions of KDOT.
- (2) No variations will be permitted except by written order from KDOT.

B. REVISION OF SPECIFICATIONS AND PLANS

- (1) KDOT may, by written notice and without invalidating this Agreement, make changes in the Specifications, Construction Contract Plans or Special Provisions resulting in the revision or abandonment of services already performed by the Consultant or resulting in work by the Consultant not contemplated in the Agreement.
- (2) Claims by the Consultant for compensation for services resulting from such revisions shall be submitted and processed in accordance with terms agreed to with the LPA.

C. OWNERSHIP OF DOCUMENTS

- (1) All data provided to the Consultant by KDOT is the sole property of KDOT and is intended for use on this Project only. Any data provided shall not be disclosed to anyone outside the Consultants firm without the express, written permission of KDOT. Upon completion or termination of this Agreement all Manuals, Contract Documents, guides, written instructions, unused forms and record-keeping books, and other written data and information furnished to the Consultant by KDOT for the performance of the Agreement, and all survey notes, diaries, reports, records and other information and data collected or prepared by the Consultant in the performance of this Agreement shall be properly arranged and delivered to KDOT, and shall become the property of KDOT.
- (2) All documents prepared by Consultant pursuant to this Agreement are instruments of service in respect of the Project. They are not intended or represented to be suitable for reuse by the Secretary or others on extensions of the Project or on any other Project. Any reuse without written verification or adaptation by Consultant for the specific purpose intended will be at the Secretary's sole risk and without liability or legal exposure to the Consultant; and Secretary shall indemnify and hold harmless Consultant from all claims, damages, losses and expenses, including attorney's fees, arising out of or resulting there from. Any such verification or adaptation will entitle Consultant to further compensation at rates to be agreed upon by Consultant and Secretary.

D. CONTINGENT FEES

- (1) The Consultant warrants they have not employed or retained any company or person, other than a bonafide employee working solely for the Consultant to secure this Agreement, and they have not paid or agreed to pay any company or person, any fee, commission, percentage, brokerage fees, gift, or any other consideration, contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty KDOT in consultation with the LPA shall have the right to annul this Agreement without liability.

E. AGREEMENT ITEMS

- (1) It is also understood and agreed the Project plans, Specifications, Special Provisions, and Construction Contract Proposal, as available, and other Special Attachments (Index provides List of Special Attachments) are all essential documents of this Agreement and are hereby incorporated by reference into this Agreement and are a part thereof.

F. LEGAL RELATIONS

- (1) The Consultant shall become familiar with, and shall at all times observe and comply with, all applicable federal, state, and local laws, ordinances and regulations.
- (2) The Consultant shall be responsible for any and all damages to property or persons arising out of an error, omission and/or negligent act in the Consultant's performance of services under this Agreement.

G. WORKER'S COMPENSATION AND OTHER EMPLOYEES PROVISIONS

- (1) The Consultant will accept full responsibility for payment of Unemployment Insurance, Worker's Compensation and Social Security as well as income tax deductions and any other taxes or payroll deductions required by State and Federal Law for the Consultant's employees engaged in work authorized by this Agreement.

H. ERRORS AND OMISSIONS

- (1) The Consultant shall be responsible for the accuracy of the work performed by the Consultant under the Agreement, and shall promptly make necessary revisions or corrections resulting from their negligent acts, errors or omissions without additional compensation.
- (2) The Consultant shall give immediate attention to these revisions or corrections to prevent or minimize delay to the Contractor.
- (3) The Consultant shall be responsible for any damages incurred as a result of their errors, omissions or negligent acts and for any losses or costs to repair or remedy construction.

I. CONFLICT OF INTEREST

- (1) The Consultant warrants they have no public or private interest, and shall not acquire directly or indirectly any such interest, which would conflict in any manner with the performance of the work under the Agreement. Specifically, the Consultant is prohibited from performing contractor construction staking or any other work that is the construction contractor's responsibility on this project.

- (2) The Consultant will not, without written permission from KDOT, engage the services of any person(s) in the employment of KDOT for any work required by the terms of this Agreement.

J. HOLD HARMLESS CLAUSE

- (1) The Consultant hereby expressly agrees to save the Secretary, the LPA, and the Secretary's and the LPA's authorized representatives harmless from any and all costs, liabilities, expenses, suits, judgements and damages to persons or property caused by the Consultant, its agents, employees or subcontractors which may result from negligent acts, errors, mistakes or omissions from the Consultant's operation in connection with the services to be performed hereunder.
- (2) The LPA hereby expressly agrees to save the Secretary and the Secretary's authorized representatives harmless from any and all costs, liabilities, expenses, suits, judgments and damages to persons or property caused by the LPA, its agents, employees or subcontractors which may result from negligent acts, errors, mistakes or omissions from the LPA's operation in connection with the services to be performed hereunder.

K. BINDING AGREEMENT

- (1) It is further understood this Agreement and all other Agreements entered into under the provisions of this Agreement shall be binding upon the Parties to this Agreement and their successors in office.

The signature page immediately follows this paragraph.

IN WITNESS WHEREOF: The Parties hereto have caused this Agreement to be signed by their duly authorized officers.

RECOMMENDED FOR APPROVAL:

APPROPRIATE LOCAL OFFICIAL:

Prairie Village City Engineer

Mayor of Prairie

ATTEST:

Prairie Village City Clerk (Date)

ATTEST:

CONSULTANT:

BY: _____
Name

Consultant

TITLE: _____

BY: _____ (Date)
Name

TITLE: _____

Kansas Department of Transportation
Michael S. King, Secretary of Transportation

BY: _____ (Date)
Jerome T. Younger, P. E.
Deputy Secretary and
State Transportation Engineer

INDEX OF ATTACHMENTS

Special Attachment No. 1	Specific Construction Provisions
Special Attachment No. 2	Listing of KDOT Certified Inspectors
Special Attachment No. 3	Civil Rights Act of 1964 Rehabilitation Act of 1973 Americans With Disabilities Act of 1990 Age Discrimination Act of 1975 Executive Order 12898 of 1994

SPECIFIC CONSTRUCTION PROVISIONS

I. SCOPE OF SERVICES

A. SERVICES TO BE PERFORMED BY THE CONSULTANT

The Consultant agrees to:

- (1) Attend all conferences designated by the KDOT, or required under the terms of this Agreement.
- (2) Designate a Project Engineer/Project Manager who shall meet KDOT's certification policy and report and transmit Project activity and documents to KDOT's Construction Office.
- (3) Assign KDOT Certified Inspector(s) of the appropriate classifications to the Project to perform the services required under this Agreement in a timely manner to avoid delay to the Contractor.
- (4) Become familiar with the standard practices of the KDOT, the Contract Documents (Specifications, Construction Contract Proposal, Special Provisions and Plans), and the Contractor's proposed schedule of operations prior to beginning field services to be performed under this Agreement.
- (5) Perform the Consultant's field operations in accordance with accepted safety practices.
- (6) Furnish all equipment required to accomplish the Consultant's services and to check or test it prior to use on the Project.
- (7) Provide for Consultant personnel such transportation, supplies, materials and incidentals as are needed to accomplish the services required under this Agreement.
- (8) Undertake the following:

Transmit orders from the KDOT to the Contractor and provide guidance in the proper interpretation of the Specifications and Plans.

Perform or provide construction surveys, staking, and measurements needed by the Contractor (unless provided for in the contract where contractor construction staking is to be performed as a bid item by the Contractor) and perform measurements and surveys that are involved in the determination of final pay quantities.

Inspect all phases of construction operations to determine the Contractor's compliance with Contract Documents and to reject such work and materials, which do not comply with Contract Documents until any questions at issue, can be referred to and be decided by the KDOT's Field Engineer.

Take field samples and/or test materials to be incorporated in the work, and reject those not meeting the provisions of the Contract Documents until any questions at issue can be referred to and be decided by the Field Engineer.

Make certain that test report records or certificates of compliance for materials tested off the Project site and required, prior to the incorporation in the work, have been received.

Keep such daily diaries, logs and records as are needed for a complete record of the Contractor's progress, including Project Engineer/Manager and Inspector's diaries.

Measure and compute all materials incorporated in the work and items of work completed, and maintain an item account record.

Provide measurement and computation of pay items.

Prepare and submit, or assist in preparing, such periodic, intermediate and final reports and records as may be required by the KDOT and as are applicable to the Project, which may include:

- a. Progress Reports
- b. Weekly statement of working days
- c. Notice of change in construction status
- d. Report of field inspection of material
- e. Test report record
- f. Contractor pay estimates
- g. Pile driving data
- h. Piling record
- i. Final certification of materials
- j. Explanation of quantity variation
- k. Statement of time
- l. Other records and reports as required by the Project

Review, or assist in reviewing, all Contractor submittals of records and reports required by the KDOT, as applicable to the Project, which may include:

- a. Requests for partial and final payment

- b. Other reports and records as required by the individual Project
- (9) Collect, properly label or identify, and deliver to the KDOT all original diaries, logs, notebooks, accounts, records, reports and other documents prepared by the Consultant in the performance of this Agreement, upon completion or termination of this Agreement.
 - (10) Return, upon completion or termination of this Agreement, all manuals, Contract Documents, guides, written instructions, unused forms and record keeping books, and other documents and materials furnished by the KDOT. The Consultant shall be responsible for replacing lost documents or materials at the price determined by the KDOT.
 - (11) Prepare and submit a certification of Project completion.
 - (12) Prepare and deliver (when Project is completed) one copy of major changes to the plans (by letter) to the KDOT. The letter should contain such items as the following:
 - a. Earthwork and Culverts
 - 1. A revised list of benchmarks
 - 2. Location of government benchmarks
 - 3. Major changes in alignment
 - 4. Major changes in grade line
 - 5. Established references on cornerstones
 - 6. Major changes in location of drainage structures
 - 7. Major changes in flow-line of drainage structures
 - 8. Drainage structures added or deleted
 - 9. Any change of access control
 - b. Bridges
 - 1. Changes in stationing
 - 2. Changes in type, size or elevation of footings
 - 3. Changes in grade line

B. SERVICES TO BE PROVIDED BY THE SECRETARY

- (1) The Secretary agrees to:
 - a. Make available to the Consultant sufficient copies of the Contract Documents, shop drawings, plan revisions, written instructions and other information and data considered by the KDOT to be necessary to enable the Consultant to perform the services under this Agreement, for the Project to the same standards required of the KDOT's personnel.

- b. Provide for the use of the Consultant a sufficient supply of the blank diaries, logs, record keeping books, and reporting forms considered by the KDOT to be necessary for the Consultant to perform the services under this Agreement to the same standards required of the KDOT'S personnel.
 - c. Provide space in the field office and field laboratory furnished by the Contractor under the terms of the Construction Contract Proposal, for the occupancy and use of the Consultant until completion of the construction work.
 - d. Perform or provide for laboratory testing of materials requiring off-site testing facilities and obtain test reports or certificates of compliance hereof.
 - e. Perform all necessary weld inspection when there is welding for bridge beam connections and splices, and for sign supports. This includes all cross frames, diaphragm connections, and stud welding.
 - f. Designate a Construction Engineer/Construction Coordinator in the Construction Office with the duties and responsibilities set forth in Section IC of the General Construction Provisions of the Agreement.
 - g. Provide, through the Field Engineer and the District Staff, such assistance and guidance to the Consultant as may be reasonably necessary to perform and complete this Agreement in conformance with standard construction engineering practices of the KDOT.
- (2) The Secretary reserves the right to assign and charge to the Project such KDOT personnel as may be needed.

II. PROSECUTION AND PROGRESS

- A. It is anticipated that the services to be performed under the construction contract will start in 2014, and be completed by 2015.
- B. The Consultant shall complete all services to be rendered under this Agreement no later than two months after completion of Project construction. Failure to comply may result in disqualification of the Consultant's Project Engineer/Project Manager or Chief Inspector until proper documentation is submitted and accepted.

III. BASIS OF PAYMENT

- A. Compensation for services provided by the Consultant will be as agreed to by the LPA and the Consultant.

IV. MISCELLANEOUS PROVISIONS

A. AUTHORIZED REPRESENTATIVES

- (1) The Field Engineer for the KDOT will be Mr. Howard Lubliner, P.E., whose work address is 1290 South Enterprise, Olathe, Kansas 66061 and work telephone is 913-764-4525.
- (2) The Project Engineer/Project Manager for the Consultant will be Mr. Kent Higgins, Certification Number 1159 (expiration date is 2/8/2017), whose work address is 2400 Pershing Road, Suite 400, Kansas City, Missouri 64108 and work telephone is 816-329-8600.
- (3) The Chief Inspector for the Consultant will be Mr. Scott Sharp, Certification Number 2554 (expiration date is 2/8/2018), whose work address is 2400 Pershing Road, Suite 400, Kansas City, Missouri 64108 and work telephone is 816-329-8600.
- (4) The contact person for the LPA will be Mr. Keith Bredehoeft, P.E. whose work address is 3535 Somerset Drive, Prairie Village, Kansas 66208 and work telephone is 913-385-4640.

BLP Special Attachment No. 4
 Project NO. 46 M203421
 Listing of Inspection Staff

The following list of personnel are available to perform the work on this project when required.

Construction and Experience Data

Name	EMPLOYMENT						EXPERIENCE																		
	Core No.	Basic Emp.	Annual Emp.	Contract Emp.	Part-time Emp.	Other Emp.	Construction	Traffic Control	Construction Management	Major Projects	Major Projects	Major Projects	Major Projects	Major Projects	Major Projects	Major Projects	Major Projects	Major Projects	Major Projects	Major Projects	Major Projects	Major Projects	Major Projects		
Dove, Jeremiah	215	12/2004	01/2005	02/2004	07/2004	08/2004																			
Grant, Terry	66	03/2004	03/2004																						
Mont, Christopher J.	66	01/2004	01/2004																						
Milne, Joe L.	427	02/2004	02/2004	02/2004	02/2004	02/2004																			
Jagi, Jada	477	02/2004	02/2004	02/2004	02/2004	02/2004																			
Robson, Kevin D.	179	02/2006	02/2006	02/2006	02/2006	02/2006																			
Samard, Jeffery L.	159	03/2004	03/2004	03/2004	03/2004	03/2004																			
Tate, Brian	196	03/2004	03/2004	03/2004	03/2004	03/2004																			
Violas, Office																									
Beaky, Michael	310	01/2007	01/2007	01/2007	01/2007	01/2007																			
Baker, Chad	352	02/2006	02/2006	02/2006	02/2006	02/2006																			
Barny, Scott	104	01/2004	01/2004	01/2004	01/2004	01/2004																			
Bentley, Bruce	130	01/2007	01/2007	01/2007	01/2007	01/2007																			
Blackburn, Robert	224	04/2004	04/2004	04/2004	04/2004	04/2004																			
Blum, Carl	262	02/2004	02/2004	02/2004	02/2004	02/2004																			
Burns, David	127	06/2004	06/2004	06/2004	06/2004	06/2004																			
Claude, Mike	290	02/2004	02/2004	02/2004	02/2004	02/2004																			
Farmer, Randy	706	02/2004	02/2004	02/2004	02/2004	02/2004																			
Frederick, Jon	306	03/2004	03/2004	03/2004	03/2004	03/2004																			
Garner, City Office																									
Captain, Rodney	312	03/2007	03/2007	03/2007	03/2007	03/2007																			
Coleman, Ron	651	04/2004	04/2004	04/2004	04/2004	04/2004																			
Davis, Lyle	447																								
Francis, Will	478																								
Hall, Robert	499	02/2007	02/2007	02/2007	02/2007	02/2007																			
Higgins, Kent	1159	02/2007	02/2007	02/2007	02/2007	02/2007																			
Hoffman, Marc	212	01/2004	02/2004	02/2004	02/2004	02/2004																			
Landry, Stephen	364	02/2004	02/2004	02/2004	02/2004	02/2004																			
Lambert, Joseph	496	02/2004	02/2004	02/2004	02/2004	02/2004																			
McIntyre, Tina	1124	01/2004	01/2004	01/2004	01/2004	01/2004																			
Myers, Tamara	414	01/2004	01/2004	01/2004	01/2004	01/2004																			
Miller, Corne	236	01/2004	01/2004	01/2004	01/2004	01/2004																			
Mull, James	480	02/2004	02/2004	02/2004	02/2004	02/2004																			
Olsen, Spencer	454																								
Rambert, Richard	472	01/2004	01/2004	01/2004	01/2004	01/2004																			
Sharp, Scott	254	02/2004	02/2004	02/2004	02/2004	02/2004																			
Stamm, CD	254	02/2004	02/2004	02/2004	02/2004	02/2004																			
Stark, Marc	490																								
Thomas, Mar	200	01/2004	01/2004	01/2004	01/2004	01/2004																			
Thomas, Juan	301	02/2004	02/2004	02/2004	02/2004	02/2004																			
Tyler, Matthew	476	02/2007	02/2007	02/2007	02/2007	02/2007																			
VF Lumber Office																									
Wall, Jason	571	02/2004	02/2004	02/2004	02/2004	02/2004																			
Ward, Devon	580	09/2004	09/2004	09/2004	09/2004	09/2004																			

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KANSAS DEPARTMENT OF TRANSPORTATION

Special Attachment
To Contracts or Agreements Entered Into
By the Secretary of Transportation of the State of Kansas

NOTE: Whenever this Special Attachment conflicts with provisions of the Document to which it is attached, this Special Attachment shall govern.

THE CIVIL RIGHTS ACT OF 1964, and any amendments thereto,
REHABILITATION ACT OF 1973, and any amendments thereto,
AMERICANS WITH DISABILITIES ACT OF 1990, and any amendments thereto,
AGE DISCRIMINATION ACT OF 1975, and any amendments thereto,
EXECUTIVE ORDER 12898, FEDERAL ACTIONS TO ADDRESS ENVIRONMENTAL JUSTICE IN MINORITY
POPULATIONS AND LOW INCOME POPULATIONS 1994, and any amendments thereto,
49 C.F.R. Part 26.1 (DBE Program), and any amendments thereto

NOTIFICATION

The Secretary of Transportation for the State of Kansas, in accordance with the provisions of Title VI and Title VII of the Civil Rights Act of 1964 (78 Stat. 252), §504 of the Rehabilitation Act of 1973 (87 Stat. 355) and the Americans with Disabilities Act of 1990 (42 USC 12101), the Age Discrimination Act of 1975 (42 USC 6101), the regulations of the U.S. Department of Transportation (49 C.F.R., Part 21, 23, and 27), issued pursuant to such Act, Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations (1994), and the DBE Program (49 C.F.R., Part 26.1), hereby notifies all contracting parties that, the contracting parties will affirmatively ensure that this contract will be implemented without discrimination on the grounds of race, religion, color, gender, age, disability, national origin, or minority populations and low income populations as more specifically set out in the following "Nondiscrimination Clauses".

CLARIFICATION

Where the term "Consultant" appears in the following "Nondiscrimination Clauses", the term "Consultant" is understood to include all parties to contracts or agreements with the Secretary of Transportation of the State of Kansas.

Nondiscrimination Clauses

During the performance of this contract, the Consultant, or the Consultant's assignees and successors in interest (hereinafter referred to as the "Consultant"), agrees as follows:

- 1) **Compliance with regulations:** The Consultant will comply with the regulations of the U.S. Department of Transportation relating to nondiscrimination in its federally-assisted programs and codified at Title 49, Code of Federal Regulations, Parts 21, 23 and 27, (hereinafter referred to as the "Regulations"). The Regulations are herein incorporated by reference and made a part of this contract.
- 2) **Nondiscrimination:** The Consultant, with regard to the work performed by the Consultant after award and prior to the completion of the contract work, will not discriminate on the grounds of race, religion, color, gender, age, disability, national origin or minority populations and low income populations in the selection and retention of subcontractors, including in the procurements of materials and leases of equipment. The Consultant will not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
- 3) **Solicitations for Subcontractors, including Procurements of Material and Equipment:** In all solicitations, either competitive bidding or negotiation made by the Consultant for work to be performed under a subcontract including procurements of materials and equipment, each potential subcontractor or supplier shall be notified by the Consultant of the Consultant's obligation under this contract and the Regulations relative to nondiscrimination on the grounds of race, religion, color, gender, age, disability, national origin or minority populations and low income populations.

- 4) **Information and Reports:** The Consultant will provide all information and reports required by the Regulations, or orders and instructions issued pursuant thereto, and the Secretary of the Transportation of the State of Kansas will be permitted access to the Consultant's books, records, accounts, other sources of information, and facilities as may be determined by the Secretary of Transportation of the State of Kansas to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a Consultant is in the exclusive possession of another who fails or refuses to furnish this information, the Consultant shall so certify to the Secretary of Transportation of the State of Kansas and shall set forth what efforts it has made to obtain the information.
- 5) **Employment:** The Consultant will not discriminate against any employee or applicant for employment because of race, religion, color, gender, age, disability, or national origin.
- 6) **Sanctions for Noncompliance:** In the event of the Consultant's noncompliance with the nondiscrimination provisions of this contract, the Secretary of Transportation of the State of Kansas shall impose such contract sanctions as the Secretary of Transportation of the State of Kansas may determine to be appropriate, including, but not limited to,
 - (a) withholding of payments to the Consultant under the contract until the Consultant complies, and/or
 - (b) cancellation, termination or suspension of the contract, in whole or in part.
- 7) **Disadvantaged Business Obligation**
 - (a) Disadvantaged Business as defined in the Regulations shall have a level playing field to compete for contracts financed in whole or in part with federal funds under this contract.
 - (b) All necessary and reasonable steps shall be taken in accordance with the Regulations to ensure that Disadvantaged Businesses have equal opportunity to compete for and perform contracts. No person(s) shall be discriminated against on the basis of race, color, gender, or national origin in the award and performance of federally-assisted contracts.
 - (c) The Consultant, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Consultant shall carry out applicable requirements of 49 C.F.R. Part 26 in the award and administration of Federally-assisted contracts. Failure by the Consultant to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as the recipient deems appropriate.
- 8) **Executive Order 12898**
 - (a) To the extent permitted by existing law, and whenever practical and appropriate, all necessary and reasonable steps shall be taken in accordance with Executive Order 12898 to collect, maintain, and analyze information on the race, color, national origin and income level of persons affected by programs, policies and activities of the Secretary of Transportation of the State of Kansas and use such information in complying with Executive Order 12898.
- 9) **Incorporation of Provisions:** The Consultant will include the provisions of paragraphs (1) through (8) in every subcontract, including procurements of materials and equipment, unless exempt by the Regulations, order, or instructions issued pursuant thereto. The Consultant will take such action with respect to any subcontract or procurement as the Secretary of Transportation of the State of Kansas may direct as a means of enforcing such provisions including sanctions for noncompliance: PROVIDED, however, that, in the event a Consultant becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the Consultant may request the State to enter into such litigation to protect the interests of the State.



PUBLIC WORKS DEPARTMENT

Council Committee Meeting Date: January 20, 2015

Council Meeting Date: January 20, 2015

CONSIDER CONSTRUCTION ADMINISTRATION AGREEMENT WITH TRANSYSTEMS FOR THE 75TH STREET PROJECT FROM MISSION ROAD TO STATE LINE ROAD, PROJECT NUMBER 75ST0001.

RECOMMENDATION

Move to approve the construction administration agreement with TranSystems for the 75th Street Project from Mission Road to State Line Road, Project 75ST0001.

BACKGROUND

In 2012 TranSystems was selected to be the City's construction administration consultant for 2012, 2013 and 2014. This project was planned to be constructed in 2014 and was delayed due to easement acquisition and utility adjustments. We planned to use TranSystems in 2014 as they also meet all the KDOT requirements for the Federally Aid project. When the project was delayed we continued with our plan to utilize TranSystems for this project.

The total construction cost for the 75th Street Project will be about \$3,500,000. The fee was negotiated with TranSystems to be \$378,923.87 or about 10.8% of construction costs. This percentage is similar to past negotiated construction administration contracts.

The manhour's and associated fee's were reviewed by Public Works and are appropriate for this project and its scope of work.

The scope meets the requirements of the Non-Federal aid three party consultant agreement between the City, TranSystems, and KDOT for this project.

FUNDING SOURCE

Funding is available under the 75th Street Project from Mission Road to State Line Road, Project 75ST001. No Federal Aid funds will be used for this contract.

RELATION TO VILLAGE VISION

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

ATTACHMENTS

1. Construction Administration Agreement with TranSystems.

PREPARED BY

Keith Bredehoeft, Public Works Director

January 14, 2015

AGREEMENT FOR PROFESSIONAL CONSULTANT SERVICES

For

CONSTRUCTION ADMINISTRATION

For

PROJECT 75ST0001

75th STREET PROJECT- MISSION ROAD to STATE LINE ROAD

THIS AGREEMENT, made at the Prairie Village, Kansas, this _____ day of _____, by and between the City of Prairie Village, Kansas, a municipal corporation with offices at 7700 Mission Road, Prairie Village, Kansas, 66208, hereinafter called the “**City**”, and TranSystems, a Missouri corporation with offices at 2400 Pershing Road, Suite 400, Kansas City, MO, 64108, hereinafter called the “**Consultant**”.

WITNESSED, THAT WHEREAS, City has determined a need to retain a professional engineering firm to provide civil engineering services for Construction Administration of Project 75ST0001- 75th Street from Mission Road to State Line Road, hereinafter called the “**Project**”,

AND WHEREAS, the City is authorized and empowered to contract with the Consultant for the necessary consulting services for the Project,

AND WHEREAS, the City has the necessary funds for payment of such services,

NOW THEREFORE, the City hereby hires and employs the Consultant as set forth in this Agreement effective the date first written above.

ARTICLE I - RESPONSIBILITIES OF THE CITY

The CITY designates Keith Bredehoeft, Manager of Engineering Services as CITY representative with respect to this Agreement. Mr. Bredehoeft shall have the authority to transmit instructions, receive information, interpret and define the policies of the CITY, make decisions relevant to the services of the CONSULTANT.

The CITY shall do the following in a timely manner:

1. Make available to the CONSULTANT all existing data and records relevant to the Project, including but not limited to, maps, plans, correspondence, data and previous reports and studies possessed by the CITY.
2. Approve all criteria and information as to the requirements of the CITY for the Project, including objectives and constraints, performance requirements, and budgetary limitations.
3. Review and approve all correspondence transmitted and forms used by the CONSULTANT relative to this Project.
4. Review for approval all submittals such as change orders and payment requests by the CONSULTANT.

ARTICLE II - RESPONSIBILITIES OF THE CONSULTANT

The CONSULTANT designates Mr. Kent Higgins as Construction Manager, who shall direct the related construction inspection and administration services in all phases of the Project to which this Agreement applies. The Construction Manager shall serve as the prime professional on this Project and shall be the prime contact with the Manager of Engineering Services. Project-specific services are identified on Exhibit A.

The standard of care for all professional consulting services and related construction inspection and administration services either performed for or furnished by the CONSULTANT under this Agreement will be the care and skill ordinarily used by members of the CONSULTANT profession, practicing under similar conditions at the same time and in the same locality.

The Construction Manager shall act as CITY representative to the extent and limitations of the duties, responsibilities and authority as assigned herein and shall not be modified, except as CONSULTANT may otherwise agree in writing. All of CITY instructions to Contractor will be issued through Construction Manager, who shall have authority to act on behalf of CITY in dealings with Contractor to the extent provided in this Agreement, except as otherwise provided in writing.

The Construction Manager shall conduct a pre-construction meeting, which will include the Manager of Engineering Services, Contractor, utility companies and any appropriate government agency partied with the CITY prior to commencement of Work at the Site.

The Construction Manager shall coordinate with the Contractor on the taking of digital, pre-construction pictures.

The Construction Manager shall make visits to the site at intervals appropriate to the various stages of construction, as Construction Manager deems necessary, in order to observe as an experienced and qualified design professional the progress and quality of the Work. Such visits and observations by Construction Manager are not intended to be exhaustive or to extend to every aspect of the Work in progress or to involve detailed inspections of the Work in progress beyond the responsibilities specifically assigned to Construction Manager herein, but rather are to be limited to selective checking, selective sampling, and similar methods of observation of the Work based on Construction Manager's exercise of professional judgment. Based on information obtained during such visits and such observations, Construction Manager will determine if Contractor's work is proceeding in accordance with the Project Manual, and Construction Manager shall keep CITY informed of the progress of the Work.

The purpose of Construction Manager visits to the Site of the Project will be to enable Construction Manager to carry out the duties and responsibilities assigned to and undertaken by CONSULTANT during the Construction Phase. By the exercise of Construction Manager's efforts as an experienced and qualified construction professional, the Construction Manager will provide for CITY a greater degree of confidence that the completed Work will conform in general to the Project Manual and that the integrity of the design concept of the completed project as a functioning whole as indicated in the Project Manual has been implemented and preserved by Contractor. Construction Manager shall not, during such visits or as a result of such observations of Contractor's work in progress, supervise, direct, or have control over the Work, nor shall Construction Manager have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected by Contractor, for safety precautions and programs incident to the Work, or for any failure of Contractor to comply with Laws and Regulations applicable to Contractor's furnishing and performing the Work. Accordingly, Construction Manager neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish and perform its work in accordance with the Project Manual.

The Construction Manager shall have authority to disapprove or reject Contractor's work while it is in progress if, on the basis of such observations, Construction Manager believes that such work will not

produce a completed project that conforms generally to the Project Manual or that it will prejudice the integrity of the design concept of the completed project as a functioning whole as indicated in the Project Manual.

The Construction Manager shall issue necessary clarifications and interpretations of the Project Manual as appropriate to the orderly completion of the Work. Such clarifications and interpretations will be consistent with the intent of and reasonably inferable from the Project Manual. Construction Manager may issue Field Orders authorizing minor variations of work that neither increase the Time for Completion nor have a value of more than \$1,000 from the requirements of the Project Manual.

The Construction Manager shall recommend Change Orders and Field Orders to Manager of Engineering Services, as appropriate, and prepare Change Orders and Field Orders as required.

The Construction Manager shall review and approve or take other appropriate action in respect to Shop Drawings and Samples and other data which Contractor is required to submit, but only for conformance with the information given in the Project Manual and compatibility with the design concept of the completed project as a functioning whole as indicated in the Project Manual. Such reviews and approvals or other action will not extend to means, methods, techniques, sequences or procedures of construction or to safety precautions and programs incident thereto. Construction Manager has an obligation to meet any Contractors submittal schedule that has earlier been acceptable to Construction Manager.

The Construction Manager and Manager of Engineering Services shall evaluate and determine the acceptability of substitute or "or equal" materials and equipment proposed by Contractor.

The Construction Manager shall require such special inspections or tests of the Work as deemed reasonably necessary, and receive and review all certificates of inspections, tests, and approvals required by Laws and Regulations or the Project Manual. The Construction Manager's review of such certificates will be for the purpose of determining that the results certified indicate compliance with the Project Manual and will not constitute an independent evaluation that the content or procedures of such inspections, tests, or approvals comply with the requirements of the Project Manual. The Construction Manager shall be entitled to rely on the results of such tests.

The Construction Manager shall render formal written recommendations on all claims of CITY and Contractor relating to the acceptability of the Work or the interpretation of the requirements of the Project Manual pertaining to the execution and progress of the Work.

The Construction Manager shall:

1. Review the Contractor's monthly Applications for Payment to determine it represents the work accepted and is mathematically correct. Construction Manager will provide recommendation for payment to the Manager of Engineering Services. Such recommendations of payment will be in writing and will constitute Construction Manager representation to the CITY, based on such observations and review, that, to the best of Construction Manager knowledge, information and belief, the Work has progressed to the point indicated, the quality of such is generally in accordance with the Project Manual (subject to an evaluation of the Work as a functioning whole prior to or upon completion, to the results of any subsequent tests called for in the Project Manual and to any other qualifications stated in the recommendation), and the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Construction Manager responsibility to observe the Work. In the case of unit price work, the Construction Manager recommendations of payment will include final determinations of quantities and classifications of the Work (subject to any subsequent adjustments allowed by the Project Manual). The responsibilities of Construction Manager are expressly subject to the limitations set forth herein.

2. By recommending any payment, it will also not impose responsibility on Construction Manager to make any examination to ascertain how or for what purposes Contractor has used the moneys paid on account of the Contract Price. However, the Construction Manager shall obtain from the Contractor documentation in approved form with the payment request to determine that title to any portion of the work in progress, materials, or equipment has passed to CITY free and clear of any liens, claims, security interests, or encumbrances, or that there may not be other matters at issue between CITY and Contractor that might affect the amount that should be paid.

The Construction Manager shall receive and review maintenance and operating instructions, schedules, and guarantees that will be given to the Manager of Engineering Services.

The Construction Manager shall receive and deliver to the Manager of Engineering Services bonds, certificates, or other evidence of insurance not previously submitted and required by the Project Manual, certificates of inspection, tests and approvals, Shop Drawings, Samples and other data approved as provided herein, and the annotated record documents which are to be assembled by Contractor in accordance with the Project Manual to obtain final payment.

Construction Manager shall transmit to Manager of Engineering Services promptly after notice from Contractor that Contractor considers the entire Work ready for its intended use. In company with Manager of Engineering Services and Contractor, the Construction Manager shall conduct an inspection to determine if the Work is Complete. If after considering any objections, the Construction Manager shall deliver a certificate of Completion to Manager of Engineering Services and Contractor.

Accompanying the recommendation for final payment, Construction Manager shall provide proper notice that the Work is acceptable to the best of the Construction Manager knowledge, information, and belief and based on the extent of the services provided by CONSULTANT under this Agreement.

The Construction Phase will commence with the execution of the Construction Agreement for the Project or any part thereof and will terminate upon written recommendation by Construction Manager for final payment to Contractors.

The Construction Manager shall not be responsible for the acts or omissions of any Contractor, or of any of their subcontractors, suppliers, or of any other individual or entity performing or furnishing any of the Work. Construction Manager shall not be responsible for failure of any Contractor to perform or furnish the Work in accordance with the Project Manual.

Construction Manager shall furnish assistants, and other field staff to assist Construction Manager to provide more extensive observation of Contractor's work by observing progress and quality of the Work. Through such additional observations of Contractor's work in progress and field checks of materials and equipment by the assistants and other field staff, Construction Manager shall provide protection against defects and deficiencies in the Work.

The duties and responsibilities Construction Manager are as follows:

- 1 Attend meetings with Contractor, such as preconstruction conferences, progress meetings, job conferences and other project-related meetings, and prepare and circulate copies of minutes thereof.
- 2 Serve liaison with Contractor, working principally through Contractor's superintendent, assist in providing information regarding the intent of the Project Manual.
- 3 Obtaining from CITY additional details or information, when required for proper execution of the Work.

- 4 Report when clarifications and interpretations of the Project Manual are needed and transmit to Contractor clarifications and interpretations.
- 5 Record date of receipt of Samples and approved Shop Drawings.
- 6 Receive and examine Samples, which are furnished at the Site by Contractor.
- 7 Review material test reports and inform Manager of Engineering Services and Contractor of results not meeting specifications. The Construction Manager shall make appropriate recommendations to address results not meeting specifications.
- 8 Advise the Contractor prior to the commencement of any portion of the Work requiring a Shop Drawing or Sample submittal that the submittal has not been received or approved by Construction Manager.
- 9 Consider and evaluate Contractor's suggestions for modifications in Drawings or Specifications and report such suggestions. Transmit to Contractor in writing decisions as issued by Construction Manager.
- 10 Conduct on-Site observations of Contractor's work in progress to determine if the Work is in general proceeding in accordance with the Project Manual.
- 11 Report any part of Contractor's work in progress will not produce a completed Project that conforms generally to the Project Manual or will imperil the integrity of the design concept of the completed Project as a functioning whole as indicated in the Project Manual, or has been damaged, or does not meet the requirements of any inspection, test or approval required to be made; and advise of that part of work in progress that the Construction Manager believes should be corrected or rejected or should be uncovered for observation, or requires special testing, inspection or approval.
- 12 Consult with Contractor in advance of scheduled major inspections, tests, and systems startups of important phases of the Work.
- 13 Verify that tests, equipment, and systems start-ups and operating and maintenance training are conducted in the presence of appropriate CITY personnel, and that Contractor maintains adequate records thereof.
- 14 Observe, record, and report appropriate details relative to the test procedures and systems start-ups.
- 15 Accompany visiting inspectors representing public or other agencies having jurisdiction over the Project, record the results of these inspections.
- 16 Maintain orderly files for correspondence, reports of job conferences, reproductions of original Project Manual including all Change Orders, Field Orders, Work Change Directives, Addenda, additional Drawings issued subsequent to the execution of the Contract, clarifications and interpretations of the Project Manual, progress reports, Shop Drawing and Sample submittals received from and delivered to Contractor, and other Project-related documents.
- 17 Prepare a daily report recording Contractor's hours on the Site, weather conditions, data relative to questions of Change Orders, Field Orders, Work Change Directives, or changed conditions, Site visitors, daily activities, decisions, observations in general, and specific observations in more detail as in the case of observing test procedures; and send copies to Manager of Engineering Services.

- 18 Record names, addresses, fax numbers, e-mail addresses, web site locations, and telephone numbers of all Contractors, subcontractors, and major suppliers of materials and equipment.
- 19 Maintain records for use in preparing Project documentation.
- 20 Upon completion of the Work, furnish original set of all Project documentation to Manager of Engineering Services.
- 21 Furnish to Manager of Engineering Services periodic reports as required of progress of the Work and of Contractor's compliance with the progress schedule and schedule of Shop Drawing and Sample submittals.
- 22 Draft and recommend to Manager of Engineering Services proposed Change Orders, Work Change Directives, and Field Orders. Obtain backup material from Contractor.
- 23 Furnish copies of all inspection, test, and system start-up reports.
- 24 Immediately notify Manager of Engineering Services of the occurrence of any Site accidents, emergencies, acts of God endangering the Work, damage to property by fire or other causes, or the discovery of any Constituent of Concern.
- 25 Review Applications for Payment with Contractor for compliance with the established procedure for their submission and forward with recommendations to Manager of Engineering Services, noting particularly the relationship of the payment requested to the schedule of values, Work completed, and materials and equipment delivered at the Site but not incorporated in the Work.
- 26 During the course of the Work, verify that materials and equipment certificates, operation and maintenance manuals and other data required by the Specifications to be assembled and furnished by Contractor are applicable to the items actually installed and in accordance with the Project Manual, and have these documents delivered to Manager of Engineering Services for review prior to payment for that part of the Work.
- 27 Participate in a Completion inspection, assist in the determination of Completion and the preparation of lists of items to be completed or corrected.
- 28 Participate in a final inspection in the company of Manager of Engineering Services, and Contractor and prepare a final list of items to be completed and deficiencies to be remedied.
- 29 Observe whether all items on the final list have been completed or corrected and make recommendations concerning acceptance and issuance of the Notice of Acceptability of the Work.

The Construction Manager shall not:

- 1 Exceed limitations of CONSULTANT authority as set forth in the Agreement or the Project Manual.
- 2 Undertake any of the responsibilities of Contractor, subcontractors, suppliers, or Contractor's superintendent.
- 3 Advise on, issue directions relative to, or assume control over any aspect of the means, methods, techniques, sequences or procedures of Contractor's work unless such advice or directions are specifically required by the Project Manual.

- 4 Advise on, issue directions regarding, or assume control over safety practices, precautions, and programs in connection with the activities or operations of CITY or Contractor.
- 5 Participate in specialized field or laboratory tests or inspections conducted off-site by others except as specifically authorized.
- 6 Accept Shop Drawing or Sample submittals from anyone other than Contractor.
- 7 Authorize CITY to occupy the Project in whole or in part.

The Construction Manager is expected to conduct himself/herself at all times in such a manner as to reflect credit upon himself/herself and the CITY they represent. It is expected that the Construction Manager will be suitably dressed for the work, and he/she will be clean and neat enough to be a suitable representative of the CITY to the Contractor and the public. The Construction Manager will be pleasant, courteous and business-like in meeting the public. He/She is helpful and considerate to answer questions asked by the public. If the Construction Manager cannot clearly answer the question, the Construction Manager should refer the questioner to the Manager of Engineering Services.

The Construction Manager will not engage in controversial activities relative to the project in public, particularly if it involves public speaking, public debate, public media, etc. All written communications intended for publication that relate to the project must be approved by the Manager of Engineering Services.

Keeping accurate records and reports is a very important function of the Construction Manager. These records are necessary for a number of reasons. Some of the most common reasons for these records and their use as references are as follows:

1. Accounting for quantities for periodic progress payments and extra work under cost plus change order procedures
2. Verify actions and decisions of the Construction Manager
3. Report job status and site conditions of an accident or liability claim
4. Clarify the continuity of project contract time, such as working days, delays, and weather.
5. Responses to inquiries and complaints
6. Evidence in legal action

The basic reporting medium is the Daily Report. It is a continuing report of the job progress and provides an adequate record of each day's progress and activities. The record of activities should be reported in the sequence that they take place. Each report should be brief but at the same time be complete, clear and factual and include all work accomplished by the Contractor, as well as pertinent related information. The report should answer "who did what, when, where, how and how much". Abbreviations are acceptable as long as their meanings are not confusing and have a common acceptance.

A checklist of items contained in the Daily Report is as follows:

Typical entries for general information -

1. All reports shall show the CITY Project number and title and the CARS or SMAC project number
2. All entries shall be printed in black ink or computer generated
3. Detail the Construction Manager hours on the jobsite
4. Record weather conditions such as "sunny, temperature, precipitation type and amount (light, moderate, heavy)"
5. Complete the report the same day
6. Label the report using the consecutive numbers
7. Note any written or verbal instructions given to the Contractor

8. Note any non-compliance issued for the job
9. Record any unsatisfactory or non-compliant work and corrective actions taken
10. Report all job incidents involving the public such injuries, damages to property and equipment, safety conditions
11. Record the type, frequency and person providing testing
12. Detail job progress in terms of quantity, distances, stations, and weight as they are appropriate and applicable to project pay items
13. Record any factors adversely affecting progress of the work, such as utility conflict, material delivery, unforeseen conditions, plan changes, poor Contractor management, weather, etc.
14. Record any important visitors to the project and their nature of business
15. Sign and date the report
16. Send copy of report to Manager of Engineering Services

Typical entries for subgrade work -

1. Name of Contractor doing the work
2. Location and results of compaction tests completed and name of the testing laboratory
3. Limits of rough grade, cuts and fills
4. Thickness and type of material placed and compacted
5. Conformance with final grade specifications

Typical entries for curb, gutter, sidewalk and driveway work -

1. Name of Contractor doing the work
2. Station to station limits of forms placed when concrete is not placed the same day
3. Station to station limits of concrete placed, type of concrete and additives, number of cubic yards placed, source of concrete and copy of delivery ticket
4. Type and size of curb and gutter
5. Width and thickness of sidewalk
6. Width and thickness of driveways
7. Number and location of concrete tests for slump, cylinders taken, and name of testing laboratory

Typical entries for paving work -

1. Name of Contractor doing the work
2. Identification of milling, paving and roller equipment used
3. Source and type of material
4. Station to station and width limits of pavement placed, method of laying, material type,, thickness, and weight of material laid based on delivery tickets
5. Number and location of temperature of material at delivery tests, density tests and name of testing laboratory

Typical entries for storm drains -

1. Station to station limits of excavation, pipe laid (including size and type), bedding material, backfill material and compaction method
2. Number and location of structure by type, backfill material and compaction method
3. Location of utility conflicts and resolution
4. Method of restoration, , compaction method and density test
5. Method of restoration, sidewalks, lawns
6. Televised inspection, dates and results

A primary responsibility of the Construction Manager is to have a working knowledge of the controlling regulations, codes and directives dealing with the public convenience, public safety and construction safety. Though jobsite safety is contractually the Contractor's responsibility, the Construction Manager should immediately report all unsafe conditions or practices to the proper authority. However, if in the opinion of the Construction Manager, the precautions taken by the Contractor are found to be

insufficient or inadequate in providing job or public safety at any time, the Construction Manager shall notify the Manager of Engineering Services.

The Construction Manager is expected to wear suitable clothing and protective gear on the jobsite. Hard hats must be worn at all times there is a danger of falling and flying material. Approved reflective vests must be worn for high visibility in close proximity to traffic and moving equipment. Clothing and protective gear should clearly identify the Construction Manager.

Good housekeeping and sanitary provisions are the responsibility of the Contractor. The Contractor is responsible for public and private property and shall take every reasonable precaution to avoid damage by the construction activities. Throughout all phases of construction, the rubbish and debris on a project shall be held to a minimum and confined to organized disposal and storage areas. Dust nuisance is to be held to a minimum. The Contractor's equipment and construction activities shall not contribute to air pollution by excessively discharging smoke, exhaust and other contaminants in such quantities to be a nuisance and violation of contract. The Construction Manager shall record such unacceptable conditions in the Daily Report.

The responsibility of safe and proper handling of traffic rests with the Contractor. The Construction Manager shall see that the Contractor provides proper handling of traffic as required by the contract and shall notify the Contractor to correct any potentially dangerous situation that exists. The section of the Manual of Uniform Traffic Control Devices (MUTCD) titled *Work Area Traffic Control Handbook* sets forth the principle and standards in order to provide safe and effective work areas and to warn, control, protect and expedite vehicular and pedestrian traffic through the construction project. The MUTCD by reference is part of the Contractor's construction documents. The Construction Manager shall refer to this document when monitoring and coordinating traffic handling with the Contractor. The Construction Manager shall record such unacceptable conditions in the Daily Report.

The Construction Manager are directed to avail themselves of the *Public Works Inspector' Manual*, latest edition published by the BNi Building News and available through the American Public Works Association. The manual is a complete operational and technical guidebook for inspecting all types of public works construction. The manual is the standard by which the CITY expects the Construction Manager to meet and is part of this Agreement.

ARTICLE III - COMPENSATION

The CITY agrees to pay the CONSULTANT, at Hourly Rates, to a Maximum Fee of \$ **378,923.87** for the scope of services as specified herein unless modified by Change Order. CONSULTANT Hourly Rates shall be actual hourly salary times a 2.858 multiplier. CONSULTANT fee estimate is attached as Exhibit B.

The CONSULTANT may submit an invoice on a monthly basis from an estimate of Services or upon the completion of services. The CONSULTANT shall bill reimbursable expenses, which are beyond all fees for professional services, with a multiplier of 1.05. Reimbursable items shall be as follows:

- a. Final plots and printing for construction or as requested by the CITY except as outlined in the scope of services (printing and plotting for the CONSULTANT in-house use is not a reimbursable expense)
- b. Project Mileage
- c. Delivery Charges

All billings must be submitted by the fifteenth day of the month for all services rendered in the previous month. The CONSULTANT will invoice the CITY on forms approved by the CITY. All properly prepared invoices will include a documented breakdown of expenses incurred.

Both parties may submit an Engineering Change Order for major changes in scope, character, delays or complexity of Services. The Engineering Change Order may provide for changes in compensation and schedule, either upward or downward. The Engineering Change Order shall be signed by the CITY and the CONSULTANT prior to the CONSULTANT proceeding with any work covered by this Agreement.

ARTICLE IV - GENERAL PROVISIONS

Times for Rendering Services: The CONSULTANT services and compensation under this Agreement have been agreed to in anticipation of orderly and continuous progress of the Services through completion. Specific periods of time for rendering services are set forth in Article IV, Time Schedule, in this Agreement, by which time defined services are to be completed. If such periods of time are changed through no fault of the CONSULTANT, the rates and amounts of compensation provided for therein shall be subject to equitable adjustment.

Opinions of Probable Cost: In providing opinions of probable cost, the CITY understands that the CONSULTANT has no control over costs or the price of labor, equipment or materials, or over the Contractor's method of pricing, and that the opinions of probable construction costs, if included herein, are to be made based on the CONSULTANT qualifications and experience. The CONSULTANT makes no warranty, expressed or implied, as to the accuracy of such opinions as compared to bid or actual costs.

Change in Scope: The scope of work described in Article I Scope of Services, shall be subject to modification or supplement upon the signing of an Engineering Change Order by the CITY and the CONSULTANT. At the time of such modification of scope, equitable adjustments, agreeable to both parties, shall be made in the time of performance and the compensation to be paid for the services.

In event the CITY consents to, allows, authorizes or approves of changes to the construction documents prepared by the CONSULTANT, and these changes are not approved in writing by the CONSULTANT, the CITY recognizes that such changes and the results thereof are not the responsibility of the CONSULTANT. Therefore, the CITY agrees to release the CONSULTANT from any liability arising from the construction, use, or result of such changes. In addition, the CITY agrees to indemnify and hold the CONSULTANT harmless from any damage, liability or cost arising from such changes.

Reuse of Documents: All documents including the plans and specifications provided or furnished by the Consultant pursuant to this Agreement ("Plans") shall become the property of City. City agrees that if such Plans are ever used in connection with another project in which the Consultant is not providing civil engineering services or for completion of the Project by others, all references to the Consultant or any subconsultant, including seals, shall be removed from the Plans before use on said project. The City may make and retain copies for the use by the City and others; however, such documents are not intended or suitable for reuse by the City or others as an extension of the Project or on any other Project. Any such reuse without written approval or adaptation by the Consultant for the specific purpose intended will be at the CITY sole risk and without liability to the Consultant. To the extent permitted by law, the City shall indemnify and hold harmless the Consultant from all claims, damages, losses and expenses including attorney's fees arising out of or resulting reuse of the Plans. In a similar manner, the Consultant is prohibited from reuse or disclosing any information contained in any documents, plans or specifications relative to the Project without the expressed written permission of the City.

Insurance: The Consultant shall procure and maintain, at its expense, the following insurance coverage: (a) Workers' Compensation -- Statutory Limits, with Employer's Liability limits of \$500,000 each employee, \$500,000 policy limit; (b) Commercial General Liability for bodily injury and property damage liability claims with limits of not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate; (c) Commercial Automobile Liability for bodily injury and property damage with limits of not less than \$1,000,000 each accident for all owned, non-owned and hired automobiles; (d) errors and omissions coverage of not less than \$1,000,000. Deductibles for any of the above coverage shall not exceed \$50,000 in General Liability and \$100,000 in Professional Liability unless approved in writing by City. In addition, Consultant agrees to require all consultants and subconsultants to obtain and provide insurance in identical type and amounts of coverage together and to require satisfaction of all other insurance requirements provided in this Agreement.

CONSULTANT'S insurance shall be from an insurance carrier with an A.M. Best rating of A-IX or better, shall be on the GL 1986 ISO Occurrence form or such other form as may be approved by City, and shall name, by endorsement to be attached to the certificate of insurance, City, and its divisions, departments, officials, officers and employees, and other parties as specified by City as additional insureds as their interest may appear, except that the additional insured requirement shall not apply to Errors and Omissions coverage. Such endorsement shall be ISO CG2010 11/85 or equivalent. "Claims Made" and "Modified Occurrence" forms are not acceptable, except for Errors and Omissions coverage. Each certificate of insurance shall state that such insurance will not be canceled or coverage reduced until after thirty (30) days' unqualified written notice of cancellation or reduction has been given to the City, except in the event of nonpayment of premium, in which case there shall be ten (10) days' unqualified written notice. Subrogation against City and CITY Agent shall be waived. CONSULTANT insurance policies shall be endorsed to indicate that CONSULTANT insurance coverage is primary and any insurance maintained by City or CITY Agent is non-contributing.

Before Consultant performs any portion of the Work, it shall provide City with certificates and endorsements evidencing the insurance required by this Article. Consultant agrees to maintain the insurance required by this Article of a minimum of three (3) years following completion of the Project and, during such entire three (3) year period, to continue to name City, CITY agent, and other specified interests as additional insureds thereunder.

If due to the CONSULTANT'S negligent act, error or omission, any required item or component of the project is omitted from the Construction documents produced by the Consultant, the CONSULTANT liability shall be limited to the difference between the cost of adding the item at the time of discovery of the omission and the cost had the item or component been included in the construction documents. The Consultant will be responsible for any retrofit expense, waste, any intervening increase in the cost of the component, and a presumed premium of 10% of the cost of the component furnished through a change order from a contractor to the extent caused by the negligence or breach of contract of the Consultant or its subconsultants.

6.4 Termination: This Agreement may be terminated by either party upon seven days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party; provided, however, the nonperforming party shall have 14 calendar days from the receipt of the termination notice to cure the failure in a manner acceptable to the other party. In any such case, the Consultant shall be paid the reasonable value of the services rendered up to the time of termination on the basis of the payment provisions of this Agreement. Copies of all completed or partially completed designs, plans and specifications prepared under this Agreement shall be delivered to the City when and if this Agreement is terminated, but it is mutually agreed by the parties that the City will use them solely in connection with this Project, except with the written consent of the Consultant (subject to the above provision regarding Reuse of Documents).

6.5 **Termination for Convenience:** The City, within its sole discretion, may elect to terminate the Agreement with the Consultant for convenience upon three (3) days written Notice to Consultant. In the event of such termination, Consultant 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. Consultant shall not be entitled to any anticipatory profits of other costs other than direct costs of demobilization

Controlling Law: This Agreement is to be governed by the laws of the State of Kansas.

Indemnity: To the fullest extent permitted by law, with respect to the performance of its obligations in this Agreement or implied by law, and whether performed by Consultant or any subconsultants hired by Consultant, the Consultant agrees to indemnify City, and its agents, servants, and employees from and against any and all claims, damages, and losses arising out of personal injury, death, or property damage, caused by the negligent acts, errors, or omissions of the Consultant or its subconsultants, to the extent and in proportion to the comparative degree of fault of the Consultant and its subconsultants. Consultant shall also pay for CITY reasonable attorneys' fees, expert fees, and costs incurred in the defense of such a claim to the extent and in proportion to the comparative degree of fault of the Consultant and its subconsultants.

Severability: Any provision or part of the Agreement held to be void or unenforceable under any law or regulation shall be deemed stricken and all remaining provisions shall continue to be valid and binding upon the City and the Consultant, who agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision. The provisions of this Article shall not prevent this entire Agreement from being void should a provision which is of the essence of this Agreement be determined void.

Notices: Any notice required under this Agreement will be in writing, addressed to the appropriate party at the address which appears on the signature page to this Agreement (as modified in writing from item to time by such party) and given personally, by registered or certified mail, return receipt requested, by facsimile or by a nationally recognized overnight courier service. All notices shall be effective upon the date of receipt.

Successors and Assigns: The City and the Consultant each is hereby bound and the partners, successors, executors, administrators, legal representatives and assigns of the City and the Consultant are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrators, legal representatives and assigns of such other party in respect of all covenants and obligations of this Agreement.

Neither the City nor the Consultant may assign, sublet, or transfer any rights under the Agreement without the written consent of the other, which consent shall not be unreasonably withheld; provided, Consultant may assign its rights to payment without Owner's consent, and except to the extent that any assignment, subletting or transfer is mandated by law or the effect of this limitation may be restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Agreement.

Nothing in this Agreement shall be construed to create, impose or give rise to any duty owed by the Consultant to any Contractor, subcontractor, supplier, other person or entity or to any surety for or employee of any of them, or give any rights or benefits under this Agreement to anyone other than the City and the Consultant.

IN WITNESS WHEREOF: the parties hereto have executed this Agreement to be effective as of the date first above written.

CITY:

CITY OF PRAIRIE VILLAGE, KS

CONSULTANT:

TRANSYSTEMS CORPORATION

By: _____

Ashley Weaver

Acting Mayor

By: _____

Thomas Swenson

Principal

Address for giving notices:

CITY of Prairie Village
7700 Mission Road
Prairie Village, Kansas, 66208
913-381-6464

Address for giving notices:

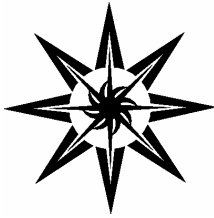
TranSystems
2400 Pershing Road, Suite 400
Kansas City, MO 64108
816-329-8762

ATTEST:

Joyce Hagen Mundy, City Clerk

APPROVED BY:

Catherine Logan, City Attorney



PUBLIC WORKS DEPARTMENT

Council Committee Meeting Date: January 20, 2015

Council Meeting Date: February 2, 2015

DISCUSS THE STATUS OF THE ROCK CREEK WATERSHED COALITION

RECOMMENDATION

APPROVE PLAN FOR PRAIRIE VILLAGE TO SUPPORT THE ROCK CREEK COALITION GOING FORWARD INTO THE FUTURE.

BACKGROUND

On February 19, 2013 Prairie Village entered a multi-jurisdictional agreement with all the cities in the Rock Creek Watershed. These cities include the City of Fairway, the City of Mission, the City of Overland Park, the City of Roeland Park, the City of Westwood, and the City of Mission Hills. This effort was initiated by the City of Fairway with the hope to be able to better manage stormwater projects and to prevent situations as have happened in the past where cities could not agree on County funded SMAC projects. SMAC requires that the city immediately downstream from a proposed project to agree with the project. This coalition effort was began to determine if stormwater projects could be managed on a watershed basis and not just managed and planned on a city basis.

Since the coalition began staff has participated in the process including at least 8 coalition meetings, a bus tour of the watershed, and a strategies workshop. Significant time and effort had been spent by coalition members in this effort.

In summary the coalition found it very difficult to come up with a governance and funding approach that would allow stormwater projects to be managed on a watershed basis. The direction at this point for the coalition is to develop a stormwater masterplan and to have the city's work together as future projects are developed. While this is not really managing stromwater projects from a governance and funding standpoint it is a good way forward to help the communities along Rock Creek to handle stormwater challenges.

Given that Prairie Village only accounts for 0.1 square miles of the 4.8 square mile watershed (2%) and that the area in Prairie Village is fully developed our involvement with the master plan and regular coalition activities going forward are proposed to be limited to a support role. In this proposed support role we would still be available at any time to attend meetings or to provide input as necessary.

Staff desires to confirm this limited approach with Council.

ATTACHMENTS

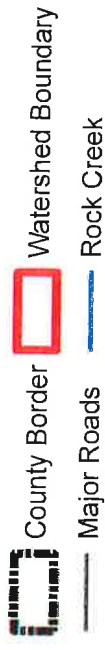
Watershed Map

PREPARED BY

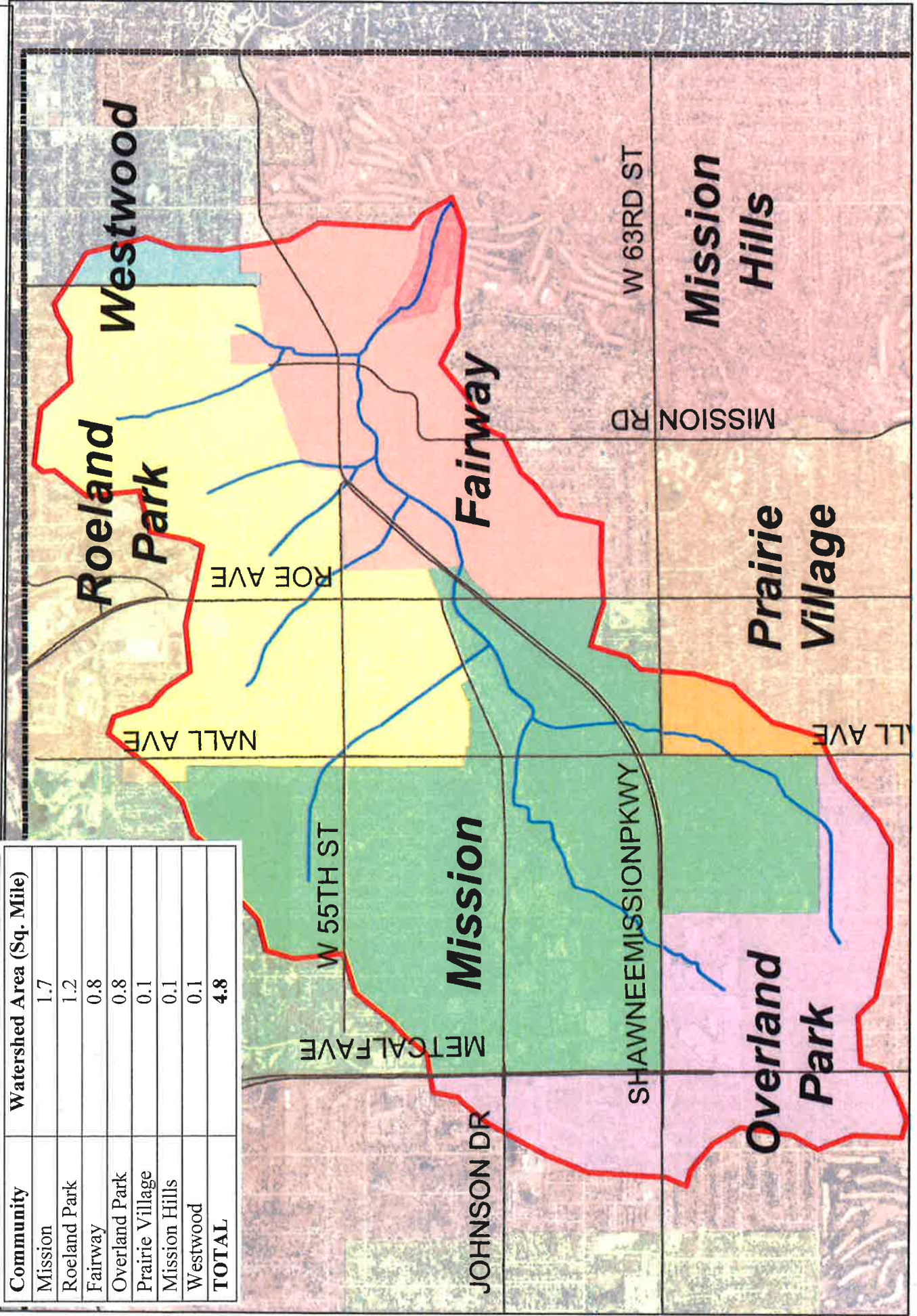
Keith Bredehoeft, Public Works Director

January 15, 2015

Rock Creek Watershed Map



Community	Watershed Area (Sq. Mile)
Mission	1.7
Roeland Park	1.2
Fairway	0.8
Overland Park	0.8
Prairie Village	0.1
Mission Hills	0.1
Westwood	0.1
TOTAL	4.8



**COUNCIL MEETING AGENDA
CITY OF PRAIRIE VILLAGE
Council Chambers
January 20, 2015
7:30 PM**

- I. **CALL TO ORDER**
- II. **ROLL CALL**
- III. **PLEDGE OF ALLEGIANCE**
- IV. **PRESENTATIONS**
Police Department Awards
- V. **PUBLIC PARTICIPATION**
- VI. **CONSENT AGENDA**

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

By Staff

- 1. Approve regular City Council minutes - January 5, 2015
- 2. Approve claims ordinance 2924
- 3. Approve the 2015 Super Pass and Interlocal Agreement and swim team letter of understanding
- 4. Approve the 2015 recreation fee schedule
- 5. Approve purchase of three 2014 Ford Police Interceptor Utilities

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

Council Committee of the Whole

- COU2014-47 Consider the awarding and funding of the 75th Street project from State Line Road to Mission Road, Project 75ST0001
- COU2015-04 Consider approval of KDOT Form 1309 - Authority to Award for Project 75ST0001: 75th Street - State Line Road to Mission Road
- COU2015-05 Consider approval of a three party non federal aid agreement between KDOT, Prairie Village, and TranSystems for Project 75ST0001: 75th Street- Stateline Road to Mission Road
- COU2015-06 Consider approval of the construction administration agreement with TranSystems for the 75th Street Project from Mission Road

to State Line Road, Project 75ST0001

Planning Commission

1. Consider final plat for Mission Chateau
2. Consider request for extension to SUP for Mission Chateau

IX. STAFF REPORTS

X. OLD BUSINESS

XI. NEW BUSINESS

Discuss recent modifications by residents on the island at Prairie Lane and Oxford Road

XII. ANNOUNCEMENTS

XIII. ADJOURNMENT

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

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

CONSENT AGENDA

CITY OF PRAIRIE VILLAGE, KS

January 20, 2015

**CITY COUNCIL
CITY OF PRAIRIE VILLAGE
January 5, 2015**

The City Council of Prairie Village, Kansas, met in regular session on Monday, January 5, 2015 at 7:30 p.m. in the Council Chambers at the Municipal Building, 7700 Mission Road, Prairie Village, Kansas.

Council President Ashley Weaver announced that Mayor Shaffer was not in attendance due to illness.

ROLL CALL

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

Staff 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. Also present were Planning Consultant Ron Williamson and Sgt. James Carney. Also attending were Teen Council members Max Keeter, Gabe Altenbernd, Kyle Baker and Denisa Butas.

Council President Ashley Weaver led those present in the Pledge of Allegiance.

PUBLIC PARTICIPATION

No one was present to address the City Council.

CONSENT AGENDA

David Morrison moved the approval of the Consent Agenda for Monday, January 5, 2015:

1. Approve Regular City Council minute - December 15, 2014
2. Approve Letter of Understanding for participation in the Johnson County Minor Home Repair Program in the amount of \$18,000
3. Approve a Letter Understanding with Johnson County Human Services for participation in the 2015 HOME Rehabilitation Program in the amount of \$8,000.
4. Approve Change Order #1 (Final) for Project BG320001: Harmon Park Tennis Court Rehabilitation Project for an increase of \$28,050.01 bringing the final contract amount to \$596,700.67

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

There was no Mayor’s Report in Mayor Shaffer’s absence.

COMMITTEE REPORTS

Planning Commission

PC2014-122 Consider Final Plat for Mission Chateau

PC2013-11 Request for extension to Special Use Permit for Mission Chateau

Laura Wassmer noted the letter received by the City on January 2nd from MVS, LLC. She stated MVS, LLC has been working on a revised plan for Mission Chateau with input from the residents. They will be meeting with the neighborhood group on January 12th to present the plan and get feedback. In order to let that process play out, Ms. Wassmer recommends these two items be continued to the January 20th City Council Meeting.

Katie Logan confirmed with MVS, LLC legal counsel that the continuation of both items would not negatively affect the timely filing of the final plat. Mr. Timothy Sear, General Counsel for MVS, LLC. said they had no specific deadline for the filing of the final plat and that the proposed continuation was acceptable.

Jori Nelson expressed concern with action only being continued to the next meeting. She did not feel two weeks was sufficient time for the parties to have active discussion on the revised plan. She would like to see this continued to a later date. Laura Wassmer noted that if additional time was needed it could be requested on January 20th.

Ms. Wassmer also stated she would like to have the Council at its next committee meeting discuss the definition for "Commence construction". If the City is able to provide that definition, the applicant can better determine if they need to request an extension. She would like staff to research how other cities have defined "commencement of construction" and bring that information to the next meeting.

Laura Wassmer moved to continue consideration of PC2014-122 Consider Final Plat for Mission Chateau and PC2013-11 Request for extension to Special Use Permit for Mission Chateau to the January, 20th City Council meeting. The motion was seconded by Ted Odell.

Ted Odell asked if the definition should be determined by the Planning Commission or the City Council. Mrs. Logan stated that since the language is in the ordinance granting the special use permit which was adopted by the Governing Body, the Governing Body should make the ultimate interpretation. She added they can request input from the Planning Commission.

Jori Nelson stated she felt this should be continued to February and that more time is needed. David Morrison disagreed. Brooke Morehead stated that she would prefer it be continued to February. Ted Odell felt the amount of time needed was pure speculation and that if more time was needed it could be continued at the January 20th meeting.

The motion to continue both items to the January 20th meeting was voted on and passed by a 6 to 5 vote with Nelson, Morehead, Morrison, Runion and Gallagher voting “nay”.

PC2014-08 Consider Amendment to Special Use Permit for Highlawn Montessori School

Ron Williamson provided a brief history on development of the Highlawn Montessori School which was issued their initial Special Use Permit for the school on March 7, 1977. The Highlawn Montessori School has had a long history in this neighborhood and consistently grown and expanded to accommodate its students. Currently the Highlawn Montessori School has a capacity of approximately 168 students. There are five Primary Classes of children ages three to six and two elementary classrooms for children from first to sixth grade. Each classroom can accommodate 24 children.

Highlawn’s elementary program currently serves 46 students in grades 1 - 6 and is located in the 2 classrooms on the second story addition to the East Building that was completed in 2012. They are seeking an amendment to allow for a second story addition to the West building. The addition would include space for two additional elementary classrooms as well as a multi-purpose room that would be used for lunch, art, special programs or speakers and after school clubs. The addition of the two

elementary classrooms would expand Highlawn's Elementary program from two multi-age classrooms serving 48 students in grades 1-6 to four classrooms with space to accommodate a total of 96 students.

There are currently has 50 students on a waiting list for 1st grade. The expansion would bring the total student population to 216 students. During the 2012 expansion concerns were raised regarding traffic congestion. A traffic study was completed and changes were made to monitor traffic with the assistance of Sgt. Carney of the Prairie Village Police Department. At that time, changes were also made to Somerset creating an extra lane that allows vehicles to stack while waiting for students. Kathy Morrison, Director of Highland Montessori, stated that she would continue to work with Sgt. Carney. She noted the traffic study recently updated by GBA found that the small increases in the overall trip generation by the proposed expansion will not cause any particular traffic concerns during the critical weekday morning and afternoon peak traffic times when no vehicle queuing was currently observed on Somerset Drive beyond the adjacent Public Works facility driveway. It appears that the school's existing parking lots and dedicated right-turn lane are being used effectively during these times to minimize any traffic impacts on the adjacent segment of Somerset Drive. It was noted that many of the families have students in both the pre-K and elementary programs with all students arriving and leaving during the elementary hours, not the peak pre-K traffic hours.

The plan adds 9 parking spaces to the site for a total of 22 spaces. City Code requires 20 spaces. The proposed west elevation adds the second story and creates an identifying main entrance to the school with a tower element and curved entry. The construction materials and color will match the existing building.

The applicant held a meeting on October 24th and a second meeting on November 19th in accordance with Planning Commission Citizen Participation Policy. The issue of concern to the neighbors was parking for evening school events at the October meeting. No one appeared at the November meeting.

The Planning Commission reviewed the criteria for approval of the amendment to the Special Use Permit and found favorably on the criteria recommending the Governing Body approve the amended Special Use Permit for Highlawn Montessori School at 3531 and 3409 Somerset Drive subject to the following conditions:

1. That any outdoor lighting installed shall be in accordance with the lighting ordinance.
2. That the following requirements be implemented to address traffic:
 - a. The Montessori School shall coordinate the parent and staff traffic education program with the Prairie Village Police Department Traffic Unit.
 - b. If traffic is an issue for either the preschool or elementary classes, as determined by the Police Department, the applicant's traffic engineer will work with the Police Department to resolve the issue. This may result in staggering start times. This will be observed on a semester basis and adjustments will be made accordingly.
3. That the applicant use the driveway on the east lot to accommodate at least two parking spaces for staff.
4. That the materials be the same as the existing structure, with the exception of adding stone, and that the applicant construct the addition in accordance with the site plan dated 11/19/2014 and the elevation and floor plans dated 10/03/2014.
5. That the Special Use Permit be approved for a maximum of nine classrooms (5 primary and 4 elementary) and one multi-purpose room with a maximum enrollment of 24 students per classroom for a total that does not exceed 120 primary and 96 elementary students.
6. That the applicant protect existing major trees during the demolition and installation of new improvements.
7. That the Special Use Permit be approved for an indefinite period of time provided that the applicant obtains a building permit and starts construction on the building within two years after the date of approval by the Governing Body unless the applicant shall reappear to the Planning Commission and Governing Body to receive an extension of time prior to the expiration.
8. If the applicant is found to be in non-compliance with the conditions of the Special Use Permit, the permit will become null and void within 90 days of notification of non-compliance, unless the non-compliance is corrected.

The Governing Body (which includes the Mayor and City Council) shall make its findings of fact based on the "Factors for Consideration" and the Golden Factors. Since no protest petition was filed the Governing Body shall either:

- A. Adopt the recommendation of the Planning Commission and approve an ordinance for the amendment to the Special Use Permit which requires a majority of the Governing Body (7 votes), or
- B. Override the recommendation of the Planning Commission by a 2/3 vote of the Governing Body (9 votes), and deny the amendment to the Special Use Permit, or approve it with revised conditions, or
- C. Return the recommendation to the Planning Commission by a simple majority vote of the quorum present with a statement specifying the basis for the Governing Body's failure to approve or disapprove the recommendation.
- D. Continue the item to a designated meeting by a simple majority of the quorum present.

Terrence Gallagher asked why the second floor was not required to be ADA Accessible. Ron Williamson responded that is determined by the building code. Mr. Gallagher noted that in talking with residents in the neighborhood one out of every three neighbors felt that there was not sufficient parking for the school and the left hand turn regulations were not being followed. He noted that with the expansion in 2012, the City reconstructed the road to provide better access and parking, yet the school would not take steps to add additional parking. He stated he cannot support this request, noting the city would not allow a second story to be added to a building without requiring more parking.

Andrew Wang asked if a survey or inventory of parking spaces was done and what was the status of parking during the day.

Kathy Morrison, Director of the School, stated they had two neighborhood meetings and the concerns expressed were for special event parking. Ms. Morrison noted they have significantly reduced the number and size of special events listing the

current events held and the time frame. The parking requirements in the code are met and there are open spaces during the day. Ms. Morrison responded to Mr. Gallagher that the building will be sprinkled and she has the ability to switch classrooms from the second floor to the first floor to meet accessibility needs if required.

Eric Mikkelson asked how many new parking spaces are being added. The applicant's traffic engineer responded 7 new spaces are being added. Mr. Mikkelson asked if any spaces were lost in the 2012 expansion. The engineer replied none were lost and three were added.

Kathy Morrison noted traffic flow is slower for the pre-school students because of the time taken to get students in and out of car seats. Laura Wassmer asked if there were any residents present to speak on this application. None were present.

Ruth Hopkins confirmed that no tickets have been written for illegal left turn violations. Sgt. Carney stated the Police Department intern conducted a traffic study covering two days on the site. They have not had recent complaints from parking during events and noted when they did have complaints investigation revealed that the cars were legally parked on the street and there were no violations.

Andrew Wang moved the Governing Body adopt Ordinance 2320 amending the Special Use Permit to allow the expansion of the private school at 3531 & 3409 Somerset Drive subject to the conditions recommended by the Planning Commission. The motion was seconded by Jori Nelson.

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

PC2014-09 Consider request for a Special Use Permit for the operation of a Country Club/Private Club at 6510 Mission Road

Ron Williamson noted that Homestead Country Club is selling off the front 5.62 acres for development of 11 single-family lots, reducing its size from 14.48 acres to 8.86 acres. There will be some major changes in the Site Plan as a result of the sell-off. The existing Club House and pool concession building will be demolished and the north four tennis courts will be repurposed for parking. With the Club House removed, the need for parking will be significantly reduced. The Club will include the fitness center/restaurant, four paddle courts, the swimming pool and twelve tennis courts. Four of the courts are enclosed during the winter months with an air supported structure.

This application is for only that portion of the property that will remain as the Homestead Country Club. The Special Use Permit covering the area to be sold off will automatically expire six months after it is abandoned or discontinued by ordinance.

Mr. Williamson stated there is not a specific listing for parking for country clubs in the ordinance and therefore based on the recent amendment to the off-street parking regulations, the Planning Commission and Governing Body approve the parking assignment for the use. The Planning Commission has recommended 98 spaces.

The applicant held a neighborhood meeting on November 24, 2014, in accordance with the Planning Commission Citizen Participation Policy and nine neighbors attended. The majority of the questions were about the operation of the Homestead Country Club and very little about the specifics of the application. The neighbors asked about the public street and parking.

At the public hearing neighbors raised concerns regarding the maintenance of the club property. Since the December 2nd Planning Commission meeting, staff has

followed up on the issues raised regarding peeling paint and landscaping. The peeling paint is currently a code violation and the club will correct by July 31, 2015. Due to the time of year, the plantings south of the platform tennis courts will be check by staff in the spring.

The Planning Commission reviewed the criteria for approval of the Special Use Permit and found favorably on the criteria recommending approval of a Special Use Permit for a Country Club/Private Club at 6510 Mission Road subject to the following conditions:

1. That the required parking of 98 spaces be approved for the project.
2. That the Club House and pool concession building be demolished within 90 days after the recording of the Final Plat of Homestead Estates.
3. That the air supported structure be allowed to be put in place from October 1st to April 30th each year, and the hours of operation be approved from 6:00 a.m. to 10:00 p.m., Monday through Friday, and 8:00 a.m. to 10:00 p.m., Saturday and Sunday.
4. That the Special Use Permit be approved for a Country Club/Private Club which includes swimming, physical fitness, tennis, other similar recreational facilities and dining activities including the sales of beer, wine and alcoholic beverages, all of which will be available only to members and their guests.
5. That the Club shall comply with all statutes of the State of Kansas and all ordinances of the City of Prairie Village relating to alcoholic liquor and/or cereal malt beverage and the sale or dispensing thereof.
6. That the Special Use Permit shall run with the land.
7. That any significant change to the exterior of any existing buildings, the replacement of buildings, the expansion of buildings, the construction of new buildings or changes to the site such as entrances and parking and major grading changes shall be submitted to the Planning Commission for Site Plan review and approval.
8. That the Special Use Permit be approved for an indefinite period of time, if however, it is discontinued or abandoned the Special Use Permit will expire in accordance with Section 19.20.055. Expiration of Special Use Permits.
9. If the applicant is found to be in non-compliance with the conditions of the Special Use Permit, the permit will become null and void within 90 days of notification of non-compliance, unless the non-compliance is corrected.
10. That the applicant obtain an easement of access to serve this property until Homestead Court is constructed.
11. That parking lots shall be 15 feet from the street and 8 feet from other property lines.
12. That the applicant work with Public Works for approval of the Final Storm Water Management Plan.

13. That the applicant prepare and submit to staff a landscape and screening plan for review and approval by Staff

Mr. Williamson noted that no protest petition was filed and reviewed the actions available for the Governing Body.

Laura Wassmer asked Chief Jordan if he was concerned with people using the swimming pool parking on the street. Chief Jordan noted the department may get complaints but that is legal to park on the street. Keith Bredehoeft stated the street would be built to city standards and would accommodate parking on both sides while allowing emergency vehicles access.

Ron Williamson reviewed the process and calculations used in determining the recommended 98 parking spaces.

Laura Wassmer expressed concern with the distance of the overflow parking at Village Church and asked if a shuttle would be run during swim meets. Brian Collins, Manager for Homestead, replied a shuttle would be used for major meets, but not for all meets. He noted in regard to swim traffic, most parents drop their children off at the pool and do not park. He also noted that platform tennis is a winter event making those parking spaces available during the summer swimming season.

Eric Mikkelson noted that as a member of Homestead Country Club, although there is no conflict of interest, he will be recusing himself from discussing and voting on this item.

Dan Runion asked who was responsible for the cost of the storm water improvements. Ron Williamson replied the property owner/developer with the Homes Association responsible for its maintenance. The Country Club would be responsible for the storm water management on their property. Mr. Runion noted the number of swim

team members has gone down dramatically and he does not foresee any parking problems.

Jori Nelson asked about the Stormwater Management Plan. Ron Williamson noted this will need to be approved by the Director of Public Works. Mr. Bredehoeft briefly reviewed the proposed plans that are being developed.

Terrence Gallagher expressed concern with possible drainage from the property on the north unto homes in Indian Fields. Mr. Bredehoeft noted that concern was expressed by the Planning Commission also and is being thoroughly reviewed in the final plans.

Jori Nelson asked if this would come back to the Council. Mr. Williamson stated the Planning Commission has approved the site plan subject to the approval of the stormwater management plan by Public Works.

Ruth Hopkins moved the Governing Body adopt Ordinance 2321 approving a Special Use Permit for the operation of a Country Club/Private Club at 6510 Mission Road subject to the conditions recommended by the Planning Commission. The motion was seconded by Andrew Wang.

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

PC2014-07 Consider Ordinance Repealing Chapter 19.38 entitled “Recreational Vehicles Parking & Storage” from the Prairie Village Zoning Ordinance

Kate Gunja stated as part of the revisions to the RV Parking and Storage provisions, the Planning Commission held a public hearing on October 7, 2014 and

recommended approval of an ordinance removing the RV Parking and Storage provisions from the Zoning Regulations.

The RV Work Group recommended a six month period to educate residents on the changes and allow modifications of current storage practices by residents if needed. An effective date of July 1, 2015 is included for this ordinance. Current regulations will be in effect until July 1, 2015 and Codes Enforcement will continue to work with residents the new ordinance becomes effective on education and reasonable timeframes for compliance.

Andrew Wang moved the Governing Body adopt Ordinance 2322 repealing Chapter 19.38 entitled "Recreational Vehicles Parking and Storage", of the Prairie Village Zoning Ordinance. The motion was seconded by Laura Wassmer.

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.

Council Committee of the Whole

COU2014-52 Consider approval of 2015 Joint City/County Legislative Platform

Nolan Sunderman presented the revised Prairie Village Legislative Platform which includes the following issues:

- State Funding of Public Education
- Non-Partisan Elections (with the language revised to express strong support):
- Non-Partisan Elections
- Metro Law Enforcement Mutual Aid
- Maintain Local Control of Revenue and Spending
- Limits on Appraised Valuation Growth
- Tax Policy
- Oppose Unfunded Mandates
- Comprehensive Transportation Plan
- Statutory Pass-through Funding
- KPERS Funding
- Kansas Open Records and Open Meetings Act

- Legislative Participation

At the December 15th meeting, the City Council directed staff to remove from the platform International Symbol of Access

Mr. Sunderman called upon Finn Bullers who has asked to address the Council seeking their support of the returning to the platform support of the International Symbol of Access. Mr. Bullers spoke of the desire of those represented by this symbol to change the current stoic, disengaged, inactive designation on the current symbol of a wheelchair. They want a symbol that reflects individuals that are engaged, robust and active participants in their community. He sees the current signage as disrespectful of those with disabilities.

Mr. Bullers noted the request will not cost the city any additional funds as the signage would be replaced as needed. This is proposed to be a symbol change process, not an immediate change out. Mr. Bullers noted that the state of New York has recognized the new symbol.

David Morrison thanked Mr. Bullers for his comments and passion.

Eric Mikkelson confirmed that the state of New York had adopted the new symbol. Mr. Bullers replied the Governor signed the legislation on July 26, 2014. Mr. Mikkelson asked if there was any significant organized opposition to the proposed sign. Mr. Bullers replied there are some individuals with invisible disabilities that are not supportive of the change as it doesn't reflect them and others who are. There organization seeks to be an inclusive as possible.

Terrence Gallagher applauded Mr. Bullers noting that he is an intelligent, articulate and strong individual. He stated this symbol does not define him, he defines

who he is. Mr. Gallagher does not feel the new sign is necessary as it is not a symbol that defines a person. However, if a group of people need to have a new symbol to empower themselves, he is ok with the change. He views people with disabilities as very strong individuals. Mr. Gallagher confirmed that the American National Sign Institute (ANSI) did not support the proposed modified sign in their last sign review.

Mr. Bullers replied he does not feel that government has the right to define the handicap experience, of which it has no knowledge, through this signage.

Ted Odell noted this is an international legislative platform and he does not see any harm in the city including it in its Legislative Platform. Ruth Hopkins agreed and felt that this movement, which started in Prairie Village, should be supported by Prairie Village.

Ruth Hopkins moved to add support of the International Symbol of Access to the city's 2015 Legislative Platform. The motion was seconded by Laura Wassmer.

Eric Mikkelson stated he would also like to make an additional change to the platform. In the statement on State Funding of Public Education he would like to add the word "constitutionally" in front of adequate funding to more clearly define the level of funding supported.

Mrs. Hopkins and Ms Wassmer accepted the amendment to their original motion and second.

Andrew Wang stated he is supportive of the proposed language change suggested by Mr. Mikkelson. He does not support the return of the "International Symbol of Access" to the legislative agenda. He is wary of taking on issues because they won't do any harm. He views the legislative platform as the city's statement to the legislature of its priorities for its residents and unlike state funding of public education

and non-partisan elections, he does not view this as a priority for residents of Prairie Village. This action will not reduce city expenditures, make the city more efficient, produce revenue or create a better standard of living for Prairie Village residents.

Finn Bullers responded this was an issue of respect for a minority population. The city has a moral obligation to respect and not pass judgment on the desires of this group. Mr. Wang replied he is not passing judgment or being disrespectful.

The motion to add the “International Symbol of Access” and the new wording “We strongly support **constitutionally** adequate funding for the public school system” was voted on and passed by a vote of 10 to 2 with Mr. Wang and Mr. Gallagher voting in opposition.

COU2014-57 Consider Ordinance amending Chapter XI of the Municipal Code adding Article 15 entitled “Recreational Vehicles and Equipment Parking and Storage

Kate Gunja reviewed the history of the proposed changes to these regulations that were initiated at the December 16, 2013 City Council Meeting. The city’s regulations and those of other cities were reviewed by staff and the city’s Planning Commission with changes recommended. A Work Group of three council members was formed to further review the issue meeting four times between May and July. On August 18, 2014 the recommendation of the work group was presented to the City Council.

A Summary of current provisions and recommended changes/additions in **bold text** is reflected below:

- 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 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).**

Ruth Hopkins spoke in opposition to the proposed changes noting that she felt the current regulations were sufficient and additional regulations were unnecessary.

On behalf of the Council Committee of the Whole, Acting Council President David Morrison moved the Governing Body adopt Ordinance 2323 amending Chapter XI, entitled “Public Offenses and Traffic” of the code of the City of Prairie Village, Kansas, by adding a new Article 15, entitled “Recreational Vehicles and Equipment - Parking and Storage”. The motion was seconded by Andrew Wang.

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

COU2014-58 Consider Ordinance amending Chapter XI, Article 7 of the Municipal Code revising the definition of Truck

Kate Gunja noted as part of these revisions and the movement of the RV Parking and Storage regulations in to Chapter XI (see agenda item directly above), the Police Department and Codes Administration staff have discussed updating the definition of Truck. This definition currently is found in Chapter XI, specifically 11-711. “Truck” is also currently found in the definitions for Chapter 19.38. At the December 1 Committee of the Whole Meeting, the Committee provided direction on the current interpretation of Truck to incorporate into the revisions. The revisions seek to reflect current enforcement practices. Staff recommends an effective date for these regulations to be July 1, 2015,

the same as the other regulations dealing with recreational vehicles and equipment - parking and storage.

Eric Mikkelson expressed concern with the definition of Truck going from its existing one sentence to 1.5 pages. He feels the new language is difficult to understand both for individuals and for judges.

Mr. Mikkelson noted the current ordinance has a provision for the Mayor to declare a traffic emergency and asked why it was being removed. Chief Jordan responded that it references traffic on snow emergency routes and the city does not have any declared snow emergency routes and thus is not enforced. Mr. Mikkelson stated it doesn't reference "snow". Sgt. James Carney stated the city does not have any "emergency routes" as an emergency route is not defined staff is recommending language referring to emergency routes be deleted.

Dan Runion stated he shares Mr. Mikkelson's concerns with the definition of "truck". He does not feel it is clear and will be difficult to enforce.

On behalf of the Council Committee of the Whole, Acting Council President David Morrison moved the Governing Body adopt Ordinance 2324 amending Chapter XI, entitled "Public Offenses and Traffic" of the code of the City of Prairie Village, Kansas, by repealing and replacing the existing Article 7, entitled "Local Traffic Regulations". The motion was seconded by Ted Odell.

Laura Wassmer stated she felt that discussion of proposed language at this point should be raised with staff prior to the Council meeting. These issues should have been discussed with the Police Department prior to the meeting. She noted police staff are experienced in writing tickets and defending them in court and they do not see any

problems with the language. She asked if the concerns raised merited holding up the ordinance for another meeting.

Wes Jordan noted the protocol followed by staff in preparing ordinances has been to not reinvent the wheel, but to research language used by other municipalities, consult with the city attorney on any potential legal issues and bring proposed language to the Council for action. This language has also been written to address the culture of Prairie Village law enforcement where the focus is on first to educate and then to enforce. The officers will be able to both educate and enforce the language written.

Eric Mikkelson stated he would be glad to get together with staff. He feels police staff can interpret the language, but he does not feel the regular citizen will be able to identify if he is violating or complying with the regulations. He feels a higher standard of clarity could be met. He does not believe the Council should totally relinquish the responsibility for writing of laws to staff as the Council is the city's legislative body.

Chief Jordan replied that approach is a new protocol or culture for staff. This is a difficult chapter to write with the on-going changes in technology. Staff has already spent significant time on this. Is it the desire of the Council that more time be spent?

Ted Odell noted that this has been discussed by the council three or more times and at some point the Council needs to rely on the experience and expertise of staff. He understands the ordinance as written. He feels it is time to trust staff and move forward.

Ruth Hopkins stated she disagreed with Mr. Mikkelson that it was the Council's responsibility to write laws.

Dan Runion stated he agreed with some of the comments. He would be ok to go forward with it and see how it works out.

Andrew Wang stated the current process followed by the city is good. He agreed with Mr. Mikkelson that without the actual writing of the ordinance, the Council is responsible for the ordinances that it adopts. He agrees that these definitions have totally been impacted by industry changes. If the city finds the ordinance needs to be amended, that can be done. He feels that is a better approach than to continue to spend hours of staff and council time trying to come up with the “perfect” language and second guessing possible problems.

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

COU2015-01 Consider Design contract with Indigo Design for 2015 Park Projects at Bennett and Taliaferro Parks

On behalf of the Council Committee of the Whole, Acting Council President David Morrison moved the City Council approve a contract with Indigo Design, Inc. in the amount of \$19,300 for the design of the 2015 Parks Projects in Bennett and Taliaferro Parks. The motion was seconded by Brooke Morehead and passed unanimously.

COU2015-02 Consider Design Agreement with Affinis Corporation for the Design of the 2015 Paving Program and the 2015 CARS Project

On behalf of the Council Committee of the Whole, Acting Council President David Morrison moved the City Council approve an agreement with Affinis Corporation for the design of the 2015 Paving Program and the 2015 CARS Project in the amount of \$136,280.00. The motion was seconded by Laura Wassmer and passed unanimously.

COU2015-03 Consider Annual Service Agreement for 2015 to 2017 for Materials Testing Services

On behalf of the Council Committee of the Whole, Acting Council President David Morrison moved the City Council Body approve the 2015 to 2017 Materials Testing Services Agreement with Kaw Valley Engineering, Inc. The motion was seconded by Ted Odell and passed unanimously.

STAFF REPORTS

Staff Reports were given at the earlier Council Committee meeting.

OLD BUSINESS

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

NEW BUSINESS

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

ANNOUNCEMENTS

Committee meetings scheduled for the next two weeks include:

Board of Zoning Appeals	01/06/2015	6:30 p.m.
Planning Commission	01/06/2015	7:00 p.m.
Sister City Committee	01/12/2015	1:00 p.m.
Park & Recreation Committee	01/14/2015	7:00 p.m.
JazzFest Committee	01/15/2015	7:00 p.m.
Council Committee of the Whole	01/20/2015	6:00 p.m.
City Council	01/20/2015	7:30 p.m.

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The Prairie Village Arts Council is pleased to present an exhibit by the Greater Kansas City Art Association in the R. G. Endres Gallery during the month of January. The artist reception will be Friday, January 9, from 6:00 - 8:00 p.m.

The NEJC State of the Cities luncheon will be held on January 8, 2015 at the Overland Park Convention Center.

The Convener Reception will be held on January 8, 2015 from 5:00 - 7:00 p.m. at Zurich North America Commercial.

An informational meeting regarding synchronized swimming will be held on January 14, 2015 at 5:30 p.m. in the Multi-Purpose Room

The Mayor's farewell reception will be held on January 14, 2015 from 4:30 p.m. - 6:30 p.m. at Meadowbrook Country Club.

ADJOURNMENT

With no further business to come before the City Council the meeting was adjourned at 9:31 p.m.

Joyce Hagen Mundy
City Clerk

CITY TREASURER'S WARRANT REGISTER

DATE WARRANTS ISSUED:

Warrant Register Page No. 1

January 20, 2015

Copy of Ordinance
2924

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			
8841-8936	12/5/2014	547,299.76	
8937-8941	12/12/2015	6,775.97	
8942	12/16/2014	844.51	
8943-9053	12/19/2014	459,403.74	
Payroll Expenditures			
12/12/2015		253,807.31	
12/26/2015		253,489.12	
Electronic Payments			
Electronic Pmnts	12/2/2014	370.00	
Electronic Pmnts	12/9/2014	850.24	
Electronic Pmnts	12/11/2015	12,441.45	
Electronic Pmnts	12/12/2015	2,696.95	
Electronic Pmnts	12/16/2014	5,793.90	
Electronic Pmnts	12/17/2014	1,812.90	
Electronic Pmnts	12/18/2014	222.92	
Electronic Pmnts	12/23/2014	1,353.54	
Electronic Pmnts	12/26/2014	18,136.54	
Electronic Pmnts			
TOTAL EXPENDITURES:			1,565,298.85
Voided Checks	Check #	(Amount)	
TOTAL VOIDED CHECKS:			-
GRAND TOTAL CLAIMS ORDINANCE			1,565,298.85

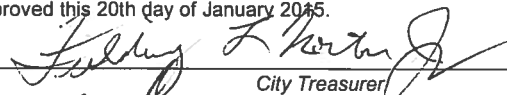
Section 2. That this ordinance shall take effect and be in force from and after its passage.

Passed this 20th day of January 2015.

Signed or Approved this 20th day of January 2015.

(SEAL)

ATTEST: _____


City Treasurer

ATTEST: _____


Finance Director



PARKS & RECREATION

Parks & Recreation Meeting Date: January 14, 2015
City Council: January 20, 2015

Consent Agenda

Consider approval of the 2015 SuperPass Interlocal Agreement & Swim Meet Letter of Understanding

RECOMMENDATION

Recommend approval of the agreements by and among the City of Prairie Village, Kansas, the City of Merriam, Kansas, the City of Leawood, Kansas, the City of Mission, Kansas, the City of Fairway, Kansas, the City of Roeland Park, Kansas, and Johnson County Parks and Recreation District for use of swimming pool facilities.

BACKGROUND

The SuperPass program allows residents of partner cities to pay a fee in addition to their regular pool membership to gain access to the other cities' pools during the summer season. The program is in its sixth year and is considered a success by all participating municipalities.

In 2014, usage for all participating pools included over 16,000 Super Pass visits. Prairie Village SuperPass Participants made 4,738 visits to other pools. The Prairie Village Pool hosted 5,285 visits from members of other pools.

In addition to the SuperPass agreement, the partnering cities also annually approve a Letter of Understanding to allow all residents with a regular pool membership to attend each other's pools on dates the host pools are closed for swim/dive meets. This occurs approximately 4 days per summer and provides resident pool members an alternative option when we close the pool. There is no fee charged or incurred for this service enhancement.

FINANCIAL IMPACT

SuperPass fees are not scheduled to increase in 2015 with a resident SuperPass being \$50 for family and \$25 for individual memberships and a non-resident being \$55 for family and \$25 for individual memberships. A family will once again be defined as five individuals with an additional \$5 for any extra members. In 2014, the program generated \$13,098.31.

ATTACHMENTS

Super Pass ILA 2015, Swim Meet Letter of Understanding 2015

PREPARED BY

Nolan Sunderman
Assistant to the City Administrator
Date: 1/15/15

AGREEMENT BY AND AMONG THE CITY OF FAIRWAY, KANSAS, THE CITY OF LEAWOOD, KANSAS, THE CITY OF MERRIAM, KANSAS, THE CITY OF MISSION, KANSAS, THE CITY OF PRAIRIE VILLAGE, KANSAS, THE CITY OF ROELAND PARK, KANSAS, AND JOHNSON COUNTY PARK AND RECREATION DISTRICT FOR USE OF SWIMMING POOL FACILITIES

This Agreement made and entered into as of the effective date specified herein by and among the City of Fairway, Kansas (“Fairway”), the City of Leawood, Kansas (“Leawood”), the City of Merriam, Kansas (“Merriam”), the City of Mission, Kansas (“Mission”), the City of Prairie Village, Kansas (“Prairie Village”), the City of Roeland Park, Kansas (“Roeland Park”), and Johnson County Park and Recreation District (“JCPRD”) as operator of the Roeland Park swimming pool facility.

RECITALS

A. The cities of Fairway, Leawood, Merriam, Mission, Prairie Village and Roeland Park (each a “City” and collectively the “Cities”) and JCPRD as operator of the swimming pool facility for Roeland Park, operate the public outdoor swimming pool facilities (“Pool Facilities”) described on the attached Exhibit A.

B. The Cities desire to enter into this Agreement to allow the residents of each City the option to use all of the Pool Facilities during the 2015 swim season with the purchase of a special pass.

C. K.S.A. § 12-2908 authorizes the cities to enter into this agreement.

D. K.S.A. § 19-2862 authorizes JCPRD to enter into this agreement.

NOW, THEREFORE, pursuant to, and in accordance with, the statutory authority invested in the parties to this Agreement, and in consideration of the mutual advantage received by each party, the parties hereto enter into this Agreement upon, and subject to, the following terms and conditions:

I. PURPOSE AND INTENT.

The purpose of this agreement is establish cooperation among the Cities, and JCPRD as operator of the Roeland Park pool facility, by making all of the Pool Facilities available for use by the qualified patrons of all the Cities with the purchase of a special pass during the 2015 swim season, which commences approximately May 23, 2015 and ends approximately September 7, 2015.

II. EFFECTIVE DATE AND TERM.

This Agreement shall become effective upon its adoption by each participating jurisdiction and shall remain in full force and effect for a term of one (1) year from the effective date hereof.

III. COOPERATION USE OF POOL FACILITIES.

As part of its program for use of its Pool Facilities during the 2015 swim season, each City shall establish and authorize a category of pool pass entitled "Super Pool Pass" with the following features:

a. The Super Pool Pass will be offered by each City as an additional option to Qualified Patrons, defined below, who are purchasing a family or individual season pass to that City's Pool Facilities. As to each City, the term "Qualified Patron" means (a) residents of the City, and (b) non-residents of the City who have purchased a pool membership in the City for the immediately preceding two years.

b. For Qualified Patrons who are residents of a City, the cost of a Super Pool Pass will be \$50 per up to five (5) person family category of seasonal pool pass, with an additional charge of \$5 for each additional family member, and \$25 per individual category of seasonal pool pass. For Qualified Patrons who are non-residents of a City, the cost of a Super Pool Pass will be \$55 per up to five (5) person family category of seasonal pool pass, with an additional charge of \$5 for each additional family member, and \$30 per individual category of seasonal pool pass.

c. The Super Pool Pass fee will be collected by each City in the same manner as standard seasonal pool passes.

d. The Super Pool Pass will be designated with a high quality, not easily reproducible sticker added to the seasonal pass card of qualified patrons. The Cities will agree in advance on the form and cost of the sticker. Cities without seasonal pass cards will need to produce a form of season pass card on which to affix the sticker. The cost of the stickers will be funded by the pooled dollars described below.

e. The Super Pool Pass will authorize the holders access to any of the Pool Facilities described on the attached Exhibit A during the 2015 swim season.

f. Each City will keep track of (i) the sales of Super Pool Passes by category, and (ii) the number of times each day a Super Pool Pass is used to enter any of its Pool Facilities and how

many individuals are admitted for each use of a family Super Pool Pass; and report these counts by email at the end of June, July, August and at the end of the season, to the Assistant to the City Administrator at Prairie Village. Prairie Village will email the tally to all of the Cities promptly upon receipt of the tallies from all Cities.

g. Each City will retain one-half of the Super Pool Pass revenue, and hold the other half (the “Shared Revenue”) in suspense until the end of the season.

h. The Shared Revenue will be summed to reach a total of pooled revenue, and used initially to pay for the cost of the stickers. The remaining pooled revenue will then be distributed proportionally to each City based on the Super Pool Pass use count at the City’s Pool Facilities divided by the total number of Super Pool Pass use count. The calculation will be used to determine the transfer of funds among Cities based on money collected and due each entity. For example, if at the end of the 2015 swim season Super Pool Passes were used on 500 occasions at all Pool Facilities, and on 100 occasions at the Mission Pool Facilities, then Mission would be credited 1/5th of the pooled revenue. This number will be compared to dollars collected in Mission to determine transfer in or out of funds.

i. Qualified Patrons who are residents may only purchase Super Pool Passes from the City in which they reside.

IV. POOL SAFETY STANDARDS

Each City agrees to operate and maintain its Pool Facility in compliance with safety standards generally applicable to municipal pool facilities in Kansas, including, but not limited to, the following practices:

a. All Pool Facilities must comply with federal regulations contained in the Virginia Graeme-Baker Act.

b. All Pool Facilities must be municipally owned and either (a) operated by municipal staff, (b) operated by a professional pool management company engaged by the city, or (c) operated by JCPRD.

c. All Pool Facilities must meet facility standards in regards to proper placement of guards, number of guards on duty and facility readiness standards as published by the American Red Cross, Ellis and Associates, or Starguard.

d. All lifeguards must receive lifeguard certification from an accredited association.

V. LIABILITY

The purpose of this Agreement is only to set forth the rights and duties of the parties with regard to the cooperative use of Pool Facilities described above. This Agreement does not create any right, benefit, or cause of action for any third party. By executing this Agreement, none of the parties waives, nor shall be deemed hereby to waive, any immunity or defense that would otherwise be available to it against claims arising in the exercise of governmental powers and functions. Each party shall be solely responsible for any loss, damage, injury, or death to a third party (parties) arising out of or related to the acts or omissions of its employees or agents and not those of any other party.

IN WITNESS WHEREOF, the above and foregoing Agreement has been executed by each of the parties hereto on the day and year indicated by each signature.

[signature pages follow]

CITY OF FAIRWAY, KANSAS

By _____
Jerry Wiley, Mayor

Attest:

City Clerk

Approved as to Form:

City Attorney

CITY OF LEAWOOD, KANSAS

By _____
Peggy Dunn, Mayor

Attest:

City Clerk

Approved as to Form:

City Attorney

CITY OF MERRIAM, KANSAS

By _____
Ken Sissom, Mayor

Attest:

City Clerk

Approved as to Form:

City Attorney

CITY OF MISSION, KANSAS

By _____
Steve Schowengerdt, Mayor

Attest:

City Clerk

Approved as to Form:

City Attorney

CITY OF PRAIRE VILLAGE, KANSAS

By _____
Ashley Weaver, Acting Mayor

Attest:

City Clerk

Approved as to Form:

City Attorney

CITY OF ROELAND PARK, KANSAS

By _____
Joel Marquardt, Mayor

Attest:

City Clerk

Approved as to Form:

City Attorney

JOHNSON COUNTY PARKS AND
RECREATION DISTRICT

By _____
George J. Schlagel, Board Chair

Attest:

Nancy Wallerstein, Secretary

Approved as to Form:

Ernie Ballweg, District Legal Counsel

Exhibit A

CITY	OUTDOOR POOL FACILITIES
Fairway	6136 Mission Road Fairway, KS 66205
Leawood	10601 Lee Boulevard Leawood, KS 66206
Merriam	6040 Slater Merriam, KS 66202
Mission	6090 Woodson Road Mission, KS 66202
Prairie Village	7711 Delmar Street Prairie Village, KS 66208
Roeland Park/Parks and Recreation District	4843 Rosewood Drive Roeland Park, KS 66205

Letter of Understanding

This UNDERSTANDING (“Understanding”) is made and entered into this ___ day of _____, by and between the **Johnson County Park & Recreation District** and the **Cities of Fairway, Leawood, Prairie Village, Roeland Park, Mission and Merriam** (individually referred to as “Hosting Agency and collectively as “Hosting Agencies”), for the following arrangement (the "Arrangement"): On days when an agency hosts a swim or dive meet, all other non-hosting agencies will honor host agency memberships.

RECITALS

1. The Hosting Agencies recognize the importance of cooperation for the purposes of providing high quality services to their constituents; and
2. Each of the Hosting Agencies is involved in the Johnson County Swim and Dive League or the MOKAN Swim and Dive League.

CONDITIONS

1. This Arrangement shall only apply to the 2015 swim and dive team season from the beginning of June to the end of July.
2. This Arrangement is only applicable on days when a Hosting Agency must be closed during regular business hours to host a meet.
3. Members of the Hosting Agencies may gain admission, at no cost, to any non-Hosting Agency’s outdoor swimming pool facilities by providing agency issued membership identification.
4. Non-Hosting Agencies will honor host agency memberships during ALL regular business hours on meet days.
5. Any Hosting Agency may “opt out” of this Arrangement by providing written notice to each other Hosting Agency. Hosting Agencies shall meet at the end of the season to evaluate the success of the Arrangement and determine participation for the 2015 season.
6. The purpose of this Agreement is only to set forth the rights and duties of the parties with regard to the cooperative use of Pool Facilities described above. This Agreement does not create any right, benefit, or cause of action for any third party. By executing this Agreement, none of the parties waives, nor shall be deemed hereby to waive, any immunity or defense that would otherwise be available to it against claims arising in the exercise of governmental powers and functions. Each party shall be solely responsible for any loss, damage, injury, or

death to a third party (parties) arising out of or related to the acts or omissions of its employees or agents and not those of any other party.

[signatures]

CITY OF FAIRWAY, KANSAS

By: _____
Jerry Wiley, Mayor

Attest: _____

CITY OF LEAWOOD, KANSAS

By: _____
Peggy Dunn, Mayor

Attest: _____

CITY OF MERRIAM, KANSAS

By: _____
Ken Sissom, Mayor

Attest: _____

CITY OF MISSION, KANSAS

By: _____
Steve Schowengerdt , Mayor

Attest: _____

CITY OF PRAIRIE VILLAGE, KANSAS

By: _____
Ashley Weaver, Acting Mayor

Attest: _____

CITY OF ROELAND PARK, KANSAS

By: _____
Joel Marquardt, Mayor

Attest: _____

JOHNSON COUNTY PARK AND RECREATION DISTRICT

By: _____
George J. Schlagel, Board Chair

Attest: _____



PARKS & RECREATION

Parks & Recreation Meeting Date: January 14, 2015
City Council: January 20, 2015

Consent Agenda

Consider 2015 Recreation Fee Schedule

RECOMMENDATION

Recommend approval of the 2015 Recreation Fee Schedule

BACKGROUND

Per Council direction, staff annually reviews recreation fees to ensure they keep pace with any operational increases. In 2013, most of the recreational fees were increased 2.5% to keep pace with operational expenses. Daily admission rates were also increased for the first time in six years. Tennis fees also increased 4.8% to bring team revenues closer to the expenditure amount. In 2014, there was a 2.8% increase in resident membership fees along with a 2.7% increase in non-resident membership fees, 1.8% increase in aquatic team fees, 2% increase in tennis fees, and a 2.8% increase in the pool rental fee.

For 2015, staff recommends the following increases:

- A 1.5% increase in resident membership fees and a 2% increase in non-resident membership fees
- With the addition of a pickleball league beginning in the spring of 2015 and a 1% increase in Peewee, Mighty Mites, and Future Stars, this should assist in bringing revenues and expenditures in line as there is currently a small funding gap in the tennis program.
- No changes are being proposed in the aquatic team fee schedule as this program is generating revenue or the daily pool admission rate for residents or non-residents in order to stay competitive with surrounding pools.

FINANCIAL IMPACT

The average General Fund subsidy for the last two years is approximately \$133,000. This does not include personnel costs for Public Works. By increasing the above fees, this will assist in keeping revenues in line with expenditures for these various programs.

ATTACHMENTS

Recommended 2015 Recreation Fee Schedule

PREPARED BY

Nolan Sunderman

Assistant to the City Administrator

Date: 1/15/15

2015 Recreation Fee Schedule

RESIDENT	2013	2014	2015 Proposed Fee	Percent Increase
Household of 4	\$157	\$161	\$163	1.5%
Two Person Family	\$147	\$151	\$153	1.5%
Individual	\$76	\$78	\$79	1.5%
Senior	\$59	\$61	\$62	1.5%
Babysitter [NEW]	\$60	\$62	\$63	1.5%
10 Swim	\$55	\$57	\$58	1.5%

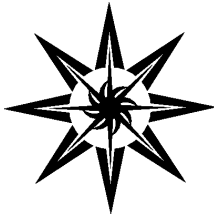
NON-RESIDENT				
Household of 4	\$262	\$269	\$274	2%
Individual	\$159	\$163	\$166	2%
Senior	\$108	\$111	\$113	2%
Child	\$108	\$111	\$113	2%
Babysitter [NEW]	\$65	\$67	\$68	2%
10 Swim	\$60	\$62	\$63	2%

AQUATICS				
Resident	\$99	\$100	\$100	0%
additional child	\$93	\$95	\$95	0%
NR w/o membership	\$142	\$146	\$149	2%
NR w/membership	\$99	\$102	\$102	0%
Lessons (.5 hr)	\$36	\$36	\$36	0%

TENNIS				
JTL	\$100	\$100	\$100	0%
additional child	\$90	\$95	\$95	0%
Warm-Up Session	\$52	\$52	\$52	0%
Cardio Tennis	\$69	\$69	\$69	0%
Pee-Wee	\$43	\$45	\$47	1%
Mighty Mites	\$57	\$59	\$60	1%
Future Stars	\$57	\$59	\$60	1%
Pickleball	N/A	N/A	\$30	N/A
Adult Lessons	\$69	\$69	\$69	0%
Private (.5 hr)	\$24	\$25	\$25	0%
Semi-Private (.5 hr)	\$16	\$16	\$16	0%
Three & a Pro (hour)	\$18	\$18	\$18	0%

POOL RENTAL	\$300.00	\$308	\$308	0%
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DAILY	\$7	\$7	\$7	0%
TWILIGHT (> 5:30p)	\$5	\$5	\$5	0%
DAYCARE	\$5	\$5	\$5	0%



POLICE DEPARTMENT

Council Committee Meeting Date: January 20, 2015

CONSENT AGENDA: PURCHASE REQUEST OF POLICE VEHICLES

RECOMMENDATION

Staff recommends the purchase of three (3) 2014 Ford Police Interceptor Utilities.

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

COUNCIL ACTION REQUESTED ON JANUARY 20, 2015

BACKGROUND

On an annual basis, the Police Department replaces older police units due to age, mileage, and/or maintenance problems. The Department is seeking authorization to purchase these units from Shawnee Mission Ford, who was awarded the 2015 MACPP Metro Bid. The price per unit is \$25,602 and the approximate build time is approximately 120 days.

This purchase was previously approved by the City Council as part of the 2015 Public Safety Budget.

FUNDING SOURCE

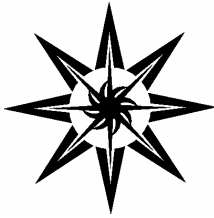
01-03-25-8006 - \$76,806

PREPARED BY

Capt. Wes Lovett

Patrol Commander

Date: January 14, 2015



PUBLIC WORKS DEPARTMENT

Council Committee Meeting Date: January 20, 2015

Council Meeting Date: January 20, 2015

DISCUSS THE AWARDING AND FUNDING OF THE 75TH STREET PROJECT FROM STATELINE ROAD TO MISSION ROAD, PROJECT 75ST0001.

RECOMMENDATION

Recommend that the Kansas Department of Transportation award Project 75ST0001 to O'Donnell and Son's Construction Company for \$3,494,951.00 and approve the transfer of funds to this project as listed in this memo.

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 originally opened for this project by KDOT on October 22, 2014. These bids were higher than expected. Changes were made to the plans and the project was rebid.

Bids were opened again for this project by KDOT on January 14, 2015. A summary of the bids are shown below.

<u>Contractor-</u>	<u>Bid Amount-</u>
O'Donnell and Son's	\$3,494,951.00
Amino Brothers	\$3,494,990.00
Emery Sapp & Son's	\$3,777,144.00
Kansas Heavy Const.	\$3,808,386.00
Miles Excavating	\$3,910,485.00
Freeman Concrete	\$4,279,223.00

KDOT determines the final Engineer's Estimate and it is not known to the City. KDOT has reviewed the bids and are within 10% of the Engineer's Estimate and has found them to be acceptable.

The low bid is **\$778,951.00** over what was budgeted for the construction of this project. This will require funding modifications to projects in the 2015 Budget as well as reallocating other funds.

Proposed funding changes are shown below.

1. Utilize **\$500,000** in unspent Paving and CARS project street rehabilitation funds from CIP projects closed out in 2014. These funds would have otherwise been reallocated with the 2016 budget process for projects in 2016.

2. Reallocate **\$300,000** from 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. This additional \$300,000 in drainage funds allocated to this project is an appropriate use of drainage funds. That would leave about \$120,000 in the Drainage Repair Program for 2015.

The above changes total **\$800,000** and will be reallocated to the 75th Street Project.

FUNDING SOURCE

Funds are available in the 75th Street Project- 75ST0001 including the transfers to Project 75ST0001 as shown below.

Funds transferred to 75ST0001 as summarized above-

1- Unspent Prior Year Street Funds-	\$500,000
2- 2015 Drainage Program-	\$300,000
Total-	\$800,000

RELATION TO VILLAGE VISION

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

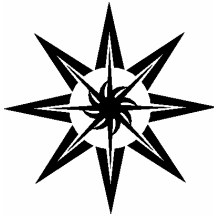
ATTACHMENTS

None

PREPARED BY

Keith Bredehoeft, Public Works Director

January 14, 2015



PUBLIC WORKS DEPARTMENT

Council Committee Meeting Date: January 20, 2015

Council Meeting Date: January 20, 2015

CONSIDER KDOT FORM 1309- AUTHORITY TO AWARD CONTRACT FOR PROJECT 75ST0001: 75TH STREET- STATELINE ROAD TO MISSION ROAD.

RECOMMENDATION

Authorize Mayor to sign KDOT Form 1309- Authority to Award for Project 75ST0001: 75th Street- Stateline Road to Mission Road.

BACKGROUND

Project 75ST0001, 75th Street- Stateline Road to Mission Road was selected by the Mid-America Regional Council(MARC) to receive Federal Funds. The Kansas Department of Transportation(KDOT) administers the Federal Funds for local communities in Kansas.

As part of their process KDOT Form 1309 must be executed by the City. This form states that the City will submit to KDOT the City funding portion of the project or \$1,950,000.00. This form also states that the low bidder, O'Donnell and Son's, has submitted satisfactory bids and that the contract will be awarded to them.

FUNDING SOURCE

Funds will be available in CIP Project 75ST0001.

RELATION TO VILLAGE VISION

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

ATTACHMENTS

KDOT form 1309

PREPARED BY

Keith Bredehoeft, Public Works Director

January 15, 2015

**AUTHORITY TO AWARD CONTRACT
COMMITMENT OF CITY FUNDS**

January 14, 2015

2 Copies to City

Project Number: 46 N-0581-01

STP-N058(101)

City of Prairie Village

WHEREAS bids were received at Topeka, Kansas on 1/14/2015 for the performance of work covered by plans on the above numbered project, and

WHEREAS the bidder and the low bid or bids on work covered by this project were:

CONTRACTOR	TYPE OF WORK	AMOUNT
O'DONNELL & SONS CONSTRUCTION COMPANY INC AND JLMB LLC 15301 BROADMOOR ST OVERLAND PARK, KS 66223-3142	Grading and Surfacing	\$ 3,494,951.15

WHEREAS bids are considered satisfactory and have been recommended by the Secretary of Transportation of the State of Kansas, hereinafter referred to as the SECRETARY, for consideration and acceptance of the work on this project as covered by such bid or bids.

A combination of the bid plus an estimated \$69,920.02 for construction engineering less \$1,616,800.00 of Maximum Federal Funds = \$1,950,000.00 matching City Funds.

BE IT FURTHER RESOLVED that City funds in the amount of \$1,950,000.00 which are required for the matching of Maximum Federal Funds are hereby pledged by the City to be remitted to the Chief of Fiscal Services of the Department of Transportation of the State of Kansas on or before 3/5/2015 for use by the SECRETARY in making payments for construction work and engineering on the above designated project with final cost being determined upon completion and audit of the project.

Adopted this ____ day of _____, _____, at _____, Kansas.

Recommended for Approval:

_____, Mayor

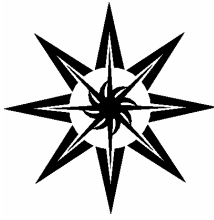
 City Engineer

Attest: _____, Member

(Seal)

_____, Member

 City Clerk



PUBLIC WORKS DEPARTMENT

Council Committee Meeting Date: January 20, 2015

Council Meeting Date: January 20, 2015

CONSIDER THREE PARTY NON FEDERAL AID AGREEMENT BETWEEN KDOT, PRAIRIE VILLAGE, AND TRANSYSTEMS FOR PROJECT 75ST0001: 75TH STREET-STATELINE ROAD TO MISSION ROAD.

RECOMMENDATION

Approve three party non federal aid agreement between KDOT, Prairie Village, and TranSystems for Project 75ST0001: 75th Street- Stateline Road to Mission Road.

BACKGROUND

Project 75ST0001, 75th Street- Stateline Road to Mission Road was selected by the Mid-America Regional Council (MARC) to receive Federal Construction Funds. The Kansas Department of Transportation (KDOT) administers the Federal Funds for local communities in Kansas.

The agreement describes the responsibilities related to the construction engineering inspection services that TranSystems will provide for this project. This is a Non-Federal Aid agreement and the inspection costs will be fully funded by the City.

FUNDING SOURCE

N/A

RELATION TO VILLAGE VISION

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

CFS3a. Ensure streets and sidewalks are in good condition by conducting maintenance and repairs as needed.

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

ATTACHMENTS

1. Non federal aid agreement between KDOT, Prairie Village, and TranSystems

PREPARED BY

Keith Bredehoeft, Public Works Director

January 14, 2015

**STATE'S
ORIGINAL**

Agreement No. 524-14

**CONTRACT FOR
FEDERAL-AID ROAD CONSTRUCTION
ENGINEERING BY CONSULTANT
(CONSULTANT-NON FEDERAL-AID AGREEMENT)**

**PROJECT NO. 46 N-0581-01
CITY OF PRAIRIE VILLAGE
JOHNSON COUNTY**

THIS AGREEMENT entered into and is effective the date signed by the Secretary of designee, by and between city of Prairie Village, Kansas, hereinafter referred to as the "LPA" (Local Public Authority), as principal, and the consulting engineering firm of TranSystems Corporation, hereinafter called the "Consultant," and the Secretary of Transportation of the State of Kansas acting by and through the Kansas Department of Transportation, hereinafter referred to as the "Secretary." The Secretary acts as agent for the LPA pursuant to authority vested in K.S.A. 68-402b and K.S.A. 68-401 et seq. and an agreement between them dated January 13, 2014. The Consultant's address is 2400 Pershing, Road, Suite 400, Kansas City, Missouri 64108. The LPA, the Consultant, and the Secretary are collectively referred to as the "Parties."

WITNESSETH:

WHEREAS, the FEDERAL GOVERNMENT through its Department of Transportation and the FHWA, pursuant to Title 23, U.S. Code, has established a program of Federal-Aid to the States designated as the Federal-Aid Program, with a general purpose to increase the safety and capacity of roads in the United States, and

WHEREAS, the LPA desires to accomplish this Federal-Aid "Project," consisting of 1.2 miles of Grading and Surfacing located 75th Street, from Mission Road to State Line Road, with the aid of funds provided under Federal-Aid highway programs and the rules and regulations promulgated by said U.S. Department of Transportation in the Federal-Aid Policy Guide, and

WHEREAS, the LPA does not have sufficient qualified engineering employees to accomplish the Construction Engineering Services on this Project within a reasonable time and the LPA deems it advisable and is desirous of engaging the professional services and assistance of a qualified consulting engineering firm to do the necessary construction engineering, and

WHEREAS, the Consultant has represented and by entering into this Agreement now represents, it is in full compliance with the statutes of the State of Kansas for registration of professional engineers and all personnel to be assigned to perform the services required under this Agreement are fully qualified to perform the services in a competent and professional manner, and

WHEREAS, the Consultant has indicated it desires to perform the services set forth in the Agreement upon the terms and conditions set forth below, and

WHEREAS, the approved plans and specifications for said Project are available in KDOT Headquarters in Topeka, and

WHEREAS, the LPA, Consultant, and the Secretary desire to set forth in this instrument their understanding and agreements relating to the construction engineering and allocation of costs for the said Project.

NOW, THEREFORE, in consideration of the covenants of the Parties and to give this Agreement full force and effect in providing the benefits hereinbefore mentioned, the Parties hereto mutually agree as follows:

I. SCOPE OF SERVICES

A. DEFINITIONS

- (1) The term "LPA" shall mean the City and its authorized employees.
- (2) The term "KDOT" shall mean the Kansas Department of Transportation and its authorized representatives.
- (3) The term "Consultant" shall mean the consulting engineering firm and its authorized employees who will be performing the work required under this Agreement.
- (4) The term "FHWA" shall mean the Federal Highway Administration and its authorized representatives.
- (5) The term "Contractor" shall mean the individual, partnership, joint ventures, corporation, or agency undertaking the performance of the work designated under the terms of the construction contract.
- (6) The term "Specifications" shall mean the current Standard Specifications for Road and Bridge Construction of the Kansas Department of Transportation, as incorporated in the construction contract specifications and supplementals thereto.
- (7) The term "Construction Contract Proposal" shall mean the offer of the bidder or Contractor on the Project, on the prescribed form, to perform the work and to furnish the labor and materials at the prices quoted.
- (8) The term "Special Provisions" shall mean the directions or requirements peculiar to a project and not otherwise thoroughly or satisfactorily included in the Specifications, and which are contained in the Construction Contract Proposal.
- (9) The term "Plans" shall mean the approved plans, profiles, typical cross sections, working drawings and supplemental drawings, or exact reproductions thereof, which show the location, character, dimensions, and details of the work to be done by the contractor.

- (10) The term "Contract Documents" shall mean the Specifications, Construction Contract Proposal, Special Provisions and Plans, as defined above.
- (11) The term "Manual" shall mean the Construction Manual, the Forms and Documentation Manual and all other publications of data and information produced by KDOT for the instruction of its employees and furnished in bound or collected form.
- (12) The term "Field Engineer" shall for the administrative control of this Agreement be considered to mean Metro Engineer, Field Engineering Administrator and/or Area Engineer.

B. GENERAL RESPONSIBILITIES AND DUTIES

- (1) The Consultant shall perform engineering services necessary and incidental to the accomplishment of the Project to the satisfaction of KDOT, and as more fully detailed in Special Attachment - Specific Construction Provisions.
- (2) The Consultant will require all personnel comply with the high visibility apparel requirements of the *KDOT Safety Manual*, Chapter 4, Section 8, Fluorescent Vests, as a minimum, while inspection is being performed.
- (3) The Consultant shall furnish services, labor, materials, equipment, supplies and incidentals, other than those hereinafter designated to be furnished by KDOT, necessary to conduct and complete the services.
- (4) The services performed under this Agreement shall at all times be subject to the review and approval of KDOT.
- (4) The Consultant and/or LPA's principal contact with the KDOT shall be through the construction field office.
- (5) The services performed under this Agreement shall comply with all applicable federal and state laws and regulations.
- (6) The FHWA shall have the right to participate in all conferences and reviews.

C. CONTROL AND AUTHORITY

- (1) The authorized representative of KDOT will be designated by the District's Construction Engineer and will be titled the Field Engineer.
- (2) The Field Engineer will delegate to a construction office the overseeing of the Project where a Construction Engineer/Construction Coordinator will be assigned to monitor and coordinate all Project related activity to assure compliance with applicable Federal and State requirements of services performed under this Agreement and all construction activities performed under the Contract Documents.

- (3) The Consultant will designate a Project Engineer/Project Manager and other inspection personnel who are certified by KDOT in the appropriate classification to inspect all work performed and materials furnished. The Consultant may designate a Chief Inspector who will perform the duties and have the responsibilities of the Project Engineer/Project Manager. The Project Engineer/Project Manager is not authorized to alter or waive the provisions of the Specifications or the Construction Contract Proposal. The Project Engineer/Project Manager is not authorized to issue instructions contrary to the Plans and Specifications, or to act as foreman for the Contractor, however, the Project Engineer/Project Manager shall have the authority to reject work or materials until any questions at issue can be referred to and be decided by the Field Engineer.
- (4) The Project Engineer/Project Manager shall serve as field supervisor of all Consultant personnel and services performed under this Agreement, and to act as liaison between the Consultant and KDOT.
- (5) The Project Engineer/Project Manager shall transmit all reports and paperwork to, and communicate and coordinate with the Construction Engineer/Construction Coordinator.
- (6) Orders or instructions issued by the Field Engineer will be transmitted through the Construction Engineer/Construction Coordinator and will in turn be transmitted through the Project Engineer/Project Manager to the Contractor. If in the absence of the Project Engineer/Project Manager a matter needs prompt attention, the Construction Engineer/Construction Coordinator will give the necessary orders and then notify the Project Engineer/Project Manager.
- (7) In the event of a controversy, the Project Engineer/Project Manager shall confer with the Construction Engineer/Construction Coordinator to determine proper course of action. In the event the Construction Engineer/Construction Coordinator and the Project Engineer/Project Manager cannot agree the Construction Engineer/Construction Coordinator will promptly contact the Field Engineer or the District Construction Engineer of KDOT who will determine the necessary course of action.

D. AGENCY COORDINATION AND COOPERATION

- (1) Contact and coordination with all affected local, state and federal agencies (including the FHWA), the general public, utilities, railroad companies, and private consultants and contractors shall be the responsibility of KDOT.
- (2) The Consultant shall cooperate fully with KDOT, all affected local, state and federal agencies (including the FHWA), the general public, utilities, railroad companies, and private consultants and contractors when so directed by KDOT. Such cooperation may include attendance at conferences.

E. MEETINGS AND CONFERENCES

- (1) Conferences as may be necessary for the discussion and review of the services under this Agreement shall be scheduled between the Consultant and KDOT. These conferences may include field review of the Project.
- (2) Conferences may be held upon the request of the Consultant or KDOT.

II. PROSECUTION AND PROGRESS

A. GENERAL

- (1) Written authority to proceed with the services on any construction Project under this Agreement will be given by KDOT to the Consultant. KDOT will not be responsible for any services performed by the Consultant prior to such authorization.
- (2) Services performed under this Agreement will commence with attendance at a formal Construction Conference by the Consultant and KDOT, unless otherwise stated elsewhere in the Agreement or at the direction of the Construction Engineer/Construction Coordinator during an informal Construction Conference. Attendees at a formal Construction Conference shall include representatives of KDOT's Area Engineer and the Construction office (Construction Engineer/Construction Coordinator) and Consultant's Project Engineer/Project Manager and such other representatives as may be designated by each party to the Agreement. KDOT will notify the Consultant of the location, date and time and will make necessary arrangements for the conference. Topics for discussion shall include scope of the Contractor's construction operations and anticipated schedule, review of necessary staffing by the Consultant, lines of communication and authority, equipment needs, standard practices of KDOT, and related subjects.
- (3) The Consultant shall attend the formal Construction Conference held between KDOT, the Contractor and involved utilities and agencies, unless otherwise stated elsewhere in the Agreement.
- (4) The Consultant shall have KDOT Certified Inspector(s) of the appropriate classification on the project or plant site at all times when work which requires inspection is being performed. The inability of a Consultant to provide appropriately certified inspectors for a project may at the Secretary's discretion, give cause for termination of this Agreement.
- (5) The Agreement shall be considered completed upon notice of written release from KDOT therefore unless previously terminated as provided in Section II.
- (6) Should KDOT deem it necessary for the Consultant to render additional services for review of contract items, conditions, claims or litigation matters after completion of the Agreement, the Consultant agrees to cooperate and render

such requested services. Such services shall be paid for in the amount and manner mutually agreed upon by the LPA and the Consultant.

- (7) Close-Out Conference may be held upon completion of this Agreement to evaluate the performance of the Consultant. Attendees shall include the Field Engineer, representatives of the construction office (including Construction Engineer/Construction Coordinator) and Consultant's Project Engineer/Project Manager and such other representatives as may be designated by each party to the Agreement. KDOT will notify the Consultant of the location, date and time and will make necessary arrangements for the conference. The evaluation shall consider the quality of the Consultant's work, adequacy of staffing, extent of corrections, cooperation and related subjects.

B. DELAYS AND EXTENSIONS

- (1) Delays caused through no fault of the Consultant may be cause for extension of time in completion of the work. Time extensions may be granted by the LPA upon reasonable claim and justification by the Consultant. Approved time extensions may also be cause for consideration of adjustments in payment, where warranted and approved by the LPA.

C. TERMINATION OF AGREEMENTS

- (1) The right is reserved by KDOT to terminate all or part of this Agreement at any time upon written notice to the Consultant. Such notice shall be sent not less than ten (10) days in advance of the termination date stated in the notice.
- (2) The Consultant may terminate this Agreement, in the event of substantial failure of other parties to perform in accordance with the terms hereof, upon ten (10) days written notice in advance of the effective date of such termination received by all Parties to this Agreement.
- (3) In the event the Agreement is terminated by KDOT without fault on the part of the Consultant, the Consultant shall be paid for the work performed or services rendered under the terms agreed to by the LPA.
- (4) In the event the services of the Consultant are terminated by KDOT for fault including but not limited to: unreasonable delays in performance; failure to respond to KDOT requests; and/or unsatisfactory performance on the part of the Consultant, the Consultant shall be paid under the terms agreed to by the LPA. The value of the services performed, rendered and delivered will be determined by the LPA.
- (5) In the event of the death of any member or partner of the Consultant's firm, the surviving members shall complete the services, unless otherwise mutually agreed upon by the LPA and KDOT and the survivors, in which case the Consultant shall be paid under terms agreed to by the LPA.

D. SUBLETTING OR ASSIGNMENT OF CONTRACT

- (1) The Consultant shall not sublet or assign all or any part of the services under this Agreement without the prior written approval of KDOT. Consent by KDOT to assign, sublet or otherwise dispose of any portion of the Agreement shall not be construed to relieve the Consultant of any responsibility for the fulfillment of the Agreement.
- (2) All the applicable terms of this Agreement remain in force and are a condition to any services approved to be sublet or assigned.

III. BASIS OF PAYMENT

A. GENERAL

- (1) The Consultant will be paid under the terms agreed to by the LPA. The extra work will be paid for separately and in addition to the foregoing amount as approved by the LPA.
- (2) Final payment of any balance due the Consultant by the LPA will be made promptly upon completion of the work under this Agreement and acceptance by KDOT, and upon receipt of the survey notes, records, reports, final estimates, record drawings, Manuals, Contract Documents, guides, and other documents required to be returned or to be furnished under this Agreement.

IV. WORK ORDERS, EXTRA WORK, OR DECREASED WORK

- (1) Written orders regarding the services to be performed will be given by KDOT. Orders that do not change the scope of services in the Agreement, but increase or decrease the quantity of labor or materials or the expense of the services, shall not annul or void this Agreement.
- (2) The Consultant must proceed with the services as directed by furnishing the necessary labor, equipment, materials and professional services to complete the services within the time limits specified in schedules or as adjusted by agreement of the Parties.

V. MISCELLANEOUS PROVISIONS

A. CONSTRUCTION ENGINEERING STANDARDS

- (1) All services performed under this Agreement shall be done in accordance with the current standard practices of KDOT as contained in the Contract Documents, Manuals, guides and written instructions of KDOT.
- (2) No variations will be permitted except by written order from KDOT.

B. REVISION OF SPECIFICATIONS AND PLANS

- (1) KDOT may, by written notice and without invalidating this Agreement, make changes in the Specifications, Construction Contract Plans or Special Provisions resulting in the revision or abandonment of services already performed by the Consultant or resulting in work by the Consultant not contemplated in the Agreement.
- (2) Claims by the Consultant for compensation for services resulting from such revisions shall be submitted and processed in accordance with terms agreed to with the LPA.

C. OWNERSHIP OF DOCUMENTS

- (1) All data provided to the Consultant by KDOT is the sole property of KDOT and is intended for use on this Project only. Any data provided shall not be disclosed to anyone outside the Consultants firm without the express, written permission of KDOT. Upon completion or termination of this Agreement all Manuals, Contract Documents, guides, written instructions, unused forms and record-keeping books, and other written data and information furnished to the Consultant by KDOT for the performance of the Agreement, and all survey notes, diaries, reports, records and other information and data collected or prepared by the Consultant in the performance of this Agreement shall be properly arranged and delivered to KDOT, and shall become the property of KDOT.
- (2) All documents prepared by Consultant pursuant to this Agreement are instruments of service in respect of the Project. They are not intended or represented to be suitable for reuse by the Secretary or others on extensions of the Project or on any other Project. Any reuse without written verification or adaptation by Consultant for the specific purpose intended will be at the Secretary's sole risk and without liability or legal exposure to the Consultant; and Secretary shall indemnify and hold harmless Consultant from all claims, damages, losses and expenses, including attorney's fees, arising out of or resulting there from. Any such verification or adaptation will entitle Consultant to further compensation at rates to be agreed upon by Consultant and Secretary.

D. CONTINGENT FEES

- (1) The Consultant warrants they have not employed or retained any company or person, other than a bonafide employee working solely for the Consultant to secure this Agreement, and they have not paid or agreed to pay any company or person, any fee, commission, percentage, brokerage fees, gift, or any other consideration, contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty KDOT in consultation with the LPA shall have the right to annul this Agreement without liability.

E. AGREEMENT ITEMS

- (1) It is also understood and agreed the Project plans, Specifications, Special Provisions, and Construction Contract Proposal, as available, and other Special Attachments (Index provides List of Special Attachments) are all essential documents of this Agreement and are hereby incorporated by reference into this Agreement and are a part thereof.

F. LEGAL RELATIONS

- (1) The Consultant shall become familiar with, and shall at all times observe and comply with, all applicable federal, state, and local laws, ordinances and regulations.
- (2) The Consultant shall be responsible for any and all damages to property or persons arising out of an error, omission and/or negligent act in the Consultant's performance of services under this Agreement.

G. WORKER'S COMPENSATION AND OTHER EMPLOYEES PROVISIONS

- (1) The Consultant will accept full responsibility for payment of Unemployment Insurance, Worker's Compensation and Social Security as well as income tax deductions and any other taxes or payroll deductions required by State and Federal Law for the Consultant's employees engaged in work authorized by this Agreement.

H. ERRORS AND OMISSIONS

- (1) The Consultant shall be responsible for the accuracy of the work performed by the Consultant under the Agreement, and shall promptly make necessary revisions or corrections resulting from their negligent acts, errors or omissions without additional compensation.
- (2) The Consultant shall give immediate attention to these revisions or corrections to prevent or minimize delay to the Contractor.
- (3) The Consultant shall be responsible for any damages incurred as a result of their errors, omissions or negligent acts and for any losses or costs to repair or remedy construction.

I. CONFLICT OF INTEREST

- (1) The Consultant warrants they have no public or private interest, and shall not acquire directly or indirectly any such interest, which would conflict in any manner with the performance of the work under the Agreement. Specifically, the Consultant is prohibited from performing contractor construction staking or any other work that is the construction contractor's responsibility on this project.

- (2) The Consultant will not, without written permission from KDOT, engage the services of any person(s) in the employment of KDOT for any work required by the terms of this Agreement.

J. HOLD HARMLESS CLAUSE

- (1) The Consultant hereby expressly agrees to save the Secretary, the LPA, and the Secretary's and the LPA's authorized representatives harmless from any and all costs, liabilities, expenses, suits, judgements and damages to persons or property caused by the Consultant, its agents, employees or subcontractors which may result from negligent acts, errors, mistakes or omissions from the Consultant's operation in connection with the services to be performed hereunder.
- (2) The LPA hereby expressly agrees to save the Secretary and the Secretary's authorized representatives harmless from any and all costs, liabilities, expenses, suits, judgments and damages to persons or property caused by the LPA, its agents, employees or subcontractors which may result from negligent acts, errors, mistakes or omissions from the LPA's operation in connection with the services to be performed hereunder.

K. BINDING AGREEMENT

- (1) It is further understood this Agreement and all other Agreements entered into under the provisions of this Agreement shall be binding upon the Parties to this Agreement and their successors in office.

The signature page immediately follows this paragraph.

IN WITNESS WHEREOF: The Parties hereto have caused this Agreement to be signed by their duly authorized officers.

RECOMMENDED FOR APPROVAL:

APPROPRIATE LOCAL OFFICIAL:

Prairie Village City Engineer

Mayor of Prairie

ATTEST:

Prairie Village City Clerk (Date)

ATTEST:

CONSULTANT:

BY: _____
Name

Consultant

TITLE: _____

BY: _____ (Date)
Name

TITLE: _____

Kansas Department of Transportation
Michael S. King, Secretary of Transportation

BY: _____ (Date)
Jerome T. Younger, P. E.
Deputy Secretary and
State Transportation Engineer

INDEX OF ATTACHMENTS

Special Attachment No. 1	Specific Construction Provisions
Special Attachment No. 2	Listing of KDOT Certified Inspectors
Special Attachment No. 3	Civil Rights Act of 1964 Rehabilitation Act of 1973 Americans With Disabilities Act of 1990 Age Discrimination Act of 1975 Executive Order 12898 of 1994

SPECIFIC CONSTRUCTION PROVISIONS

I. SCOPE OF SERVICES

A. SERVICES TO BE PERFORMED BY THE CONSULTANT

The Consultant agrees to:

- (1) Attend all conferences designated by the KDOT, or required under the terms of this Agreement.
- (2) Designate a Project Engineer/Project Manager who shall meet KDOT's certification policy and report and transmit Project activity and documents to KDOT's Construction Office.
- (3) Assign KDOT Certified Inspector(s) of the appropriate classifications to the Project to perform the services required under this Agreement in a timely manner to avoid delay to the Contractor.
- (4) Become familiar with the standard practices of the KDOT, the Contract Documents (Specifications, Construction Contract Proposal, Special Provisions and Plans), and the Contractor's proposed schedule of operations prior to beginning field services to be performed under this Agreement.
- (5) Perform the Consultant's field operations in accordance with accepted safety practices.
- (6) Furnish all equipment required to accomplish the Consultant's services and to check or test it prior to use on the Project.
- (7) Provide for Consultant personnel such transportation, supplies, materials and incidentals as are needed to accomplish the services required under this Agreement.
- (8) Undertake the following:

Transmit orders from the KDOT to the Contractor and provide guidance in the proper interpretation of the Specifications and Plans.

Perform or provide construction surveys, staking, and measurements needed by the Contractor (unless provided for in the contract where contractor construction staking is to be performed as a bid item by the Contractor) and perform measurements and surveys that are involved in the determination of final pay quantities.

Inspect all phases of construction operations to determine the Contractor's compliance with Contract Documents and to reject such work and materials, which do not comply with Contract Documents until any questions at issue, can be referred to and be decided by the KDOT's Field Engineer.

Take field samples and/or test materials to be incorporated in the work, and reject those not meeting the provisions of the Contract Documents until any questions at issue can be referred to and be decided by the Field Engineer.

Make certain that test report records or certificates of compliance for materials tested off the Project site and required, prior to the incorporation in the work, have been received.

Keep such daily diaries, logs and records as are needed for a complete record of the Contractor's progress, including Project Engineer/Manager and Inspector's diaries.

Measure and compute all materials incorporated in the work and items of work completed, and maintain an item account record.

Provide measurement and computation of pay items.

Prepare and submit, or assist in preparing, such periodic, intermediate and final reports and records as may be required by the KDOT and as are applicable to the Project, which may include:

- a. Progress Reports
- b. Weekly statement of working days
- c. Notice of change in construction status
- d. Report of field inspection of material
- e. Test report record
- f. Contractor pay estimates
- g. Pile driving data
- h. Piling record
- i. Final certification of materials
- j. Explanation of quantity variation
- k. Statement of time
- l. Other records and reports as required by the Project

Review, or assist in reviewing, all Contractor submittals of records and reports required by the KDOT, as applicable to the Project, which may include:

- a. Requests for partial and final payment

- b. Other reports and records as required by the individual Project
- (9) Collect, properly label or identify, and deliver to the KDOT all original diaries, logs, notebooks, accounts, records, reports and other documents prepared by the Consultant in the performance of this Agreement, upon completion or termination of this Agreement.
 - (10) Return, upon completion or termination of this Agreement, all manuals, Contract Documents, guides, written instructions, unused forms and record keeping books, and other documents and materials furnished by the KDOT. The Consultant shall be responsible for replacing lost documents or materials at the price determined by the KDOT.
 - (11) Prepare and submit a certification of Project completion.
 - (12) Prepare and deliver (when Project is completed) one copy of major changes to the plans (by letter) to the KDOT. The letter should contain such items as the following:
 - a. Earthwork and Culverts
 - 1. A revised list of benchmarks
 - 2. Location of government benchmarks
 - 3. Major changes in alignment
 - 4. Major changes in grade line
 - 5. Established references on cornerstones
 - 6. Major changes in location of drainage structures
 - 7. Major changes in flow-line of drainage structures
 - 8. Drainage structures added or deleted
 - 9. Any change of access control
 - b. Bridges
 - 1. Changes in stationing
 - 2. Changes in type, size or elevation of footings
 - 3. Changes in grade line

B. SERVICES TO BE PROVIDED BY THE SECRETARY

- (1) The Secretary agrees to:
 - a. Make available to the Consultant sufficient copies of the Contract Documents, shop drawings, plan revisions, written instructions and other information and data considered by the KDOT to be necessary to enable the Consultant to perform the services under this Agreement, for the Project to the same standards required of the KDOT's personnel.

- b. Provide for the use of the Consultant a sufficient supply of the blank diaries, logs, record keeping books, and reporting forms considered by the KDOT to be necessary for the Consultant to perform the services under this Agreement to the same standards required of the KDOT'S personnel.
 - c. Provide space in the field office and field laboratory furnished by the Contractor under the terms of the Construction Contract Proposal, for the occupancy and use of the Consultant until completion of the construction work.
 - d. Perform or provide for laboratory testing of materials requiring off-site testing facilities and obtain test reports or certificates of compliance hereof.
 - e. Perform all necessary weld inspection when there is welding for bridge beam connections and splices, and for sign supports. This includes all cross frames, diaphragm connections, and stud welding.
 - f. Designate a Construction Engineer/Construction Coordinator in the Construction Office with the duties and responsibilities set forth in Section IC of the General Construction Provisions of the Agreement.
 - g. Provide, through the Field Engineer and the District Staff, such assistance and guidance to the Consultant as may be reasonably necessary to perform and complete this Agreement in conformance with standard construction engineering practices of the KDOT.
- (2) The Secretary reserves the right to assign and charge to the Project such KDOT personnel as may be needed.

II. PROSECUTION AND PROGRESS

- A. It is anticipated that the services to be performed under the construction contract will start in 2014, and be completed by 2015.
- B. The Consultant shall complete all services to be rendered under this Agreement no later than two months after completion of Project construction. Failure to comply may result in disqualification of the Consultant's Project Engineer/Project Manager or Chief Inspector until proper documentation is submitted and accepted.

III. BASIS OF PAYMENT

- A. Compensation for services provided by the Consultant will be as agreed to by the LPA and the Consultant.

IV. MISCELLANEOUS PROVISIONS

A. AUTHORIZED REPRESENTATIVES

- (1) The Field Engineer for the KDOT will be Mr. Howard Lubliner, P.E., whose work address is 1290 South Enterprise, Olathe, Kansas 66061 and work telephone is 913-764-4525.
- (2) The Project Engineer/Project Manager for the Consultant will be Mr. Kent Higgins, Certification Number 1159 (expiration date is 2/8/2017), whose work address is 2400 Pershing Road, Suite 400, Kansas City, Missouri 64108 and work telephone is 816-329-8600.
- (3) The Chief Inspector for the Consultant will be Mr. Scott Sharp, Certification Number 2554 (expiration date is 2/8/2018), whose work address is 2400 Pershing Road, Suite 400, Kansas City, Missouri 64108 and work telephone is 816-329-8600.
- (4) The contact person for the LPA will be Mr. Keith Bredehoeft, P.E. whose work address is 3535 Somerset Drive, Prairie Village, Kansas 66208 and work telephone is 913-385-4640.

KANSAS DEPARTMENT OF TRANSPORTATION

Special Attachment
To Contracts or Agreements Entered Into
By the Secretary of Transportation of the State of Kansas

NOTE: Whenever this Special Attachment conflicts with provisions of the Document to which it is attached, this Special Attachment shall govern.

THE CIVIL RIGHTS ACT OF 1964, and any amendments thereto,
REHABILITATION ACT OF 1973, and any amendments thereto,
AMERICANS WITH DISABILITIES ACT OF 1990, and any amendments thereto,
AGE DISCRIMINATION ACT OF 1975, and any amendments thereto,
EXECUTIVE ORDER 12898, FEDERAL ACTIONS TO ADDRESS ENVIRONMENTAL JUSTICE IN MINORITY
POPULATIONS AND LOW INCOME POPULATIONS 1994, and any amendments thereto,
49 C.F.R. Part 26.1 (DBE Program), and any amendments thereto

NOTIFICATION

The Secretary of Transportation for the State of Kansas, in accordance with the provisions of Title VI and Title VII of the Civil Rights Act of 1964 (78 Stat. 252), §504 of the Rehabilitation Act of 1973 (87 Stat. 355) and the Americans with Disabilities Act of 1990 (42 USC 12101), the Age Discrimination Act of 1975 (42 USC 6101), the regulations of the U.S. Department of Transportation (49 C.F.R., Part 21, 23, and 27), issued pursuant to such Act, Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations (1994), and the DBE Program (49 C.F.R., Part 26.1), hereby notifies all contracting parties that, the contracting parties will affirmatively ensure that this contract will be implemented without discrimination on the grounds of race, religion, color, gender, age, disability, national origin, or minority populations and low income populations as more specifically set out in the following "Nondiscrimination Clauses".

CLARIFICATION

Where the term "Consultant" appears in the following "Nondiscrimination Clauses", the term "Consultant" is understood to include all parties to contracts or agreements with the Secretary of Transportation of the State of Kansas.

Nondiscrimination Clauses

During the performance of this contract, the Consultant, or the Consultant's assignees and successors in interest (hereinafter referred to as the "Consultant"), agrees as follows:

- 1) **Compliance with regulations:** The Consultant will comply with the regulations of the U.S. Department of Transportation relating to nondiscrimination in its federally-assisted programs and codified at Title 49, Code of Federal Regulations, Parts 21, 23 and 27, (hereinafter referred to as the "Regulations"). The Regulations are herein incorporated by reference and made a part of this contract.
- 2) **Nondiscrimination:** The Consultant, with regard to the work performed by the Consultant after award and prior to the completion of the contract work, will not discriminate on the grounds of race, religion, color, gender, age, disability, national origin or minority populations and low income populations in the selection and retention of subcontractors, including in the procurements of materials and leases of equipment. The Consultant will not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
- 3) **Solicitations for Subcontractors, including Procurements of Material and Equipment:** In all solicitations, either competitive bidding or negotiation made by the Consultant for work to be performed under a subcontract including procurements of materials and equipment, each potential subcontractor or supplier shall be notified by the Consultant of the Consultant's obligation under this contract and the Regulations relative to nondiscrimination on the grounds of race, religion, color, gender, age, disability, national origin or minority populations and low income populations.

- 4) **Information and Reports:** The Consultant will provide all information and reports required by the Regulations, or orders and instructions issued pursuant thereto, and the Secretary of the Transportation of the State of Kansas will be permitted access to the Consultant's books, records, accounts, other sources of information, and facilities as may be determined by the Secretary of Transportation of the State of Kansas to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a Consultant is in the exclusive possession of another who fails or refuses to furnish this information, the Consultant shall so certify to the Secretary of Transportation of the State of Kansas and shall set forth what efforts it has made to obtain the information.
- 5) **Employment:** The Consultant will not discriminate against any employee or applicant for employment because of race, religion, color, gender, age, disability, or national origin.
- 6) **Sanctions for Noncompliance:** In the event of the Consultant's noncompliance with the nondiscrimination provisions of this contract, the Secretary of Transportation of the State of Kansas shall impose such contract sanctions as the Secretary of Transportation of the State of Kansas may determine to be appropriate, including, but not limited to,
 - (a) withholding of payments to the Consultant under the contract until the Consultant complies, and/or
 - (b) cancellation, termination or suspension of the contract, in whole or in part.
- 7) **Disadvantaged Business Obligation**
 - (a) Disadvantaged Business as defined in the Regulations shall have a level playing field to compete for contracts financed in whole or in part with federal funds under this contract.
 - (b) All necessary and reasonable steps shall be taken in accordance with the Regulations to ensure that Disadvantaged Businesses have equal opportunity to compete for and perform contracts. No person(s) shall be discriminated against on the basis of race, color, gender, or national origin in the award and performance of federally-assisted contracts.
 - (c) The Consultant, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Consultant shall carry out applicable requirements of 49 C.F.R. Part 26 in the award and administration of Federally-assisted contracts. Failure by the Consultant to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as the recipient deems appropriate.
- 8) **Executive Order 12898**
 - (a) To the extent permitted by existing law, and whenever practical and appropriate, all necessary and reasonable steps shall be taken in accordance with Executive Order 12898 to collect, maintain, and analyze information on the race, color, national origin and income level of persons affected by programs, policies and activities of the Secretary of Transportation of the State of Kansas and use such information in complying with Executive Order 12898.
- 9) **Incorporation of Provisions:** The Consultant will include the provisions of paragraphs (1) through (8) in every subcontract, including procurements of materials and equipment, unless exempt by the Regulations, order, or instructions issued pursuant thereto. The Consultant will take such action with respect to any subcontract or procurement as the Secretary of Transportation of the State of Kansas may direct as a means of enforcing such provisions including sanctions for noncompliance: PROVIDED, however, that, in the event a Consultant becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the Consultant may request the State to enter into such litigation to protect the interests of the State.



PUBLIC WORKS DEPARTMENT

Council Committee Meeting Date: January 20, 2015

Council Meeting Date: January 20, 2015

CONSIDER CONSTRUCTION ADMINISTRATION AGREEMENT WITH TRANSYSTEMS FOR THE 75TH STREET PROJECT FROM MISSION ROAD TO STATE LINE ROAD, PROJECT NUMBER 75ST0001.

RECOMMENDATION

Move to approve the construction administration agreement with TranSystems for the 75th Street Project from Mission Road to State Line Road, Project 75ST0001.

BACKGROUND

In 2012 TranSystems was selected to be the City's construction administration consultant for 2012, 2013 and 2014. This project was planned to be constructed in 2014 and was delayed due to easement acquisition and utility adjustments. We planned to use TranSystems in 2014 as they also meet all the KDOT requirements for the Federally Aid project. When the project was delayed we continued with our plan to utilize TranSystems for this project.

The total construction cost for the 75th Street Project will be about \$3,500,000. The fee was negotiated with TranSystems to be \$378,923.87 or about 10.8% of construction costs. This percentage is similar to past negotiated construction administration contracts.

The manhour's and associated fee's were reviewed by Public Works and are appropriate for this project and its scope of work.

The scope meets the requirements of the Non-Federal aid three party consultant agreement between the City, TranSystems, and KDOT for this project.

FUNDING SOURCE

Funding is available under the 75th Street Project from Mission Road to State Line Road, Project 75ST001. No Federal Aid funds will be used for this contract.

RELATION TO VILLAGE VISION

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

ATTACHMENTS

1. Construction Administration Agreement with TranSystems.

PREPARED BY

Keith Bredehoeft, Public Works Director

January 14, 2015

AGREEMENT FOR PROFESSIONAL CONSULTANT SERVICES

For

CONSTRUCTION ADMINISTRATION

For

PROJECT 75ST0001

75th STREET PROJECT- MISSION ROAD to STATE LINE ROAD

THIS AGREEMENT, made at the Prairie Village, Kansas, this _____ day of _____, by and between the City of Prairie Village, Kansas, a municipal corporation with offices at 7700 Mission Road, Prairie Village, Kansas, 66208, hereinafter called the “**City**”, and TranSystems, a Missouri corporation with offices at 2400 Pershing Road, Suite 400, Kansas City, MO, 64108, hereinafter called the “**Consultant**”.

WITNESSED, THAT WHEREAS, City has determined a need to retain a professional engineering firm to provide civil engineering services for Construction Administration of Project 75ST0001- 75th Street from Mission Road to State Line Road, hereinafter called the “**Project**”,

AND WHEREAS, the City is authorized and empowered to contract with the Consultant for the necessary consulting services for the Project,

AND WHEREAS, the City has the necessary funds for payment of such services,

NOW THEREFORE, the City hereby hires and employs the Consultant as set forth in this Agreement effective the date first written above.

ARTICLE I - RESPONSIBILITIES OF THE CITY

The CITY designates Keith Bredehoeft, Manager of Engineering Services as CITY representative with respect to this Agreement. Mr. Bredehoeft shall have the authority to transmit instructions, receive information, interpret and define the policies of the CITY, make decisions relevant to the services of the CONSULTANT.

The CITY shall do the following in a timely manner:

1. Make available to the CONSULTANT all existing data and records relevant to the Project, including but not limited to, maps, plans, correspondence, data and previous reports and studies possessed by the CITY.
2. Approve all criteria and information as to the requirements of the CITY for the Project, including objectives and constraints, performance requirements, and budgetary limitations.
3. Review and approve all correspondence transmitted and forms used by the CONSULTANT relative to this Project.
4. Review for approval all submittals such as change orders and payment requests by the CONSULTANT.

ARTICLE II - RESPONSIBILITIES OF THE CONSULTANT

The CONSULTANT designates Mr. Kent Higgins as Construction Manager, who shall direct the related construction inspection and administration services in all phases of the Project to which this Agreement applies. The Construction Manager shall serve as the prime professional on this Project and shall be the prime contact with the Manager of Engineering Services. Project-specific services are identified on Exhibit A.

The standard of care for all professional consulting services and related construction inspection and administration services either performed for or furnished by the CONSULTANT under this Agreement will be the care and skill ordinarily used by members of the CONSULTANT profession, practicing under similar conditions at the same time and in the same locality.

The Construction Manager shall act as CITY representative to the extent and limitations of the duties, responsibilities and authority as assigned herein and shall not be modified, except as CONSULTANT may otherwise agree in writing. All of CITY instructions to Contractor will be issued through Construction Manager, who shall have authority to act on behalf of CITY in dealings with Contractor to the extent provided in this Agreement, except as otherwise provided in writing.

The Construction Manager shall conduct a pre-construction meeting, which will include the Manager of Engineering Services, Contractor, utility companies and any appropriate government agency partied with the CITY prior to commencement of Work at the Site.

The Construction Manager shall coordinate with the Contractor on the taking of digital, pre-construction pictures.

The Construction Manager shall make visits to the site at intervals appropriate to the various stages of construction, as Construction Manager deems necessary, in order to observe as an experienced and qualified design professional the progress and quality of the Work. Such visits and observations by Construction Manager are not intended to be exhaustive or to extend to every aspect of the Work in progress or to involve detailed inspections of the Work in progress beyond the responsibilities specifically assigned to Construction Manager herein, but rather are to be limited to selective checking, selective sampling, and similar methods of observation of the Work based on Construction Manager's exercise of professional judgment. Based on information obtained during such visits and such observations, Construction Manager will determine if Contractor's work is proceeding in accordance with the Project Manual, and Construction Manager shall keep CITY informed of the progress of the Work.

The purpose of Construction Manager visits to the Site of the Project will be to enable Construction Manager to carry out the duties and responsibilities assigned to and undertaken by CONSULTANT during the Construction Phase. By the exercise of Construction Manager's efforts as an experienced and qualified construction professional, the Construction Manager will provide for CITY a greater degree of confidence that the completed Work will conform in general to the Project Manual and that the integrity of the design concept of the completed project as a functioning whole as indicated in the Project Manual has been implemented and preserved by Contractor. Construction Manager shall not, during such visits or as a result of such observations of Contractor's work in progress, supervise, direct, or have control over the Work, nor shall Construction Manager have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected by Contractor, for safety precautions and programs incident to the Work, or for any failure of Contractor to comply with Laws and Regulations applicable to Contractor's furnishing and performing the Work. Accordingly, Construction Manager neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish and perform its work in accordance with the Project Manual.

The Construction Manager shall have authority to disapprove or reject Contractor's work while it is in progress if, on the basis of such observations, Construction Manager believes that such work will not

produce a completed project that conforms generally to the Project Manual or that it will prejudice the integrity of the design concept of the completed project as a functioning whole as indicated in the Project Manual.

The Construction Manager shall issue necessary clarifications and interpretations of the Project Manual as appropriate to the orderly completion of the Work. Such clarifications and interpretations will be consistent with the intent of and reasonably inferable from the Project Manual. Construction Manager may issue Field Orders authorizing minor variations of work that neither increase the Time for Completion nor have a value of more than \$1,000 from the requirements of the Project Manual.

The Construction Manager shall recommend Change Orders and Field Orders to Manager of Engineering Services, as appropriate, and prepare Change Orders and Field Orders as required.

The Construction Manager shall review and approve or take other appropriate action in respect to Shop Drawings and Samples and other data which Contractor is required to submit, but only for conformance with the information given in the Project Manual and compatibility with the design concept of the completed project as a functioning whole as indicated in the Project Manual. Such reviews and approvals or other action will not extend to means, methods, techniques, sequences or procedures of construction or to safety precautions and programs incident thereto. Construction Manager has an obligation to meet any Contractors submittal schedule that has earlier been acceptable to Construction Manager.

The Construction Manager and Manager of Engineering Services shall evaluate and determine the acceptability of substitute or "or equal" materials and equipment proposed by Contractor.

The Construction Manager shall require such special inspections or tests of the Work as deemed reasonably necessary, and receive and review all certificates of inspections, tests, and approvals required by Laws and Regulations or the Project Manual. The Construction Manager's review of such certificates will be for the purpose of determining that the results certified indicate compliance with the Project Manual and will not constitute an independent evaluation that the content or procedures of such inspections, tests, or approvals comply with the requirements of the Project Manual. The Construction Manager shall be entitled to rely on the results of such tests.

The Construction Manager shall render formal written recommendations on all claims of CITY and Contractor relating to the acceptability of the Work or the interpretation of the requirements of the Project Manual pertaining to the execution and progress of the Work.

The Construction Manager shall:

1. Review the Contractor's monthly Applications for Payment to determine it represents the work accepted and is mathematically correct. Construction Manager will provide recommendation for payment to the Manager of Engineering Services. Such recommendations of payment will be in writing and will constitute Construction Manager representation to the CITY, based on such observations and review, that, to the best of Construction Manager knowledge, information and belief, the Work has progressed to the point indicated, the quality of such is generally in accordance with the Project Manual (subject to an evaluation of the Work as a functioning whole prior to or upon completion, to the results of any subsequent tests called for in the Project Manual and to any other qualifications stated in the recommendation), and the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Construction Manager responsibility to observe the Work. In the case of unit price work, the Construction Manager recommendations of payment will include final determinations of quantities and classifications of the Work (subject to any subsequent adjustments allowed by the Project Manual). The responsibilities of Construction Manager are expressly subject to the limitations set forth herein.

2. By recommending any payment, it will also not impose responsibility on Construction Manager to make any examination to ascertain how or for what purposes Contractor has used the moneys paid on account of the Contract Price. However, the Construction Manager shall obtain from the Contractor documentation in approved form with the payment request to determine that title to any portion of the work in progress, materials, or equipment has passed to CITY free and clear of any liens, claims, security interests, or encumbrances, or that there may not be other matters at issue between CITY and Contractor that might affect the amount that should be paid.

The Construction Manager shall receive and review maintenance and operating instructions, schedules, and guarantees that will be given to the Manager of Engineering Services.

The Construction Manager shall receive and deliver to the Manager of Engineering Services bonds, certificates, or other evidence of insurance not previously submitted and required by the Project Manual, certificates of inspection, tests and approvals, Shop Drawings, Samples and other data approved as provided herein, and the annotated record documents which are to be assembled by Contractor in accordance with the Project Manual to obtain final payment.

Construction Manager shall transmit to Manager of Engineering Services promptly after notice from Contractor that Contractor considers the entire Work ready for its intended use. In company with Manager of Engineering Services and Contractor, the Construction Manager shall conduct an inspection to determine if the Work is Complete. If after considering any objections, the Construction Manager shall deliver a certificate of Completion to Manager of Engineering Services and Contractor.

Accompanying the recommendation for final payment, Construction Manager shall provide proper notice that the Work is acceptable to the best of the Construction Manager knowledge, information, and belief and based on the extent of the services provided by CONSULTANT under this Agreement.

The Construction Phase will commence with the execution of the Construction Agreement for the Project or any part thereof and will terminate upon written recommendation by Construction Manager for final payment to Contractors.

The Construction Manager shall not be responsible for the acts or omissions of any Contractor, or of any of their subcontractors, suppliers, or of any other individual or entity performing or furnishing any of the Work. Construction Manager shall not be responsible for failure of any Contractor to perform or furnish the Work in accordance with the Project Manual.

Construction Manager shall furnish assistants, and other field staff to assist Construction Manager to provide more extensive observation of Contractor's work by observing progress and quality of the Work. Through such additional observations of Contractor's work in progress and field checks of materials and equipment by the assistants and other field staff, Construction Manager shall provide protection against defects and deficiencies in the Work.

The duties and responsibilities Construction Manager are as follows:

- 1 Attend meetings with Contractor, such as preconstruction conferences, progress meetings, job conferences and other project-related meetings, and prepare and circulate copies of minutes thereof.
- 2 Serve liaison with Contractor, working principally through Contractor's superintendent, assist in providing information regarding the intent of the Project Manual.
- 3 Obtaining from CITY additional details or information, when required for proper execution of the Work.

- 4 Report when clarifications and interpretations of the Project Manual are needed and transmit to Contractor clarifications and interpretations.
- 5 Record date of receipt of Samples and approved Shop Drawings.
- 6 Receive and examine Samples, which are furnished at the Site by Contractor.
- 7 Review material test reports and inform Manager of Engineering Services and Contractor of results not meeting specifications. The Construction Manager shall make appropriate recommendations to address results not meeting specifications.
- 8 Advise the Contractor prior to the commencement of any portion of the Work requiring a Shop Drawing or Sample submittal that the submittal has not been received or approved by Construction Manager.
- 9 Consider and evaluate Contractor's suggestions for modifications in Drawings or Specifications and report such suggestions. Transmit to Contractor in writing decisions as issued by Construction Manager.
- 10 Conduct on-Site observations of Contractor's work in progress to determine if the Work is in general proceeding in accordance with the Project Manual.
- 11 Report any part of Contractor's work in progress will not produce a completed Project that conforms generally to the Project Manual or will imperil the integrity of the design concept of the completed Project as a functioning whole as indicated in the Project Manual, or has been damaged, or does not meet the requirements of any inspection, test or approval required to be made; and advise of that part of work in progress that the Construction Manager believes should be corrected or rejected or should be uncovered for observation, or requires special testing, inspection or approval.
- 12 Consult with Contractor in advance of scheduled major inspections, tests, and systems startups of important phases of the Work.
- 13 Verify that tests, equipment, and systems start-ups and operating and maintenance training are conducted in the presence of appropriate CITY personnel, and that Contractor maintains adequate records thereof.
- 14 Observe, record, and report appropriate details relative to the test procedures and systems start-ups.
- 15 Accompany visiting inspectors representing public or other agencies having jurisdiction over the Project, record the results of these inspections.
- 16 Maintain orderly files for correspondence, reports of job conferences, reproductions of original Project Manual including all Change Orders, Field Orders, Work Change Directives, Addenda, additional Drawings issued subsequent to the execution of the Contract, clarifications and interpretations of the Project Manual, progress reports, Shop Drawing and Sample submittals received from and delivered to Contractor, and other Project-related documents.
- 17 Prepare a daily report recording Contractor's hours on the Site, weather conditions, data relative to questions of Change Orders, Field Orders, Work Change Directives, or changed conditions, Site visitors, daily activities, decisions, observations in general, and specific observations in more detail as in the case of observing test procedures; and send copies to Manager of Engineering Services.

- 18 Record names, addresses, fax numbers, e-mail addresses, web site locations, and telephone numbers of all Contractors, subcontractors, and major suppliers of materials and equipment.
- 19 Maintain records for use in preparing Project documentation.
- 20 Upon completion of the Work, furnish original set of all Project documentation to Manager of Engineering Services.
- 21 Furnish to Manager of Engineering Services periodic reports as required of progress of the Work and of Contractor's compliance with the progress schedule and schedule of Shop Drawing and Sample submittals.
- 22 Draft and recommend to Manager of Engineering Services proposed Change Orders, Work Change Directives, and Field Orders. Obtain backup material from Contractor.
- 23 Furnish copies of all inspection, test, and system start-up reports.
- 24 Immediately notify Manager of Engineering Services of the occurrence of any Site accidents, emergencies, acts of God endangering the Work, damage to property by fire or other causes, or the discovery of any Constituent of Concern.
- 25 Review Applications for Payment with Contractor for compliance with the established procedure for their submission and forward with recommendations to Manager of Engineering Services, noting particularly the relationship of the payment requested to the schedule of values, Work completed, and materials and equipment delivered at the Site but not incorporated in the Work.
- 26 During the course of the Work, verify that materials and equipment certificates, operation and maintenance manuals and other data required by the Specifications to be assembled and furnished by Contractor are applicable to the items actually installed and in accordance with the Project Manual, and have these documents delivered to Manager of Engineering Services for review prior to payment for that part of the Work.
- 27 Participate in a Completion inspection, assist in the determination of Completion and the preparation of lists of items to be completed or corrected.
- 28 Participate in a final inspection in the company of Manager of Engineering Services, and Contractor and prepare a final list of items to be completed and deficiencies to be remedied.
- 29 Observe whether all items on the final list have been completed or corrected and make recommendations concerning acceptance and issuance of the Notice of Acceptability of the Work.

The Construction Manager shall not:

- 1 Exceed limitations of CONSULTANT authority as set forth in the Agreement or the Project Manual.
- 2 Undertake any of the responsibilities of Contractor, subcontractors, suppliers, or Contractor's superintendent.
- 3 Advise on, issue directions relative to, or assume control over any aspect of the means, methods, techniques, sequences or procedures of Contractor's work unless such advice or directions are specifically required by the Project Manual.

- 4 Advise on, issue directions regarding, or assume control over safety practices, precautions, and programs in connection with the activities or operations of CITY or Contractor.
- 5 Participate in specialized field or laboratory tests or inspections conducted off-site by others except as specifically authorized.
- 6 Accept Shop Drawing or Sample submittals from anyone other than Contractor.
- 7 Authorize CITY to occupy the Project in whole or in part.

The Construction Manager is expected to conduct himself/herself at all times in such a manner as to reflect credit upon himself/herself and the CITY they represent. It is expected that the Construction Manager will be suitably dressed for the work, and he/she will be clean and neat enough to be a suitable representative of the CITY to the Contractor and the public. The Construction Manager will be pleasant, courteous and business-like in meeting the public. He/She is helpful and considerate to answer questions asked by the public. If the Construction Manager cannot clearly answer the question, the Construction Manager should refer the questioner to the Manager of Engineering Services.

The Construction Manager will not engage in controversial activities relative to the project in public, particularly if it involves public speaking, public debate, public media, etc. All written communications intended for publication that relate to the project must be approved by the Manager of Engineering Services.

Keeping accurate records and reports is a very important function of the Construction Manager. These records are necessary for a number of reasons. Some of the most common reasons for these records and their use as references are as follows:

1. Accounting for quantities for periodic progress payments and extra work under cost plus change order procedures
2. Verify actions and decisions of the Construction Manager
3. Report job status and site conditions of an accident or liability claim
4. Clarify the continuity of project contract time, such as working days, delays, and weather.
5. Responses to inquiries and complaints
6. Evidence in legal action

The basic reporting medium is the Daily Report. It is a continuing report of the job progress and provides an adequate record of each day's progress and activities. The record of activities should be reported in the sequence that they take place. Each report should be brief but at the same time be complete, clear and factual and include all work accomplished by the Contractor, as well as pertinent related information. The report should answer "who did what, when, where, how and how much". Abbreviations are acceptable as long as their meanings are not confusing and have a common acceptance.

A checklist of items contained in the Daily Report is as follows:

Typical entries for general information -

1. All reports shall show the CITY Project number and title and the CARS or SMAC project number
2. All entries shall be printed in black ink or computer generated
3. Detail the Construction Manager hours on the jobsite
4. Record weather conditions such as "sunny, temperature, precipitation type and amount (light, moderate, heavy)"
5. Complete the report the same day
6. Label the report using the consecutive numbers
7. Note any written or verbal instructions given to the Contractor

8. Note any non-compliance issued for the job
9. Record any unsatisfactory or non-compliant work and corrective actions taken
10. Report all job incidents involving the public such injuries, damages to property and equipment, safety conditions
11. Record the type, frequency and person providing testing
12. Detail job progress in terms of quantity, distances, stations, and weight as they are appropriate and applicable to project pay items
13. Record any factors adversely affecting progress of the work, such as utility conflict, material delivery, unforeseen conditions, plan changes, poor Contractor management, weather, etc.
14. Record any important visitors to the project and their nature of business
15. Sign and date the report
16. Send copy of report to Manager of Engineering Services

Typical entries for subgrade work -

1. Name of Contractor doing the work
2. Location and results of compaction tests completed and name of the testing laboratory
3. Limits of rough grade, cuts and fills
4. Thickness and type of material placed and compacted
5. Conformance with final grade specifications

Typical entries for curb, gutter, sidewalk and driveway work -

1. Name of Contractor doing the work
2. Station to station limits of forms placed when concrete is not placed the same day
3. Station to station limits of concrete placed, type of concrete and additives, number of cubic yards placed, source of concrete and copy of delivery ticket
4. Type and size of curb and gutter
5. Width and thickness of sidewalk
6. Width and thickness of driveways
7. Number and location of concrete tests for slump, cylinders taken, and name of testing laboratory

Typical entries for paving work -

1. Name of Contractor doing the work
2. Identification of milling, paving and roller equipment used
3. Source and type of material
4. Station to station and width limits of pavement placed, method of laying, material type,, thickness, and weight of material laid based on delivery tickets
5. Number and location of temperature of material at delivery tests, density tests and name of testing laboratory

Typical entries for storm drains -

1. Station to station limits of excavation, pipe laid (including size and type), bedding material, backfill material and compaction method
2. Number and location of structure by type, backfill material and compaction method
3. Location of utility conflicts and resolution
4. Method of restoration, , compaction method and density test
5. Method of restoration, sidewalks, lawns
6. Televised inspection, dates and results

A primary responsibility of the Construction Manager is to have a working knowledge of the controlling regulations, codes and directives dealing with the public convenience, public safety and construction safety. Though jobsite safety is contractually the Contractor's responsibility, the Construction Manager should immediately report all unsafe conditions or practices to the proper authority. However, if in the opinion of the Construction Manager, the precautions taken by the Contractor are found to be

insufficient or inadequate in providing job or public safety at any time, the Construction Manager shall notify the Manager of Engineering Services.

The Construction Manager is expected to wear suitable clothing and protective gear on the jobsite. Hard hats must be worn at all times there is a danger of falling and flying material. Approved reflective vests must be worn for high visibility in close proximity to traffic and moving equipment. Clothing and protective gear should clearly identify the Construction Manager.

Good housekeeping and sanitary provisions are the responsibility of the Contractor. The Contractor is responsible for public and private property and shall take every reasonable precaution to avoid damage by the construction activities. Throughout all phases of construction, the rubbish and debris on a project shall be held to a minimum and confined to organized disposal and storage areas. Dust nuisance is to be held to a minimum. The Contractor's equipment and construction activities shall not contribute to air pollution by excessively discharging smoke, exhaust and other contaminants in such quantities to be a nuisance and violation of contract. The Construction Manager shall record such unacceptable conditions in the Daily Report.

The responsibility of safe and proper handling of traffic rests with the Contractor. The Construction Manager shall see that the Contractor provides proper handling of traffic as required by the contract and shall notify the Contractor to correct any potentially dangerous situation that exists. The section of the Manual of Uniform Traffic Control Devices (MUTCD) titled *Work Area Traffic Control Handbook* sets forth the principle and standards in order to provide safe and effective work areas and to warn, control, protect and expedite vehicular and pedestrian traffic through the construction project. The MUTCD by reference is part of the Contractor's construction documents. The Construction Manager shall refer to this document when monitoring and coordinating traffic handling with the Contractor. The Construction Manager shall record such unacceptable conditions in the Daily Report.

The Construction Manager are directed to avail themselves of the *Public Works Inspector' Manual*, latest edition published by the BNi Building News and available through the American Public Works Association. The manual is a complete operational and technical guidebook for inspecting all types of public works construction. The manual is the standard by which the CITY expects the Construction Manager to meet and is part of this Agreement.

ARTICLE III - COMPENSATION

The CITY agrees to pay the CONSULTANT, at Hourly Rates, to a Maximum Fee of \$ **378,923.87** for the scope of services as specified herein unless modified by Change Order. CONSULTANT Hourly Rates shall be actual hourly salary times a 2.858 multiplier. CONSULTANT fee estimate is attached as Exhibit B.

The CONSULTANT may submit an invoice on a monthly basis from an estimate of Services or upon the completion of services. The CONSULTANT shall bill reimbursable expenses, which are beyond all fees for professional services, with a multiplier of 1.05. Reimbursable items shall be as follows:

- a. Final plots and printing for construction or as requested by the CITY except as outlined in the scope of services (printing and plotting for the CONSULTANT in-house use is not a reimbursable expense)
- b. Project Mileage
- c. Delivery Charges

All billings must be submitted by the fifteenth day of the month for all services rendered in the previous month. The CONSULTANT will invoice the CITY on forms approved by the CITY. All properly prepared invoices will include a documented breakdown of expenses incurred.

Both parties may submit an Engineering Change Order for major changes in scope, character, delays or complexity of Services. The Engineering Change Order may provide for changes in compensation and schedule, either upward or downward. The Engineering Change Order shall be signed by the CITY and the CONSULTANT prior to the CONSULTANT proceeding with any work covered by this Agreement.

ARTICLE IV - GENERAL PROVISIONS

Times for Rendering Services: The CONSULTANT services and compensation under this Agreement have been agreed to in anticipation of orderly and continuous progress of the Services through completion. Specific periods of time for rendering services are set forth in Article IV, Time Schedule, in this Agreement, by which time defined services are to be completed. If such periods of time are changed through no fault of the CONSULTANT, the rates and amounts of compensation provided for therein shall be subject to equitable adjustment.

Opinions of Probable Cost: In providing opinions of probable cost, the CITY understands that the CONSULTANT has no control over costs or the price of labor, equipment or materials, or over the Contractor's method of pricing, and that the opinions of probable construction costs, if included herein, are to be made based on the CONSULTANT qualifications and experience. The CONSULTANT makes no warranty, expressed or implied, as to the accuracy of such opinions as compared to bid or actual costs.

Change in Scope: The scope of work described in Article I Scope of Services, shall be subject to modification or supplement upon the signing of an Engineering Change Order by the CITY and the CONSULTANT. At the time of such modification of scope, equitable adjustments, agreeable to both parties, shall be made in the time of performance and the compensation to be paid for the services.

In event the CITY consents to, allows, authorizes or approves of changes to the construction documents prepared by the CONSULTANT, and these changes are not approved in writing by the CONSULTANT, the CITY recognizes that such changes and the results thereof are not the responsibility of the CONSULTANT. Therefore, the CITY agrees to release the CONSULTANT from any liability arising from the construction, use, or result of such changes. In addition, the CITY agrees to indemnify and hold the CONSULTANT harmless from any damage, liability or cost arising from such changes.

Reuse of Documents: All documents including the plans and specifications provided or furnished by the Consultant pursuant to this Agreement ("Plans") shall become the property of City. City agrees that if such Plans are ever used in connection with another project in which the Consultant is not providing civil engineering services or for completion of the Project by others, all references to the Consultant or any subconsultant, including seals, shall be removed from the Plans before use on said project. The City may make and retain copies for the use by the City and others; however, such documents are not intended or suitable for reuse by the City or others as an extension of the Project or on any other Project. Any such reuse without written approval or adaptation by the Consultant for the specific purpose intended will be at the CITY sole risk and without liability to the Consultant. To the extent permitted by law, the City shall indemnify and hold harmless the Consultant from all claims, damages, losses and expenses including attorney's fees arising out of or resulting reuse of the Plans. In a similar manner, the Consultant is prohibited from reuse or disclosing any information contained in any documents, plans or specifications relative to the Project without the expressed written permission of the City.

Insurance: The Consultant shall procure and maintain, at its expense, the following insurance coverage: (a) Workers' Compensation -- Statutory Limits, with Employer's Liability limits of \$500,000 each employee, \$500,000 policy limit; (b) Commercial General Liability for bodily injury and property damage liability claims with limits of not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate; (c) Commercial Automobile Liability for bodily injury and property damage with limits of not less than \$1,000,000 each accident for all owned, non-owned and hired automobiles; (d) errors and omissions coverage of not less than \$1,000,000. Deductibles for any of the above coverage shall not exceed \$50,000 in General Liability and \$100,000 in Professional Liability unless approved in writing by City. In addition, Consultant agrees to require all consultants and subconsultants to obtain and provide insurance in identical type and amounts of coverage together and to require satisfaction of all other insurance requirements provided in this Agreement.

CONSULTANT'S insurance shall be from an insurance carrier with an A.M. Best rating of A-IX or better, shall be on the GL 1986 ISO Occurrence form or such other form as may be approved by City, and shall name, by endorsement to be attached to the certificate of insurance, City, and its divisions, departments, officials, officers and employees, and other parties as specified by City as additional insureds as their interest may appear, except that the additional insured requirement shall not apply to Errors and Omissions coverage. Such endorsement shall be ISO CG2010 11/85 or equivalent. "Claims Made" and "Modified Occurrence" forms are not acceptable, except for Errors and Omissions coverage. Each certificate of insurance shall state that such insurance will not be canceled or coverage reduced until after thirty (30) days' unqualified written notice of cancellation or reduction has been given to the City, except in the event of nonpayment of premium, in which case there shall be ten (10) days' unqualified written notice. Subrogation against City and CITY Agent shall be waived. CONSULTANT insurance policies shall be endorsed to indicate that CONSULTANT insurance coverage is primary and any insurance maintained by City or CITY Agent is non-contributing.

Before Consultant performs any portion of the Work, it shall provide City with certificates and endorsements evidencing the insurance required by this Article. Consultant agrees to maintain the insurance required by this Article of a minimum of three (3) years following completion of the Project and, during such entire three (3) year period, to continue to name City, CITY agent, and other specified interests as additional insureds thereunder.

If due to the CONSULTANT'S negligent act, error or omission, any required item or component of the project is omitted from the Construction documents produced by the Consultant, the CONSULTANT liability shall be limited to the difference between the cost of adding the item at the time of discovery of the omission and the cost had the item or component been included in the construction documents. The Consultant will be responsible for any retrofit expense, waste, any intervening increase in the cost of the component, and a presumed premium of 10% of the cost of the component furnished through a change order from a contractor to the extent caused by the negligence or breach of contract of the Consultant or its subconsultants.

6.4 **Termination:** This Agreement may be terminated by either party upon seven days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party; provided, however, the nonperforming party shall have 14 calendar days from the receipt of the termination notice to cure the failure in a manner acceptable to the other party. In any such case, the Consultant shall be paid the reasonable value of the services rendered up to the time of termination on the basis of the payment provisions of this Agreement. Copies of all completed or partially completed designs, plans and specifications prepared under this Agreement shall be delivered to the City when and if this Agreement is terminated, but it is mutually agreed by the parties that the City will use them solely in connection with this Project, except with the written consent of the Consultant (subject to the above provision regarding Reuse of Documents).

6.5 **Termination for Convenience:** The City, within its sole discretion, may elect to terminate the Agreement with the Consultant for convenience upon three (3) days written Notice to Consultant. In the event of such termination, Consultant 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. Consultant shall not be entitled to any anticipatory profits of other costs other than direct costs of demobilization

Controlling Law: This Agreement is to be governed by the laws of the State of Kansas.

Indemnity: To the fullest extent permitted by law, with respect to the performance of its obligations in this Agreement or implied by law, and whether performed by Consultant or any subconsultants hired by Consultant, the Consultant agrees to indemnify City, and its agents, servants, and employees from and against any and all claims, damages, and losses arising out of personal injury, death, or property damage, caused by the negligent acts, errors, or omissions of the Consultant or its subconsultants, to the extent and in proportion to the comparative degree of fault of the Consultant and its subconsultants. Consultant shall also pay for CITY reasonable attorneys' fees, expert fees, and costs incurred in the defense of such a claim to the extent and in proportion to the comparative degree of fault of the Consultant and its subconsultants.

Severability: Any provision or part of the Agreement held to be void or unenforceable under any law or regulation shall be deemed stricken and all remaining provisions shall continue to be valid and binding upon the City and the Consultant, who agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision. The provisions of this Article shall not prevent this entire Agreement from being void should a provision which is of the essence of this Agreement be determined void.

Notices: Any notice required under this Agreement will be in writing, addressed to the appropriate party at the address which appears on the signature page to this Agreement (as modified in writing from item to time by such party) and given personally, by registered or certified mail, return receipt requested, by facsimile or by a nationally recognized overnight courier service. All notices shall be effective upon the date of receipt.

Successors and Assigns: The City and the Consultant each is hereby bound and the partners, successors, executors, administrators, legal representatives and assigns of the City and the Consultant are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrators, legal representatives and assigns of such other party in respect of all covenants and obligations of this Agreement.

Neither the City nor the Consultant may assign, sublet, or transfer any rights under the Agreement without the written consent of the other, which consent shall not be unreasonably withheld; provided, Consultant may assign its rights to payment without Owner's consent, and except to the extent that any assignment, subletting or transfer is mandated by law or the effect of this limitation may be restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Agreement.

Nothing in this Agreement shall be construed to create, impose or give rise to any duty owed by the Consultant to any Contractor, subcontractor, supplier, other person or entity or to any surety for or employee of any of them, or give any rights or benefits under this Agreement to anyone other than the City and the Consultant.

IN WITNESS WHEREOF: the parties hereto have executed this Agreement to be effective as of the date first above written.

CITY:

CITY OF PRAIRIE VILLAGE, KS

CONSULTANT:

TRANSYSTEMS CORPORATION

By: _____

Ashley Weaver

Acting Mayor

By: _____

Thomas Swenson

Principal

Address for giving notices:

CITY of Prairie Village
7700 Mission Road
Prairie Village, Kansas, 66208
913-381-6464

Address for giving notices:

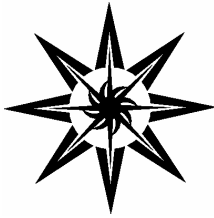
TranSystems
2400 Pershing Road, Suite 400
Kansas City, MO 64108
816-329-8762

ATTEST:

Joyce Hagen Mundy, City Clerk

APPROVED BY:

Catherine Logan, City Attorney



PLANNING COMMISSION

Council Meeting Date: December 15, 2014

PC2014-122 Consider Final Plat for Mission Chateau

PLANNING CONDITION RECOMMENDATION

That the Governing Body accept the dedications of land for public purposes and authorize the Mayor and City Clerk to execute the Final Plat for "Mission Chateau" for recording upon satisfaction of the requirements of Chapter 18.14 of the Subdivision Regulations and the conditions of approval of the Final Plat imposed by the Planning Commission.

BACKGROUND

The Preliminary Plat for Mission Chateau was approved by the Planning Commission on February 10, 2014 subject to 14 conditions which have all been addressed in the presentation of the Final Plat. Conditions 1, 2, 3 and 5 of the preliminary plat have been addressed as a part of Condition 13. Conditions 6, 8 and 11 are shown on the Final Plat. The applicant has submitted covenants as required in Condition 7. Conditions 9, 10 and 12 will be attached to the Final Plat.

The Subdivision Regulations require the following additional information to be submitted with the Final Plat:

- A. Covenants - submitted condition 7
- B. Proof of Ownership - submitted
- C. Review by County Surveyor - submitted for information (The County Engineer will not review the Final Plat until it is approved by the City.)
- D. A Certificate showing all taxes and assessments have been paid - submitted
- E. Construction Documents for streets, sidewalks and storm drainage - submitted

The Final Plat has the Certificate of Property Owner, Certification of Surveyor, Planning Commission approval and Governing Body acceptance of easements and rights-of-way.

The City does not want the liability or responsibility for maintaining the storm drains within pipes, the detention pond and the Dykes Branch drainage way across the north end of Lot 10. However, it is critical that this storm drainage system not be impaired. Therefore, the following text has been added to the Final Plat:

*Property Owner Maintenance of Drainage Easements and Improvements
The Owner of Lot 10 shall construct, install and maintain all drainage improvements (pipes, conduit, open drainage and detention areas) located in*

easements on Lot 10 and shall keep said improvements in good repair and fully functional.

If the City reasonably determines that the drainage improvements require repair or maintenance, including the removal of debris, the City shall provide written notice to such owner indicating the repair or maintenance needed. If said owner does not repair or perform such maintenance within a reasonable period of time, the City may perform the required maintenance or repair and said owner shall reimburse the City for the cost of such work. The City shall have no liability associated with the repair and maintenance.

In accordance with Chapter 18.14 "Improvement Procedures" of the Subdivision Regulations, the applicant is required to complete all public improvements prior to the City signing and releasing the Final Plat for recording.

Alternatively, Chapter 18.14 authorizes the Governing Body to waive that requirement at its discretion, and as an alternative permit the applicant to record the Final Plat and enter into a Subdivision Improvement Agreement with the City.

The applicant is not requesting a waiver and agrees to the standard procedures of Chapter 18.14 that all public improvements to be dedicated on the Final Plat will be completed by applicant prior to the City signing and releasing the Final Plat for recording.

The Planning Commission approved the Final Plat for Mission Chateau on December 2, 2014 (including the dedications of land for public purposes) subject to the following conditions - (the satisfaction of which prior to recording are indicated below by Ron Williamson per City procedures):

1. That the applicant protect and preserve as much existing vegetation as possible along the property lines. - **This determination made after the public improvements are completed, and also in connection with the issuance of building permits.**
2. That all existing improvements be removed from the 85th Circle right-of-way and the nine single-family lots prior to recording the Final Plat. - **This determination is made after the public improvements are completed.**
3. That the west driveway connection and the loop drive to Mission Road from the Senior Housing Community to 85th Circle be constructed at the same time as 85th Circle. - **This determination is made after the public improvements are completed.**
4. That the applicant submit the Final Plat to the County Engineer after approval by the City. **To be completed as soon as Governing Body accepts the dedications, and prior to recording.**

5. Add Property Owner Maintenance of Drainage Easements and Improvements to text of Plat prior to submission to the Governing Body. - **completed**
6. That the applicant make revisions to the proposed covenants as requested by Staff prior to submitting the Final Plat to the Governing Body. - **completed**

Timing: The Governing Body shall accept or refuse the dedication of land for public purposes within 30 days after the first meeting of the Governing Body following the date of the submission of the plat to the governing body from the Planning Commission, i.e. December 15, 2014. The Governing Body may defer action for an additional 30 days for the purpose of allowing for modifications to comply with the requirements established by the Governing Body. No additional filing fees shall be assessed during that period. If the Governing Body defers or refuses such dedication, it shall advise the Planning Commission of the reasons therefor. K.S.A. 12-752 and Chapter 18.12 of the Subdivision Regulations

The Governing Body (which includes the Mayor and City Council), by simple majority vote, has the following options, pursuant to KSA 12-752 and Chapter 18.12 of the Subdivision Regulations:

Accept (either Dec 15 or after deferral per below):

The Governing Body may accept the dedications of land for public purposes shown on the final plat, and authorize the Mayor and City Clerk to sign the Final Plat for recording, all conditioned upon and subject to the following conditions:

(1) that all required public improvements shall have been installed to the satisfaction of the Public Works Director as required by Chapter 18.14, and

(2) satisfaction of Planning Commission conditions 1 through 6 prior to the Mayor and City Clerk signing of the final plat for recording.

Defer:

The Governing Body may defer action for an additional 30 days (unless a special meeting, January 5 meeting is next regular meeting within 30 day period) for the purpose of allowing for modifications to comply with the requirements established by the Governing Body. If the Governing Body defers such dedication, it shall notify the owner or owners of the land and the planning commission of such fact. Such notice shall be in writing and if the deferral of the dedication of land is based upon noncompliance with the requirements established by the Governing Body, the notice shall specify in detail the nature of such noncompliance.

Refuse (either December 15 or after deferral per above):

If the Governing Body refuses such dedication, it shall notify the owner or owners of the land and the planning commission of such fact. Such notice shall be in writing and if the refusal of the dedication of land is based upon noncompliance with the requirements established by the Governing Body, the notice shall specify in detail the nature of such noncompliance.

ATTACHMENTS

Related Planning Commission Minutes December 2, 2014 (Draft)
Proposed Plat

PREPARED BY

Ron Williamson
Katie Logan, and
Joyce Hagen Mundy,
City Clerk

DATE: December 11, 2014

DRAFT
PLANNING COMMISSION MINUTES
December 2, 2014

PC2014-122 Final Plat Approval - Mission Chateau
8500 Mission Road

Sterling Cramer, with Olsson Associates, stated the final plat has addressed the 14 conditions for approval of the preliminary plat by the Planning Commission on February 10, 2014. They have reviewed the staff comments and recommended conditions for approval for the final plat and accept them.

Ron Williamson noted Conditions 1, 2, 3 and 5 of the preliminary plat will be addressed as a part of Condition 13. Conditions 6, 8 and 11 are shown on the Final Plat. The applicant has submitted covenants as required in Condition 7. Conditions 9, 10 and 12 will be attached to the Final Plat.

The Subdivision Regulations require the following additional information to be submitted with the Final Plat:

- A. Covenants - submitted condition 7, some minor revisions are needed.
- B. Proof of Ownership - submitted
- C. Review by County Surveyor - submitted for information (The County Engineer will not review the Final Plat until it is approved by the City.)
- D. A Certificate showing all taxes and assessments have been paid - submitted
- E. Construction Documents for streets, sidewalks and storm drainage - submitted

The Final Plat has the Certificate of Property Owner, Certification of Surveyor, Planning Commission approval and Governing Body acceptance of easements and rights-of-way.

Mr. Williamson stated the City does not want the liability or responsibility for maintaining the storm drains within pipes, the detention pond and the Dykes Branch drainage way across the north end of Lot 10. However, it is critical that this storm drainage system not be impaired. Therefore, the following text needs to be added to the Final Plat:

Property Owner Maintenance of Drainage Easements and Improvements

The Owner of Lot 10 shall construct, install and maintain all drainage improvements (pipes, conduit, open drainage and detention areas) located in easements on Lot 10 and shall keep said improvements in good repair and fully functional.

If the City reasonably determines that the drainage improvements require repair or maintenance, including the removal of debris, the City shall provide written notice to such owner indicating the repair or maintenance needed. If said owner does not repair or perform such maintenance within a reasonable period of time, the City may perform the required maintenance or repair and said owner shall reimburse the City for the cost of such work. In undertaking any such repairs or maintenance, the City shall not disturb any improvements or Lot 10 unless necessary to perform such work. The City shall have no liability associated with the repair and maintenance.

Mr. Williamson responded to several questions called in by a resident. The curb radius and the length of the cul-de-sac have been reviewed and approved by the Fire District. The width of the proposed road meets city criteria and is adequate to accommodate emergency vehicles. The cul-de-sac is approximately 1025 feet long and was approved because the loop driveway from Mission Chateau Senior Homes provides an alternate access.

Andrew Spitsnogle, attorney speaking on behalf of the Mission Valley Neighborhood Association, stated that they felt the final plat should not be approved until the city receives assurances that the applicant will complete the entire project. Mr. Spitsnogle noted that if only the nine single family homes were constructed with only the road and cul-de-sac and not the loop road it would create a fire and safety risk as without the loop fire and emergency vehicles would not be able to turn around.

They do not feel the plat should be approved until the applicant has provided sufficient sureties that they are ready to go forth with the construction of the entire 18.4 acres. In addition urge the city to require the entire loop road to be publicly dedicated as it is essential for the safety of the entire development.

MVNA would like at a minimum that the city condition approval of the final plat on the applicant providing a sufficient surety to assure that the entire project will be constructed.

David Waters responded he is not aware of any requirement in the code that a surety be provided.

Ron Williamson suggested rewording item 3 adding that the loop drive to Mission Road be constructed at the same time as 85th Circle. He noted that was the intent, but the rewording would clarify it. Ron Williamson stated the drive has to be built to city standards to accommodate fire and safety vehicles.

Sterling Cramer responded that they understand the intent of the condition that the construction of the loop road and the driveway be completed together. There is no intention to build the nine single family homes without the rest of the development at this time.

Chairman Bob Lindeblad confirmed that condition #3 would read: That the west driveway connection and the loop drive to Mission Road from the Senior Housing Community to 85th Circle be constructed at the same time as 85th Circle.

Larry Levy questioned the maintenance of the street. Ron Williamson responded that 85th Circle is a public street that will be maintained by the City, the loop road. The islands and sidewalk will be maintained by the Homes Association and the drainage improvements maintained by the owners of Lot 10. This wording will be added to the final plat.

Larry Levy moved the Planning Commission approve the Final Plat for Mission Chateau subject to the following conditions:

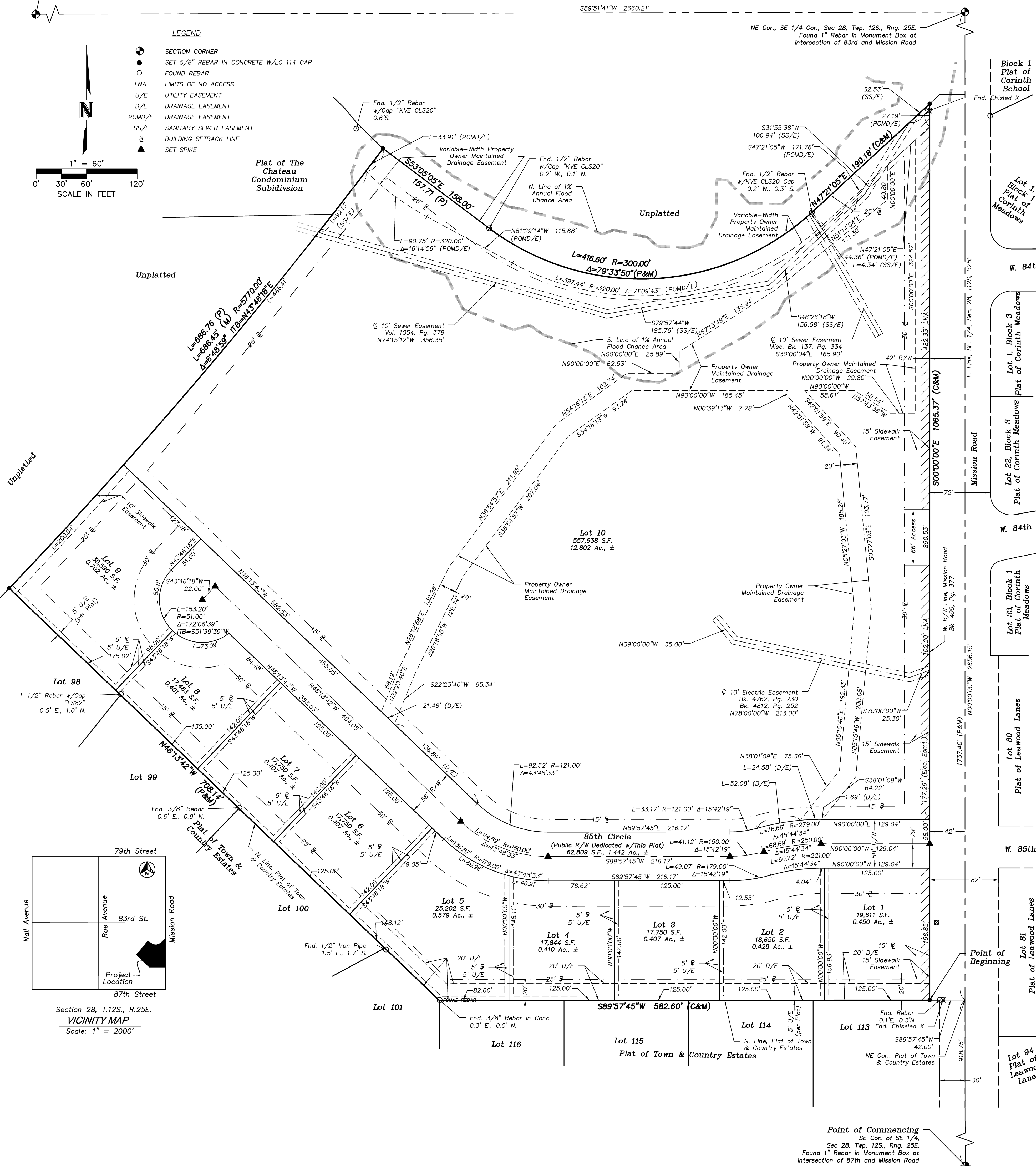
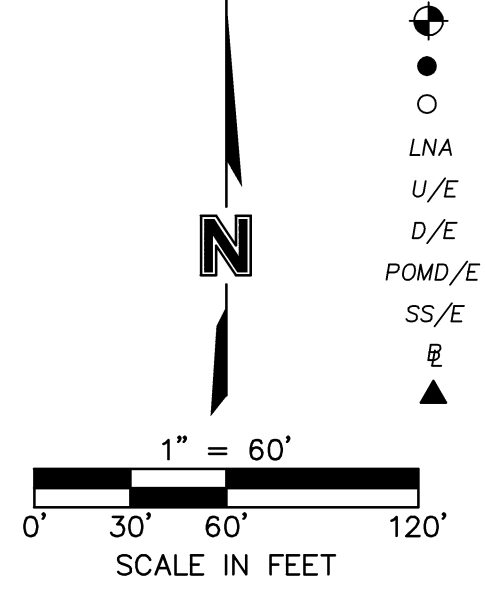
1. That the applicant protect and preserve as much existing vegetation as possible along the property lines.
 2. That all existing improvements be removed from the 85th Circle right-of-way and the nine single-family lots prior to recording the Final Plat.
 3. That the west driveway connection and the loop drive to Mission Road from the Senior Housing Community to 85th Circle be constructed at the same time as 85th Circle.
 4. That the applicant submit the Final Plat to the County Engineer after approval by the City.
 5. Add Property Owner Maintenance of Drainage Easements and Improvements to text of Plat prior to submission to the Governing Body.
 6. That the applicant make revisions to the proposed covenants as requested by Staff prior to submitting the Final Plat to the Governing Body.
- The motion was seconded by Nancy Vennard and passed unanimously.

Final Plat
of
Mission Chateau

a Replat of Part of Block 1, Meadowbrook Junior High School, a subdivision in the Southeast Quarter of Section 28, Township 12 South, Range 25 East, Prairie Village, Johnson County, Kansas

NW Cor. SE 1/4, Sec. 28, Twp. 12S, Rng. 25E.
Found 1" Rebar in Monument Box at
Intersection of 83rd and Roe Avenue

- LEGEND**
- SECTION CORNER
 - SET 5/8" REBAR IN CONCRETE W/LC 114 CAP
 - FOUND REBAR
 - LNA LIMITS OF NO ACCESS
 - U/E UTILITY EASEMENT
 - D/E DRAINAGE EASEMENT
 - POMD/E DRAINAGE EASEMENT
 - SS/E SANITARY SEWER EASEMENT
 - BUILDING SETBACK LINE
 - SET SPIKE



Property Description:
All that part of Block 1, Meadowbrook Junior High School, a subdivision in the Southeast Quarter of Section 28, Township 12 South, Range 25 East, in the City of Prairie Village, Johnson County, Kansas, described as follows:

COMMENCING at the Southeast corner of the Southeast Quarter of Section 28, Township 12 South, Range 25 East; thence North 0 degrees 00 minutes 00 seconds East along the East line of the Southeast Quarter of said Section 28 a distance of 918.75 feet to a point on the Easterly extension of the Northern line of the Plat of Town & Country Estates, a subdivision in the City of Prairie Village, Johnson County, Kansas; thence South 89 degrees 57 minutes 45 seconds West along the Easterly extension of the North line of said Plat of Town & Country Estates a distance of 42.00 feet to a point on the West right of way line of Mission Road, the POINT OF BEGINNING; thence continuing South 89 degrees 57 minutes 45 seconds West along the Northern line of said Plat of Town & Country Estates a distance of 582.60 feet to a point; thence North 46 degrees 13 minutes 42 seconds West along the Northern line of said Plat of Town & Country Estates a distance of 708.14 feet to a point on a non-tangent curve, said point also being the Northernmost corner of Lot 98 of said Plat of Town & Country Estates; thence in a Northeasterly direction along a curve to the left, whose initial tangent bears North 43 degrees 46 minutes 18 seconds East, having a radius of 5,770.00 feet, through a central angle of 06 degrees 48 minutes 59 seconds, an arc distance of 686.45 feet to a point of non-tangency; thence South 53 degrees 05 minutes 05 seconds East a distance of 158.00 feet to a point of curvature; thence in a Southeasterly, Easterly and Northeasterly direction along a curve to the left, having a radius of 300.00 feet, through a central angle of 79 degrees 33 minutes 50 seconds, an arc distance of 416.60 feet to a point of tangency; thence North 47 degrees 21 minutes 05 seconds East a distance of 190.18 feet to a point on the West right of way line of Mission Road; thence South 00 degrees 00 minutes 00 seconds East along the West right of way line of Mission Road a distance of 1,065.37 feet to the POINT OF BEGINNING, and containing 803,077 Square Feet or 18.436 Acres, more or less.

Dedication
The undersigned proprietor of the above described tract of land has caused the same to be subdivided in the manner shown on the accompanying plat which hereafter shall be known as "Mission Chateau".

That portion reserved for public use as roads, designated as "85th Circle," the extent and direction of which are shown hereon, are hereby dedicated to public use.

Dedication
The undersigned proprietor of the above described tract of land has caused the same to be subdivided in the manner shown on the accompanying plat which hereafter shall be known as "Mission Chateau".

An easement or license to enter upon, locate, construct, use and maintain or authorize the location, construction, maintenance or use of conduits, water, gas, sewer pipes, poles, wires, drainage facilities, irrigation systems, ducts and cables, and similar facilities, upon, over and under these areas outlined and designated on this plat as "Utility Easement" or "U/E" is hereby granted to the City of Prairie Village, Johnson County, Kansas, with subordinate use of the same by other governmental entities and public utilities as may be authorized by state law to use such easement for said purposes. Utility Easements shall be kept clear of obstructions that impair the strength or interfere with the use and/or maintenance of public utilities located within the easement.

An easement or license to lay, construct, alter, repair, replace and operate one or more sewer lines and all appurtenances convenient for the collection of sanitary sewage, together with the right of ingress and egress, over and through those areas designated as "Sanitary Sewer Easement" or "SS/E" on this plat is hereby dedicated to the Consolidated Main Sewer District of Johnson County, Kansas, or their assigns.

Building Setback Lines (denoted hereon as "B") are hereby established as shown on the accompanying plat, and no buildings shall be constructed between this line and the street right-of-way lines or lot lines to which said Building Setback Lines are adjacent.

An easement for the purpose of constructing, using, replacing, and maintaining a public sidewalk and appurtenant work, including the right to repair, maintain and replace the sidewalk, and for any reconstruction and future expansion of such facility, together with the right of ingress and egress, over and through the area designated as "Sidewalk Easement" on this plat is hereby granted to the City of Prairie Village, Johnson County, Kansas.

Property Owner Maintained Drainage Easement
A storm water drainage easement (the "Property Owner Maintained Drainage Easement" or "POMD/E") is depicted on this plat and is hereby granted to the City of Prairie Village for the purpose of storm water drainage; provided that the owner of Lot 10 shall maintain the Property Owner Maintained Drainage Easement in good repair and in a fully functional condition. On or before May 1 on a biennial basis, such owner shall submit a certification from a professional engineer licensed in the State of Kansas to the Director of Public Works indicating that the Property Owner Maintained Drainage Easement is in good repair and fully functional.

If the City reasonably determines that the Property Owner Maintained Drainage Area requires repair or maintenance, including removal of debris, the City shall provide written notice to such owner indicating the necessary repair or maintenance. If such owner does not repair or perform such maintenance within a reasonable period of time, the City may perform the required maintenance or repair and such owner shall reimburse the City for the reasonable cost of such work. The City shall have no liability associated with the Property Owner Maintained Drainage Easement.

Consent to Levy
The undersigned proprietor of the above described tract of land hereby agrees and consents that the Board of County Commissioners of Johnson County, Kansas, and the City of Prairie Village, Johnson County, Kansas, shall have the power to release such land proposed to be dedicated for public ways and thoroughfares, or parts thereof, for public use, from the lien and effect of any special assessment, and that the amount of unpaid special assessments on such land so dedicated shall become and remain a lien on the remainder of the land fronting or abutting on such dedicated public way or thoroughfare.

Execution
IN TESTIMONY WHEREOF, the undersigned proprietor has hereunto subscribed their name.
OWNER of Lots 1-10 and 85th Circle - MVS, LLC, a Missouri limited liability company

Joseph C. Tutera, Manager
STATE OF _____)
COUNTY OF _____) SS

Be it remembered, that on this _____ day of _____, 2014, before me, a notary public in and for said county and state, came Joseph C. Tutera, Manager of MVS, LLC, a Missouri limited liability company, duly organized and existing under and by virtue of the laws of the State of Missouri, who is personally known to me to be the same person who executed as such officer the foregoing instrument of writing on behalf of said owner, and such persons duly acknowledged the execution of the same to be the free act and deed of said owner.

In witness hereof, I have hereunto subscribed my name and affixed my notarial seal this day and year last above written.

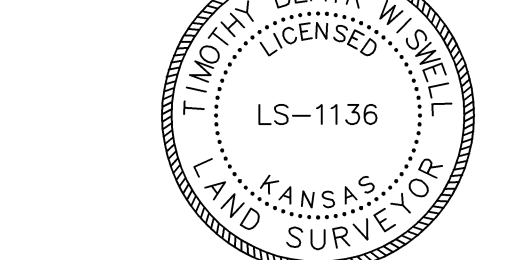
Notary: _____ My appointment expires: _____
Approvals
This plat has been submitted to and approved by the Planning Commission for the City of Prairie Village, Johnson County, Kansas on this _____ day of _____, 2014.

Planning Commission,
Prairie Village, Johnson County, Kansas
Bob Lindeblad
Planning Commission Chairman
Joyce Hagen Mundy
Secretary

Lands dedicated for easements and street rights-of-way are hereby accepted by the Governing Body of the City of Prairie Village, on this _____ day of _____, 2014.

ATTEST: Joyce Hagen Mundy - City Clerk
Ronald L. Shaffer, Mayor

This is to certify that this plat represents a survey completed on October 31, 2014 by me or under my direct supervision and furthermore meets or exceeds the minimum standards for Boundary Surveys Standard of Practice No. 1 to the best of my professional knowledge and belief.



Timothy Blair Wiswell, LS-1136
Olsson Associates, LC-114

- Surveyor's Notes:**
- Basis of Bearings - Held East Line of SE 1/4 of Section 28, Township 12 South, Range 25 East as S00°00'00"E (Matches plat of Meadowbrook Junior High School).
 - The area of the subject property is 803,077 square feet, or 18.436 acres, more or less. There are 1.442 acres of right-of-way being dedicated with this plat.
 - This property lies partially within "Zone X (Future Base Flood) - Areas of 1% annual chance flood based on future conditions hydrology. No Base Flood Elevations determined," and "Zone X - Areas determined to be outside the 0.2% annual chance floodplain," according to the FEMA Flood Insurance Rate Map Number 20091C0039G, Revised August 3, 2009.

Owner/Subdivider:
MVS, LLC
Attn: Joe Tutera
7611 State Line Road, Suite 301
Kansas City, MO 64114

Prepared By:
Olsson Associates
7301 West 133rd Street, Suite 200
Overland Park, Kansas 66213
Telephone (913) 381-1170

OLSSON ASSOCIATES

7301 West 133rd Street, Suite 200
Overland Park, KS 66213
Tel: 913.381.1170
Fax: 913.381.1170
www.olssonassociates.com

REV. NO.	DATE	REVISION DESCRIPTION
1	11/13/14	Revised Easement Labels, Planning Commission Chairman, and City Acceptance Language
2	11/17/14	Rev. Drainage Easement, Address, Sidewalk Easement, Rev. Building Line Submittals All Per City Comments
3	12/01/14	Added Property Owner Maintained Drainage Easement Labels and Dedication
4	12/11/14	Added Property Owner Maintained Drainage Easement Labels

2014

Final Plat of Mission Chateau

Prairie Village, Kansas

drawn by: _____ MJB
checked by: _____ TBM
approved by: _____ TBW
QA/QC by: _____ TBW
project no.: 012-2388
drawing no.: 122388-F2-DWG
date: 10/31/14

SHEET
1 of 1



PLANNING COMMISSION

Council Meeting Date: December 15, 2014

PC2013-11 Request for extension to SUP for Mission Chateau

RECOMMENDATION OF PLANNING COMMISSION

The Governing Body accept the recommendation of the Planning Commission that the 24 month deadline in the SUP shall be extended to 14 months after the termination of the pending litigation involving Mission Valley Chateau project. Termination means dismissal with prejudice or the issuance of a final judgment and all appeal and/or motion to reconsider deadlines/rights expire. Applicant shall notify the City of PV within three business days of the termination as defined herein that the termination has occurred and the 14 months have commenced.

BACKGROUND

On January 6, 2014 the City granted a Special Use Permit for Mission Chateau subject to 14 conditions. Condition #4 provides that "if construction has not begun within twenty-four (24) months of the approval of the Special Use Permit by the Governing Body, the permit shall expire unless the applicant shall reappear to the Planning Commission and Governing Body to receive an extension of time prior to expiration."

On November 14, 2014, the City Clerk received a letter from MVS, LLC requesting the Planning Commission consider an Extension of the Special Use Permit granted by Ordinance 2301 for the operation of a Senior Living Community at 8500 Mission Road.

The Planning Commission considered this request at their December 2, 2014 meeting recommending the Governing Body extend the 24 month deadline to commence construction found in condition #4 of the Special Use Permit to 14 months after the termination of the pending litigation involving the Special Use Permit for Mission Chateau (see recommendation). The minutes of the December 2nd meeting relative to this item are attached.

To assist the Commission in their consideration, they received a memorandum from the City Attorney dated November 26, 2014 applicant's request for an extension. This memo is also attached.

The Governing Body (which includes the Mayor and City Council) has the following options:

- A. Adopt the recommendation of the Planning Commission and approve the extension;
- B. Deny the requested extension;
- C. Change the recommendation of the Planning Commission

Any of these actions require a simple majority vote.

ATTACHMENTS

Letter Requesting Extension

Memo from the City Attorney on the request for an extension

Related Planning Commission Minutes December 2, 2014 (Draft)

Letter dated December 10, 2014 in response to Memo from City Attorney

PREPARED BY

Joyce Hagen Mundy

City Clerk

DATE: December 11, 2014



6201 College Boulevard, Suite 500, Overland Park, KS 66211-2435 • 913.451.8788

November 14, 2014

Timothy J. Sear
(913) 234-7402
(913) 451-6205 Fax
tsear@polsinelli.com

BY HAND DELIVERY AND E-MAIL TO jhmundy@pvkansas.com

Joyce Hagen Mundy
City Clerk
City of Prairie Village, Kansas
7700 Mission Road
Prairie Village, KS 66208

**Re: MVS LLC Special Use Permit/Prairie Village Ordinance 2301
Request to City Planning Commission for Extension of Special Use Permit**

Dear Madam Clerk:

As you are aware, on January 6, 2014, a Special Use Permit was approved by enactment of Prairie Village Ordinance 2301, pursuant to which MVS LLC ("MVS") intends to build an approximate \$55 million senior living facility to be known as Mission Chateau in compliance with the Special Use Permit.

However, within 30 days of enactment of Ordinance 2301, a group of Plaintiffs filed suit in the District Court of Johnson County, Kansas challenging the legality of the grant of the Special Use Permit (Marsh, et al v. City of Prairie Village, Kansas and MVS LLC, Case No. 13CV-08544). Although the District Court on October 30, 2014 affirmed the legality of the grant of the Special Use Permit, the Plaintiffs have appealed that decision to the Kansas Court of Appeals.

Ordinance 2301 states, in part:

4. That the Special Use Permit not have a termination or expiration time established for it; however, if construction has not begun within twenty-four (24) months from the approval of the Special Use Permit by the Governing Body, the permit shall expire unless the applicant shall reappear to the Planning Commission and Governing Body to receive an extension of time prior to the expiration.

There is no reasonable likelihood that the appeal of the District Court judgment will be fully and finally resolved (i.e. a ruling by the Kansas Court of Appeals, which will likely be followed by the filing of a Petition for Transfer to Kansas Supreme Court) prior to January 6, 2016, which is the twenty-four (24) month anniversary of the approval of the Special Use Permit.

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

Polsinelli PC, Polsinelli LLP in California

072868/449966-TJSEA-49157833.4

When faced with similar circumstances, numerous state courts have unanimously held that where the validity of a permit for construction was the subject of pending litigation, the local ordinance providing for the expiration of such permit was stayed or tolled by operation of law until the pending litigation had been fully and finally resolved.

For example, in *Belfer v. Building Commissioner of Boston*, 294 N.E.2d 857, 363 Mass. 439 (1973), there was an appeal from the grant of zoning variances to allow the building of a 33-story building. The ordinance required construction to begin within two years or the variances would expire. The Massachusetts Supreme Court stayed the expiration of the variances pending the conclusion of the appeal, stating: **“We conclude that the relief from time limitations... where a legal impediment exists to the use of a benefit, should also be given where an appeal from the granting of the variance creates equally real practical impediments to the use of a benefit. Otherwise a variance which was lawfully awarded can be frustrated by the delay inherent in an appeal. Unless an appeal tolls the time period, many variances would be meaningless.”** 294 N.E.2d at 859 (emphasis added).

In *Tantimonaco v. Zoning Board of Review of Town of Johnston*, 232 A.2d 385, 102 R.I. 594 (R.I. 1967), there was an appeal challenging the legality of the grant of a building permit for a gasoline service station. The ordinance required that construction start within six months or the permit would expire. The Supreme Court of Rhode Island stayed the expiration of the permit pending the conclusion of the appeal, stating: **“As heretofore noted, petitioners challenged the validity of that permit by seeking a review of the board’s decision . . . Although the filing of such a petition does not act as a stay . . . common prudence understandably acts as a brake against incurring obligations, the benefits of which would be cancelled by an adverse decision of this court. Apart from the question as it may be affected by a change in the zoning regulations, we think it clear that the requirement of activating a permit set forth in an ordinance does not apply during such time as the legality of a permit is open to question by reason of litigation amounting to an appeal from the issuance thereof.”** 232 A.2d at 388 (emphasis added).

In *Gala Homes v. Board of Adjustment of City of Killeen*, 405 S.W.2d 165 (Tex.Civ.App. 1966), there was an appeal challenging the legality of building permits to construct apartments. The ordinance required construction to start within 90 days or the permits would expire. The Texas Court of Civil Appeals stayed the expiration of the permits pending the conclusion of the appeal, stating: **“Further, we hold that the two year period within which the city ordinance requires that construction be completed should be tolled, commencing with the filing of intervenor’s appeal with the Board and continuing until final judgment herein.”** 405 S.W.2d at 167.

In *Homeowners Organized to Protect the Environment v. First National Bank of Barrington*, 521 N.E.2d 1202 (Ill.App. 2 Dist. 1988) there was an appeal challenging the validity of the grant of a special use permit. The ordinance required commencement of substantial

construction within one year or the permit would lapse. The Illinois Court of Appeals stayed the expiration of the permit pending the conclusion of the appeal, stating: **“However, to allow plaintiffs here or in any other case to exhaust an ordinance’s time limitation by simply litigating the ordinance would be, as the trial court observed, inequitable. We believe judicial review should be afforded parties to resolve legitimate legal questions and not as a bar to the full enjoyment of the zoning relief granted.”** 521 N.E.2d at 1207.

In *National Waste Managers, Inc. v. Anne Arundel County*, 763 A.2d 264 (Ct. Special Appeals Md. 2000) there was a claim that the special exception and variance to operate a rubble landfill had expired while various legal challenges to the landfill proceeded. The ordinance required that action to implement the use must begin within two years of the grant of the special exception. The Maryland Court of Special Appeals rejected a claim that the special exception and variance had expired, stating: **“To be sure, we do not fault the parties for exercising their legal rights. At the same time, we cannot disregard that delay is an inherent consequence of litigation, and the County’s repeated attempt to litigate National’s right to proceed with the Landfill ultimately made it impossible for National to comply with [the regulation]. If the County were correct in its analysis as to tolling, it would mean that a developer facing a time-related condition could almost always be thwarted in its efforts by the inevitable delay resulting from litigation, regardless of the merits; the right to proceed would necessarily expire before a court could rule otherwise. We cannot accept that logic, which elevates legal gamesmanship to new heights. Here, National did not comply with [the regulation] because the County’s exercise of its rights made it impossible for National to do so. We have not uncovered any Maryland cases discussing the concept of tolling in the context of this case. Nor have we been referred to any applicable Maryland cases. Nevertheless, other authorities suggest, by analogy, that the tolling principle ought to apply to the circumstances of this case.”** 763 A.2d at 276-277 (emphasis added).

In *Fromer v. Two Hundred Post Associates*, 631 A.2d 347 (Conn.App. 1993), there was a claim that a wetlands permit expired when the developer did not commence significant activity within one year of issuance of the permit. Litigation challenging the permit went on for six years. The Appellate Court of Connecticut rejected claims that the permit expired, stating: **“The regulatory process is not designed to be a spider’s web, snaring one who follows all the regulations and statutes, obtains all the necessary permits, and successfully defends a series of appeals, but then loses his right to proceed because the passage of time has caused the permits to expire.”** 631 A.2d at 353.

Because we find no reported court decisions that are in conflict with this line of cases, we are confident that Kansas courts would follow this line of cases and determine that the twenty-four (24) month time period in which MVS was given to commence construction in accordance with Ordinance 2301 is currently stayed or tolled by operation of law pending the full and final resolution of the pending appeal consistent with the cases discussed above.

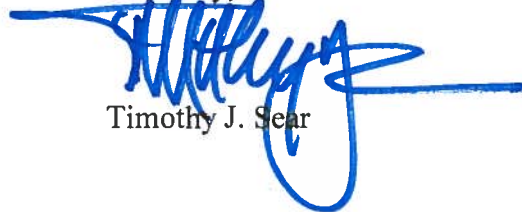
Joyce Hagen Mundy
November 14, 2014
Page 4

However, in lieu of filing yet another lawsuit dealing with Mission Chateau which would request the District Court to enter a judgment confirming that the twenty-four (24) month time period in which MVS was given to commence construction in accordance with Ordinance 2301 is currently stayed or tolled by operation of law pending the full and final resolution of the pending appeal, MVS respectfully requests the City extend the current expiration date of January 6, 2016 contained in Ordinance 2301 to provide that MVS shall have twenty-four (24) months to commence construction beginning from the date upon which a final non-appealable judgment is entered in connection with the Marsh litigation.

Granting such an extension is not only warranted under the circumstances, but also supported by applicable case law, and will put to rest any issues with respect to the date by which MVS has or must commence construction on the project while affording all of the interested parties the opportunity for a judicial review to resolve the legal questions surrounding the issuance of the Special Use Permit.

MVS asks that this Application for Extension of Special Use Permit be placed on the December 2, 2014 Planning Commission Agenda.

Sincerely,



Timothy J. Sear

TJS:mgs
Enclosure

cc: Joseph Tutera
Michael F. Flanagan, Esq.
John D. Petersen, Esq.
Catherine P. Logan, Esq., (by e-mail to Logan@Lathropgage.com)
Ron Williamson (by e-mail to rwilliamson@hwlochner.com)

MEMORANDUM

To: Governing Body and Planning Commission
City of Prairie Village, Kansas

From: Catherine P. Logan, City Attorney

Date: November 26, 2014

Subject: **Mission Chateau Special Use Permit
Ordinance No. 2301
MVS LLC Request for Extension**

Ordinance No. 2301, adopted January 6, 2014, grants a Special Use Permit (“Mission Chateau SUP”) subject to fourteen conditions, including condition #4 which provides, in pertinent part, that “if construction has not begun within twenty-four (24) months from the approval of the Special Use Permit by the Governing Body, the permit shall expire unless the applicant shall reappear to the Planning Commission and Governing Body to receive an extension of time prior to expiration.” By its terms, the Mission Chateau SUP will expire on January 6, 2016, unless construction begins prior to that date, or the time period is extended by the Governing Body.

Prior to the adoption of Ordinance No. 2301, and on December 11, 2013, a number of neighboring property owners filed an action in the District Court of Johnson County, Kansas styled *Gary W. Marsh et al. v. City of Prairie Village, Kansas*, Case No. 13CV08544, seeking to enjoin the City from considering the Mission Chateau SUP at the January 6, 2014 meeting of the Governing Body. For reasons unknown, the plaintiffs changed their minds, and did not pursue a temporary injunction. Thus, the Governing Body approved the Mission Chateau SUP at that meeting.

On February 3, 2014, the original plaintiffs, joined by additional plaintiffs, filed a First Amended Verified Petition against the City challenging the lawfulness of Ordinance No. 2301. MVS LLC (“MVS”) intervened as a party defendant. Subsequently, the parties filed extensive and lengthy cross-motions for summary judgment, seeking a comprehensive ruling and determination of all legal questions that gave rise to this lawsuit. These issues included numerous challenges to the actions of the City, from both the plaintiffs and MVS. On September 12, 2014, the District Court issued an order finding that the Governing Body acted lawfully in passing Ordinance No. 2301, thus fully satisfying, and fully complying with, all aspects of Kansas law in its actions leading up to, and throughout, its passage of Ordinance No. 2301.

On October 20, 2014, MVS filed a motion to stay expiration of the Mission Chateau SUP during the pendency of the lawsuit and any appeal therefrom. On October 30, 2014, the District Court denied MVS's motion, while simultaneously denying the plaintiffs' request to alter or amend its original order regarding the cross-motions for summary judgment.

Subsequently, on October 30, 2014, the plaintiffs filed an appeal of the District Court's summary judgment rulings in the Kansas Court of Appeals, which is presently pending and in its early stages. This appeal is styled Case No. 112706. On November 6, 2014, MVS filed a cross-appeal, seeking review of the District Court's decision which overruled MVS's motion for a stay of the expiration of the Mission Chateau SUP during the pendency of the action, once again including all proceedings in the trial and appellate courts. Lastly, just earlier today, MVS filed a motion with the Kansas Court of Appeals to transfer the appeal to the Supreme Court for review.

An appeal of this type typically takes approximately eight to twelve months before a decision is issued. If a party seeks further review in the Kansas Supreme Court, the Court of Appeals decision does not become final until the Supreme Court either accepts or denies review. This can take an additional twelve months or more. If the Supreme Court denies review, the Court of Appeals decision becomes final essentially immediately. If the Kansas Supreme Court accepts review, the appeal does not become final until the Kansas Supreme Court rules. Based upon these timelines, it is highly unlikely that the *Marsh* case will be finally decided prior to January 6, 2016. However, if the Supreme Court were to grant MVS's motion for transfer, and thus accept review, the appeal would then bypass any consideration or ruling from the Court of Appeals, thus expediting the appeal process substantially. If this were to occur, it is quite possible that a final decision would be rendered in advance of January 6, 2016. As MVS's motion to transfer was just filed earlier today, it is presently unknown what position, if any, the plaintiffs will take in response to the motion. At this time, the City has also yet to take a position on MVS's motion to transfer, if any.

Turning to MVS's request for "staying" or "tolling" the expiration of the Mission Chateau SUP, counsel for MVS, in its letter to the City Clerk dated November 16, 2014, cites case law in which courts in other states have applied an equitable doctrine that time periods similar to the time period in condition No. 4 are automatically "stayed" or "tolled" in certain situations involving litigation. Counsel for MVS admits that there is no controlling case law in Kansas.

Counsel for MVS states that based on this case law in other states, the Planning Commission and Governing Body should grant an extension of the 24 month period to begin construction, and that if the extension is not granted, MVS will file a lawsuit against the City requesting that the District Court enter a judgment that the 24 month period is stayed or tolled pending the final resolution of the *Marsh* case.

The purpose of this Memorandum is to briefly respond to the legal issue raised in the letter from MVS's legal counsel in order to assist the Planning Commission and the Governing Body in considering the request for extension. Nothing contained herein will constitute a waiver of matters not addressed in this Memorandum.

1. I agree with counsel for MVS that there are no reported Kansas cases which have considered whether equity requires that conditions similar to condition #4 are automatically tolled or stayed if opponents to a special use permit appeal to the District Court. Kansas courts are not bound by case law from other states, and in any event the determination of whether such an equitable remedy should apply depends on the facts and circumstances in each case.

2. There are no Kansas statutes or provisions in the Prairie Village City Code which impose an automatic stay when zoning matters are appealed, by either automatically staying the right of the successful applicant to build, or automatically staying any time period in which the successful applicant is required to build.

3. MVS wants the right, but not the obligation, to build within the 24 month period. This is contrary to what was approved in Ordinance 2301 and for the following reasons I believe that it would not be unreasonable for the Planning Commission or Governing Body to deny an extension under the circumstances.

When Ordinance No. 2301 was considered by the Governing Body on January 6, 2014, MVS stated that it accepted all the conditions. It did not ask for the period to begin construction to exceed 24 months. It also did not suggest or ask that the condition state that the period be tolled until completion of any appeal, even though some of the opposing neighboring property owners had already filed a lawsuit against the City to challenge the Mission Chateau SUP. Although Ordinance No. 2301 gives MVS the right to *request* an extension, there is no right to *obtain* an extension.

The *Marsh* plaintiffs asked the District Court to enjoin the right of MVS to begin construction. MVS successfully opposed the injunction request in the District Court. In doing so, MVS argued that the construction of senior living structures approved by the Mission Chateau SUP should not be enjoined because it should be up to MVS to take the risk that such structures must be removed if the case is ultimately decided in favor of the *Marsh* plaintiffs.¹

¹ "That is, we need the SUP only to build those structures and use it as a senior living community. So should MVS decide that they want to take the risk while this litigation is pending of going ahead and beginning construction, whether they ultimately would use the construction as a senior living community under an SUP, or as another allowed use without a permit under R-1A zoning, is completely up to MVS." Transcript of Hearing on TRO 4-18-14. Pp 14-15, Mr. Sear.

"They say that if we build and lose the lawsuit, we have to tear it down and that we are at risk. Well, let us take the risk if we choose to do that." Transcript of Hearing on TRO 4-18-14. Pp 123, Mr. Sear.

Belatedly in the *Marsh* case², MVS asked the District Court for the relief its counsel now states that it may seek in a new lawsuit. The District Court ruled that it was not certain that the matter was properly before the Court, but even if it was, it was not ripe as the period of time had not yet expired, nor had MVS sought and been denied an extension.

In a decision not mentioned by MVS's legal counsel, a Maine court took a view that an applicant also assumed the risk that a construction deadline would expire. The applicant, which had been granted a conditional use permit, had not commenced construction within a required time period, and argued that the time to commence construction was automatically tolled while two appeals that questioned the legality of the conditional use permit were pending. A Maine statute provided that an appeal of the zoning decision did not automatically stay the grant of the conditional use permit, and that a stay could be requested from the court. Although Kansas does not have a similar statute, the law in Kansas is the same. Stays in zoning appeals are not automatic but may be requested by a party, as was done by the *Marsh* plaintiffs in the pending case.

The Maine court found that because construction was not commenced within the required time period, the conditional use permit expired. The Maine court ruled that appeals by opponents to the grant of a conditional use permit did not result an automatic stay of the construction period, noting that the applicant did not ask for a stay at the local town level, or in either of two appeals challenging the conditional use permit. *Cobbossee Development Group v. Town of Winthrop*, 585 A.2d 190, 194 (Me. 1991).

Similarly, although MVS is now asking for an extension, it accepted a 24-month construction period when the Mission Chateau SUP was granted, even though a lawsuit was already pending challenging the City's authority to grant the Mission Chateau SUP. It further opposed a motion to enjoin construction sought by the *Marsh* plaintiffs, expressly assuming the "risk" that it might begin construction of the assisted living facility and then be required to remove improvements if the *Marsh* plaintiffs were ultimately successful in their challenge. Since Ordinance No. 2301 does not grant a right to an extension, only the right to seek an extension, MVS also assumed the risk that the Planning Commission and Governing Body might not grant an extension, causing the Mission Chateau SUP to expire if MVS choses not to begin construction.

One of the primary reasons for condition #4 is that the use approved by the Mission Chateau SUP is dissimilar to the normal uses found in R-1A districts. The bodies considering the Mission Chateau SUP took into consideration numerous factors, including then-existing conditions and surrounding uses. Those conditions and surrounding uses change over time. If the special use is not required to commence within a reasonable time after approval, the factors relied upon may become less relevant, and

² MVS LLC filed a motion with the District Court seeking this relief after the entry of Judgment on September 12, 2014, and prior to the hearing on the *Marsh* Plaintiffs' motion to reconsider.

new relevant factors may arise. The use proposed by the Mission Chateau SUP involves a complex project and therefore a majority of the Planning Commission and Governing Body considered a period of 24 months to commence construction to be a reasonable period. MVS agreed to the condition which included the right to return and request an extension of time.

Finally, it should be noted that MVS is not without a remedy. The zoning regulations do not prohibit a reapplication for a special use permit, other than Section 19.28.075, which imposes a reapplication waiting period of 6 months if an application is denied. If the Mission Chateau SUP expires, MVS may reapply for a special use permit, at which point the current factors and conditions could be weighed by the Planning Commission and Governing Body.

In conclusion, under the above circumstances, a Kansas court could very well refuse to apply the equitable doctrine that an appeal “stays” a mandatory construction period followed by courts in some other states because: (a) in opposing the injunctive relief in the *Marsh* case, MVS willingly assumed the risks that an extension may not be granted, and that it would have to begin construction prior to a final decision in the *Marsh* case; (b) MVS can prevent the SUP from expiring by beginning construction before January 6, 2016; and (c) if the Mission Chateau SUP expires because MVS elects not to begin construction, then it may reapply for a special use permit.

DRAFT
PLANNING COMMISSION MINUTES
December 2, 2014

**PC2013-11 Request for extension to SUP for Mission Chateau
8500 Mission Road**

David Waters, representing the City Attorney, stated on January 6, 2014 the City granted a Special Use Permit for Mission Chateau subject to 14 conditions. Condition #4 provides that “if construction has not begun within twenty-four (24) months of the approval of the Special Use Permit by the Governing Body, the permit shall expire unless the applicant shall reappear to the Planning Commission and Governing Body to receive an extension of time prior to expiration.” This is the request before the Planning Commission.

Mr. Waters reviewed the following history of litigation that has taken place on this project:

- December 11, 2013 - neighboring property owners filed an action in the District Court of Johnson County against the City seeking to enjoin the City from considering the Mission Chateau SUP at the January 6, 2014 meeting. The plaintiffs did not pursue the temporary injunction and the application was considered.
- February 3, 2014 - neighboring property owners filed a First Amended Verified Petition against the City challenging the lawfulness of the adopting Ordinance on a number of issues.
- On September 12, 2014, the District Court issued an order finding that the Governing Body acted lawfully in passing Ordinance #2301 fully satisfying and fully complying with all aspects of Kansas law in its actions leading up to and throughout the passage of Ordinance 2301.
- On October 20, 2014 - MVS filed a motion to stay the expiration of the Mission Chateau SUP during the dependency of the lawsuit and any appeal therefrom.
- On October 30, 2014, the District Court denied MVS’s motion, while simultaneously denying the plaintiffs’ request to alter or amend its original order regarding the cross-motions for summary judgment.
- On October 30, 2014 - the plaintiffs filed an appeal of the District Court’s summary judgment rulings in the Kansas Court of Appeals, which is presently pending and in its early stages.
- On November 6, 2014 - MVS filed a cross-appeal, seeking review of the District Court’s decision which overruled MVS’s motion for a stay of the expiration during the pendency of action.
- On November 26, 2014 - MVS filed a motion with the Kansas Court of Appeals to transfer the appeal to the Supreme Court for review.

Mr. Waters noted the potential timeframe for these actions to move through the court system causing the applicant to be concerned that final action will not be taken until after the expiration of the SUP per condition #4. Therefore, they are requesting an extension.

In the applicant's request to the City they contend that as a matter of law the City should rule that the 24 month period of construction be stayed pending the resolution of the appeals. However, they have formally requested an extension of the 24 month time period listed in condition four from the date that all appeals are final. In support of the request several case law references were presented.

The City Attorney has advised that there are no Kansas cases which have considered whether equity requires that conditions similar to condition #4 are automatically tolled or stayed if opponents to a special use permit appeal to the District Court. Kansas courts are not bound by case law from other states, and in any event the determination of whether such an equitable remedy should apply depends on the facts and circumstances of each case.

There are no Kansas statutes or provisions in the Prairie Village City Code which impose an automatic stay when zoning matters are appealed, by either automatically staying the right of the successful applicant to build, or automatically staying any time period in which the successful applicant is required to build.

Mr. Waters noted there is case law from other jurisdictions ruling in support of stays during litigation as well as some opposing it. It is not the Planning Commission decision to determine what the case law should be, but simply to consider a request for an extension.

In her memo to the Planning Commission the City Attorney stated that she believed it would not be unreasonable for the Planning Commission or Governing Body to deny an extension based on the following circumstances:

- MVS accepted the conditions of approval for the SUP including condition #4
- MVS opposed the injunction request in the District Court stating it should be up to MVS to take the risk that such structures must be removed if the case is ultimately decided in favor of the Marsh plaintiffs.
- Stays in zoning appeals in Kansas are not automatic, but may be requested by a party.
- The applicant could prevent the expiration of the SUP by beginning construction
- MVS is not without a remedy. The zoning regulations do not prohibit a reapplication for a special use permit should the permit expire.

Mr. Waters noted this is not a public hearing, although the Commission can chose to take comment, there are no criteria, standards or Golden Factors that must be met. The Commission should make a good faith consideration of the request. The Commission serves as a recommending body. The final decision will be made by the Governing Body. There is no protest petition or required vote to override the Commission's recommendation. The Planning Commission may recommend granting the request, recommend denying the request, recommend granting the request for a shorter time frame or send it forward with no recommendation.

Gregory Wolf asked if the requested extension was for a specific period of time. Mr. Waters stated the request was for a 24 month period beginning after the final judgment of any appeals.

Bob Lindeblad asked what would constitute commencement of construction. Mr. Waters stated there is no definition for "commencement of construction" in the SUP. He feels it would be a determination of the Governing Body.

Timothy Sear, with Polsinelli representing MVS, LLC, reviewed again with the Commission the series of legal challenges that have been filed against this SUP noting the amount of time it has taken for resolution, although positive, of these challenges. Now an appeal of the ruling has been filed which will further delay final judgment until quite possibly beyond the established termination or expiration of the time period given in the Special Use Permit for Mission Chateau approved by the City on January 6, 2014 for the commencement of construction of the project. Mr. Sear reviewed the possible timetable for possible court appeals that will take well beyond the January 6, 2016 deadline.

MVS filed a motion to stay the expiration of the Mission Chateau SUP during the dependency of the lawsuit and any appeal therefrom to prevent the MVNA appeal of the court's judgment in support of the SUP from essentially keeping the SUP in pending litigation until the expiration of the SUP per condition #4. On October 30, 2014, the District Court did deny MVS's motion; however, not because there was no merit to the motion, but because there had not been an application made to the City for an extension and the judge felt he did not have jurisdiction to decide.

MVS is committed to this project and it is their sincere intention to proceed with it; however, as pointed out if the Courts determine there was a mistake made in the granting of the SUP any improvements made pursuant to the SUP would have to be removed and destroyed.

Mr. Sear stated that land use appeals in the state of Kansas are relatively rare, resulting in not a lot of case law rulings. However, numerous state courts have unanimously held that where the validity of a permit for construction was the subject of pending litigation, the local ordinance providing for the expiration of such permit was stayed or tolled by operation of law until the pending litigation had been fully and finally resolved.

They have found that courts that have dealt with this issue when there is not a statute that deals with this situation, with neither Kansas nor Prairie Village has, they have determined that it would be unreasonable to allow a permit to be lost simply by the delay of litigation as to the legality of the permit. No one has cited any contrary case law. Although it is all from outside Kansas, all courts that they have found that have dealt with this issue have determined that if there is not a statute dealing with the issue already to provide for a tolling of the expiration during the pendency of the legal challenge to the permit that equitably the expiration of the permit is to be tolled during the pendency of it.

Mr. Sear noted the memo from your city attorney regarding a case in Maine that opposed the extension, the judge's ruling found that because there was already a Maine statute that provided for the permit to be saved that tolling was not necessary.

All of the cases cited in their request unanimously stated that the mere specter of litigation regarding the legality of the permit makes it unreasonable to proceed with construction, especially when the stance of the City is that any improvements made would be required to be removed and destroyed if the legality of the permit was upheld. Mr. Sear asked if it would be responsible for the City would undertake a \$55M project under such terms.

Mr. Sear stated that MVS is doing everything possible to expedite this appeal process requesting the Kansas Supreme Court take an immediate transfer of this case from the Appeals Court to shorten the timetable for this process. However, he noted those motions are very seldom granted.

Mr. Sear stated in reference to the City Attorney's memo to the Planning Commission stating reasons why she feels it would not be unreasonable to deny this extension, they believe under the facts of this situation it would be unreasonable for the city to require what all these other states have refused to require - that is to go forward and expend this kind of money while there is litigation pending. The City Attorney points out in opposing the MVNA attempt to enjoin this project in the past that MVS has opposed those requests for injunction. He does not feel that should weigh against MVS getting the full right to exercise it right under the SUP permit. When the lawsuit was first filed and the plaintiff asked that the City and MVS be enjoined by the court from any activities related to the entire 18 acre tract, both the City and MVS opposed that injunction. No one contended that if the injunction was granted that additional time would be given to MVS at the tail end to cover the period of time for the injunction. The mere fact that MVS like the city opposed this effort to shut down this project through an injunction that that we told the court that risk if we started construction was on MVS is not an unusual position to take and should not weigh against the approval of an extension of time relative to the SUP permit.

They contend that although there is no Kansas case law on the tolling argument that if the Kansas Court were given this issue, that the Kansas court would likely follow these other states. However, that would only be determined if MVS is denied an extension and has to file a declaratory judgment against the City. They are not interested in more litigation and more delays, although they feel the Kansas Court would find the permit should be tolled, that is why they are requesting grant an extension beyond the date when all of the appeals end. There would be no harm to anyone in extending this permit for a period of time beyond the time period appeals process ends. The City has already determined that this project should be built in the City of Prairie Village. He stated the SUP should not be defeated by the mere filing of continuous legal appeals regardless of the outcome of the appeal. The SUP should only be defeated by the Court deciding the legality of the SUP based on the process followed by the City which has already been found to be valid.

In summing up the City Attorney presents in her memo of last week three statements a) In opposing the injunctive relief in the *Marsh* case, MVS willingly assumed the risks that an extension may not be granted.; b) MVS can prevent the SUP from expiring by beginning construction before January 6, 2016 and c) if the Mission Chateau SUP expires because MVS elects not to begin construction, then it may reapply for a special use permit.

Mr. Sear responded to (a) that MVS is at risk to construct before the appeal is over; however, that does not weigh against the City granting the extension. In fact it weighs in favor of the extension as it would be unreasonable to put at risk that kind of money when the City is saying if you build it and the City loses, as it is the City that is being challenged on the legality of the SUP, that it must be removed.

Mr. Sear responded to (b) it is the same argument worded differently. If the City would require us to remove improvements, if the City loses the appeal, it is unreasonable to require MVS to expend that kind of money during dependency of the appeal.

Finally (c) seems nonsensical in that this process has already gone on for two years. Why would anyone want to let the SUP expire due to pending litigation and require a new application to be filed to begin the entire process again.

MVS wants to proceed, they want the litigation to end; however, there is only so much they can do under the situation where the city is going to insist that improvements be torn out if the City loses the appeal by the MVNA.

Gregory Wolf asked if all the appeals were to end tomorrow, how long would it take to commence construction. Mr. Sear replied 10 to 14 months to get the contracts let and the demolition done, noting the abatement work that has been completed at the school. He noted it is in their benefit to begin as quickly as possible. Current interest rates are at their lowest and in financing \$40M even a change of 1% in the interest rate impacts the financing by \$400,000 per year. It is in their best interest to proceed as quickly as possible after appeals are completed.

Mr. Wolf asked for clarification on what is being requested. Mr. Sear responded they are seeking an extension in time. He noted "tolling" is court language. They are asking that pursuant to condition #4 of the SUP that it be extended for a period of two years beyond the end of the appeal process. He noted that is beyond the time that is needed. Mr. Wolf asked why they were then asking for two years. Mr. Sear replied the court decisions on tolling have determined in those states that if you have 24 months in the permit that you get 24 months after the legal challenge is over. So they are simply mirroring what has been done. He is quite certain that 12 or 14 months beyond the end of the appeals process would be acceptable to them.

Mr. Wolf asked why the issue was not addressed when the initial litigation was filed. Mr. Sear noted that any SUP application can result in litigation, however they rarely do and with filed rarely goes on the extent that the litigation has in this case.

He does not feel it was the City's intent by Condition #4 which is standard language in Special Use Permits issued by the City was meant to kill a project just by legal delay and not by delay of the developer. That is what the cases that they have cited stand for - developers are not going to forward in all likelihood in this situation and that is why even in the absence of a regulation or statute or a condition, the state courts that have heard this issue have said that it must be "tolled" otherwise the permit becomes meaningless even by a losing lawsuit being filed.

Mr. Wolf stated he is trying to understand why 24 months. Mr. Sear responded that as soon as the appeal was filed it became clear that the request for extension would need to be filed as the process would not end prior to January 6, 2016. Mr. Sear noted the similar situation faced by the City of Prairie Village in the length of time taken for the appeal of Councilman David Morrison and now subsequent appeal by the County to the Kansas Supreme Court.

Nancy Vennard stated the City has had to spend an enormous amount of money with meetings at offsite locations and now ongoing legal fees. She would not want to see the City go through this process again if the extension is not granted.

Gregory Wolf does not see the need for a 24 month extension. He feels they should be ready to begin once the litigation ends. Based on their comments, he could support a 14 month extension. Nancy Vennard noted she understand the rationale behind the 24 month request. Bob Lindeblad reminded the Commission that their action is only a recommendation to the Governing Body.

Nancy Wallerstein asked if the extension was not granted by the Governing Body, they could still start construction under the current SUP. What would constitute commencement of construction. Mr. Lindeblad responded that would be the decision of the Governing Body.

Nancy Wallerstein noted there is not a precedence either for or against extending an SUP. She stated they owned the land regardless of the outcome of the litigation.

Nancy Vennard acknowledged the extensive and costly preparation work that needed to be done prior to commencing construction in design, construction documents, etc. She also added that if they had to refile for the SUP there is no guarantee the current plans would be accepted by the Planning Commission and/or Governing Body at that time, noting the several changes that have taken place for the Mission Mall property.

Gregory Wolf stated in reality, if the extension is not granted, a lawsuit will be filed against the City for declarative judgment on the failure to grant the extension.

Mike Flanagan, General Counsel for the Tutera Group, stated that last week they met with Prairie Village staff to discuss the issue of what is "commencement of construction" which staff believed would be a decision of the Governing Body, but were checking with the City Attorney. The building permit process was discussed and expectations for and timetable for plan reviews. The possibility of a phased building permit was discussed.

They would need to seek a full building permit. He would expect the cost of full construction documents to be as Mrs. Vennard indicated several thousands of dollars. The lead time needed by public works, the building official and fire department for review of plans of this size is significant. He does believe the 14 month period of time would work for MVS to get the building permit approved. If the definition of commencement of construction was less, they could begin sooner. This needs to be determined. Mr. Flanagan noted that in regard to "tolling" you generally are either granted 24 months or nothing.

They feel it is appropriate to grant the extension as it is of no harm to anyone, it does not cost anything of the city and it allows the court, who is the appropriate party, to make its determination on whether the Special Use Permit is valid or if it should be revoked.

Chairman Bob Lindeblad opened the floor for comments from the public.

Andrew Spitsnogle, attorney speaking on behalf of the Mission Valley Neighborhood Association, noted that Mr. Sear made several comments regarding legal interpretations; however, Mr. Waters direction to the Commission was that it was not your job to make a legal determination. It is the job of your city attorney and her analysis is clear. "MVS wants the right, but not the obligation, to build within the 24 month period. This is contrary to what was approved in Ordinance 2301 and that she feels it would not be unreasonable for the Governing Body to deny an extension under the circumstances". They concur with her assessment.

Mr. Spitsnogle made the following additional comments:

- MVS request for an extension is premature - noting that the deadline does not expire until January 6, 2016 and that this was one of the reasons for the denial of their motion on October 30th.
- If the Governing Body intended for the SUP to be "stayed or tolled" it is their view that they would have included that language in the SUP
- The Ordinance was approved with full knowledge that a lawsuit would be filed challenging the validity of the Special Use Permit
- Concur that it would not be unreasonable to deny the two year extension as factors for approval change over time.

They do not feel the applicant should have another two years after the final judgment in which to begin construction on one of the most valuable pieces of land in the City.

Gregory Wolf asked Mr. Spitsnogle that their position was that it was reasonable to force the applicant to spend hundreds if not millions of dollars to begin construction that if you win will have to be removed and destroyed. This is what he is struggling with.

Mr. Spitsnogle responded that that point has not been reached yet and this request is premature. Mr. Wolf asked when would it be appropriate. Mr. Spitsnogle responded it is currently in the court of appeals and MVS has filed for an immediate transfer to the Supreme Court and they do not intend to oppose that filing. It is their intention to get

this resolved as quickly as possible. It is more than a year to the deadline and things change. He cannot say when it would be appropriate to make the request.

Nancy Wallerstein asked Mr. Sear to confirm that he stated it would be 12 months before the case was even heard before the Supreme Court. Mr. Sear replied there is no timetable and the motions are rarely granted. For example in the Morrison case, there was a motion to transfer that case to the Supreme Court and it was denied. If denied, then the Kansas Court of Appeals will continue to proceed until the Kansas Supreme Court says it is not theirs to decide. They believe they are looking at a period of time of at least a year to get a decision on whether to even hear the case.

Mr. Wolf asked Mr. Spitsnogle for his prediction as to how it will take for the appeal. He responded that he has no idea, but doesn't feel that is the issue before the Commission. The issue is whether it would be unreasonable to deny the request.

Mr. Wolf noted the legal costs the city has already incurred thousands of dollars of legal expense on this application and asked Mr. Spitsnogle if he felt that was in the best interest of the city to put itself in the position for yet another lawsuit with the filing a declaratory judgment if the extension is denied.

Mr. Spitsnogle stated he does not feel zoning decisions should be made on the basis of fear of legal costs and secondly he does not know that a separate law suit would be filed.

Bob Lindeblad closed the public comment at 10:00 p.m.

James Breneman believes the request for the extension is justified. He would not want to commit the amount of money that will need to be committed to commence construction with the potential that it may need to be eventually torn down. January 6, 2016 is 13 months away, they would have to begin preparation of construction documents now to meet that deadline. It would be unreasonable for the city not to approve the extension.

Larry Levy stated more harm is being done to the landowners in going through the court system to determine the validity prior to construction in the increased costs that they will occur. He does not see the request for the extension as unreasonable.

Greg Wolf moved the Planning Commission recommend that the 24 month deadline in the SUP shall be extended to 14 months after the termination of the pending litigation involving Mission Valley Chateau project. Termination means dismissal with prejudice or the issuance of a final judgment and all appeal and/or motion to reconsider deadlines/rights expire. Applicant shall notify the City of PV within three business days of the termination as defined herein that the termination has occurred and the 14 months have commenced. The motion was seconded by Larry Levy.

Nancy Wallerstein questioned if 14 months was sufficient time when under normal conditions they would have been given 24 months.

Bob Lindeblad stated he would support 14 months as the applicant has stated they can work within that timeframe. He feels it would be reasonable to grant the extension.

Larry Levy noted this could take 3 years. Mr. Wolf states the applicant knows the risk.

The motion was voted on and passed unanimously.

Next Meeting

At this time the Planning Commission has two Special Use Permit applications filed for the service stations at Mission Road and Tomahawk. The filing deadline is this Friday, so more items could be submitted.

ADJOURNMENT

With no further business to come before the Commission, Chairman Bob Lindeblad adjourned the meeting at 10:10 p.m.

Bob Lindeblad
Chairman

Nancy Vennard
Vice Chairman

DRAFT



6201 College Boulevard, Suite 500, Overland Park, KS 66211-2435 • 913.451.8788

December 10, 2014

Timothy J. Sear
(913) 234-7402
(913) 451-6205 Fax
tsear@polsinelli.com

BY U.S. MAIL AND E-MAIL to CLogan@Lathropage.com

Catherine P. Logan, Esq.
Lathrop & Gage LLP
10851 Mastin Boulevard
Building 82, Suite 1000
Overland Park, KS 66210-1669

Re: MVS LLC Application for Extension of Special Use Permit

Dear Ms. Logan:

This letter is a response to your Memorandum of November 26, 2014 to the Governing Body and Planning Commission of Prairie Village setting forth your analysis as to why it would not be “unreasonable” to deny MVS’s Request for an extension of the Special Use Permit (the “Extension”).

As you are aware, on December 2, 2014, the Planning Commission unanimously recommended that the Extension be granted for a period of 14 months from the conclusion of the litigation/appeal challenging the legality of the SUP. To a member, the Planning Commission agreed that it would be “unreasonable” for the City to deny the Extension because it would be “unreasonable” for the City to require MVS to spend hundreds of thousands of dollars to prepare construction plans, and millions of dollars more in construction costs should the City lose the pending appeal and the SUP be set aside by the Kansas Appellate Courts, the City would require any improvements previously constructed by MVS to be immediately removed.

The statements made by the Planning Commission members were remarkably similar to the analysis contained in the line of cases cited by MVS from non-Kansas courts unanimously holding that the expiration of a permit is stayed by operation of law during the pendency of legal proceedings challenging the legality of the grant of such permit. We explained that even the *Cobbossee Development Group* case cited in your Memorandum is not contrary to the holdings in the other cases cited by MVS, as the Maine court noted that it did not have to undertake the “tolling” analysis because there was a Maine court rule expressly providing for such the granting of a stay upon application to the court, and the applicant in *Cobbossee Development Group* had failed to make a timely request for such stay in accordance with that Maine court rule. Obviously, Kansas has no such court rule and the analysis undertaken by the Maine court in *Cobbossee Development Group* as to why there was no tolling therefore has no application to this matter.

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The language contained in Condition 4 of the MVS SUP (relating to expiration of the SUP if construction is not commenced within two years of the date of the SUP) is consistently and routinely required by the City of Prairie Village as a condition of granting Special Use Permits and was not carefully tailored solely for the MVS SUP. By way of illustration, on December 2, 2014, the Planning Commission recommended approval of a Special Use Permit for Highlawn Montessori to add a second story to one of its buildings with that identical condition. Yet, no one could ever seriously expect that Highlawn Montessori should have to commence adding a new second story to its existing building if an opponent to the Special Use Permit were to file a legal challenge to the issuance of that Special Use Permit. If that were indeed the case, a single disgruntled neighbor could simply file appeals that would cause that Special Use Permit to expire by its own terms in 2 years.

We also pointed out to the Planning Commission that it would be unfair to deny MVS the Extension based on the fact that MVS previously opposed the injunction sought by the Plaintiffs in the District Court. As you will recall, both MVS and the City jointly opposed the injunction sought by the Plaintiffs, which sought to not only enjoin any construction pursuant to the SUP, but also any activities on the entire 18-acre parcel owned by MVS, and to enjoin the construction of single family homes on the 6-acre portion not the subject of the SUP and/or the demolition of the existing middle school. Entry of such a broad injunction was simply unacceptable to MVS for a variety of legitimate business reasons, not the least of which is that demolishing the Mission Valley Middle School will substantially reduce the real property taxes which are currently being assessed against the property.

The Planning Commission also rejected the suggestion that if MVS is unwilling to risk hundreds of thousands of dollars preparing for construction, or risk millions of dollars constructing improvements during the pendency of the appeal, MVS can choose to simply allow the SUP to expire and thereafter file an application for a new SUP. Members of the Planning Commission recognized that this would make no business sense whatsoever as this purported remedy would only likely result in the City facing new litigation over the issuance or non-issuance of a new SUP a year or two from now and that any benefit of having gotten the existing dispute before the Kansas Court of Appeals would be lost. Given that the City has incurred in excess of \$333,000 during 2013-14 in legal fees alone for services that relate to the issuance and appeal of the existing SUP, it is not "reasonable" or practical to suggest that the entire SUP process be started anew when the Kansas Court of Appeals is now in a position to resolve all issues pertaining to the existing SUP.

As you are now likely aware, counsel for Plaintiffs appeared at the Planning Commission to oppose the Extension. Counsel for Plaintiffs argued that it was "premature" for MVS to seek the Extension, although counsel for Plaintiffs stated that he could not dispute that the appeal would likely continue past the January 6, 2016 expiration date. The Planning Commission asked counsel for Plaintiffs when would be the appropriate time for MVS to ask for the Extension if not now—to which counsel for Plaintiffs had no meaningful response.

Based on all of the foregoing, the Planning Commission unanimously agreed that it was in the best interests of the City to approve the Extension rather than force MVS to file a Declaratory Judgment action to determine whether Kansas courts would follow the unanimous line of case law mentioned above. At the request of the Planning Commission, MVS voluntarily agreed to reduce the time period in which to commence construction to 14 months after the SUP is determined to be a final and non-appealable SUP.

No party is more interested in commencing the immediate construction of Mission Chateau once all pending legal issues have been resolved than MVS. In fact, as stated in our presentation to the Planning Commission, MVS is most anxious to complete construction and obtain permanent financing during the current low-interest environment, for even a one percent increase in interest rates would equate to \$400,000 per year in additional interest expense on a \$40,000,000 permanent loan. However, it would be “unreasonable” to require MVS to proceed forward until the legal validity of the SUP has been fully and finally resolved.

The issue of whether to grant MVS a Special Use Permit is no longer before the City. The issue of whether the City followed the proper procedure in granting the Special Use Permit is currently pending before the Kansas Court of Appeals. The sole issue now before the City is whether the Special Use Permit should be extended to allow all parties to find out whether the prior grant of the Special Use Permit was indeed valid, and then allow MVS with a reasonable period of time in which to proceed with construction if the SUP is upheld.

Your Memorandum focused only on factors and arguments as to why a court might determine why it was not “unreasonable” for the Planning Commission and Governing Body to deny the request for the Extension. However, your Memorandum failed to discuss any of the numerous and compelling factors and arguments as to why it would not only be “reasonable” to grant the Extension, and perhaps more importantly, why a court might determine why it would be “unreasonable” for the Governing Body to deny the Extension. Those factors and arguments include the following:

- The Planning Commission unanimously recommended that MVS be granted a 14 month extension and the Governing Body cannot ignore the various reasons stated on the record which supported that recommendation.
- Granting the Extension does not prejudice any party. The validity of the SUP will be determined by a Kansas appellate court in due course and none of the parties to that litigation have any control over when that decision will be rendered.
- Granting the Extension allows the City to avoid the legal fees that will be required to defend a Declaratory Judgment action with respect to the tolling issue. All of the relevant case law which has examined the tolling issue has unanimously held that tolling occurs by operation of law upon the filing of an appeal with regard to a permit that has a

Catherine P. Logan Esq.
December 10, 2014
Page 4

performance deadline. There can and should be little doubt that a Kansas court would issue a ruling consistent with the cases we have cited. The City has spent more than \$333,000 on Mission Chateau related legal issues, and there is absolutely no tangible benefit to be obtained by the City in engaging in unnecessary and expensive litigation over the tolling issue.

- A vote to grant the Extension is not an endorsement of the SUP, but rather a recognition that the Kansas appellate courts are in the process of determining the validity of the SUP.

- The last thing that any opponent of Mission Chateau really wants is for MVS to actually proceed with demolishing the school. One additional benefit to granting the Extension is that Mission Valley Middle School can remain in place and available for a possible future user in the event that the pending appeal overturns the SUP.

MVS looks forward to appearing before the Governing Body on December 15 to seek the Extension.

Sincerely,



Timothy J. Sear

TJS:mgs

cc: Joyce Hagen Mundy, City Clerk
Joseph Tutera
Michael F. Flanagan, Esq.
John D. Petersen, Esq.



6201 College Boulevard, Suite 500, Overland Park, KS 66211-2435 • 913.451.8788

January 2, 2015

Timothy J. Sear
(913) 234-7402
(913) 451-6205 Fax
tsear@polsinelli.com

Joyce Hagen Mundy
City Clerk
City of Prairie Village, Kansas
7700 Mission Road
Prairie Village, KS 66208

Re: MVS LLC Application for Extension of Special Use Permit

Dear Ms. Mundy:

The Governing Body has on its Agenda for Monday, January 5, 2015, the recommendation of the Planning Commission to extend the MVS Special Use Permit for a period of 14 months beyond the end of all litigation challenging the legality of the Special Use Permit. MVS believes that the Governing Body should adopt the Planning Commission recommendation for all the reasons stated by MVS and stated by the Planning Commission. Extensions of this sort are routinely granted and the City Attorney has not advised that an extension of the Special Use Permit would be unreasonable.

MVS has also presented interested parties with a revised conceptual plan for the MVS development. MVS is hopeful that this revised plan can serve as the basis for a resolution of the disputes surrounding the Special Use Permit.

There has been a suggestion that in order to allow interested parties an opportunity to fully explore the resolution of this matter that the Special Use Permit be extended, or the expiration of the Special Use Permit be stayed, pending these discussions. MVS supports these efforts.

If the Governing Body is unwilling to adopt the recommendation of the Planning Commission at this time, MVS would suggest that the Governing Body consider extending the Special Use Permit for such time as negotiations continue. At the same time, MVS recommends that the City and MVS seek a judicial declaration as to whether Kansas courts adopt the position



Joyce Hagen Mundy
January 2, 2015
Page 2

of other state courts holding that Special Use Permits do not expire pending a challenge to the legality of the grant of the permit.

Under this proposal, and without regard to whether the expiration of the Special Use Permit has been tolled by the filing of litigation challenging the legality of the Special Use Permit, there is one year remaining to begin construction under the Special Use Permit. Further running of time under the Special Use Permit would be stayed until such time as MVS Counsel or Plaintiffs Counsel advise the City Clerk, in writing, that negotiations have ended. Upon such notice being given, time would again begin to run on the remaining twelve months remaining on the Special Use Permit.

If such notice is given, MVS would retain its right to have the Governing Body immediately take up the recommendation of the Planning Commission—without further hearings before the Planning Commission. MVS also does not waive its claim that the expiration of the Special Use Permit has been “tolled” by the filing of the litigation challenging the legality of the Special Use Permit.

I would be pleased to address any of these issues prior to or at the Governing Body meeting.

Sincerely,

A handwritten signature in blue ink that reads "Timothy J. Sear".

Timothy J. Sear

TJS:jlh



PUBLIC WORKS DEPARTMENT

Council Committee Meeting Date: January 20, 2015

Council Meeting Date: January 20, 2015

DISCUSS ISLAND MODIFICATIONS PROPOSED BY RESIDENTS ON THE ISLAND AT PRAIRIE LANE AND OXFORD ROAD.

RECOMMENDATION

Option 1-

Recommend approval of the modifications to the island at Prairie Lane and Oxford Road as propose by residents.

Option 2-

Deny approval of the modifications, including removal of work completed to date, to the island at Prairie Lane and Oxford Road as proposed by residents.

Option 3-

Recommend approval of the modifications to the island at Prairie Lane and Oxford Road with certain changes to the plan.

BACKGROUND

In early December it was discovered that improvements were being constructed in the island at Prairie Lane and Oxford Road. Approval from the City was not requested for these modifications and after looking into the situation it was discovered that a group of residents who are involved in island maintenance in this area made these modifications without seeking prior City approval. Work was stopped until the City could determine if the improvements were acceptable for this location. At this point, the Prairie Hills Home Owners Association is not in favor or against these modifications. Approval by the HOA was not sought prior to construction.

The improvements are shown on the attached plan provided by the residents as well as the attached photo of what has been constructed to date. The circular stone seating area has a central fire pit ring and the plan also shows landscaping being added to the island as well. The modifications that are constructed to date seem to be of quality standards. Overall this type of improvement is positive and would add to the quality of life in the area.

Public Work's concern with the improvement centers around the addition of the permanent fire pit. This is a small island with public streets on all three sides, two of which are through residential streets connection to the Village Shops. The desire to have a fire pit at this location is understandable but Public Works does not think is it appropriate at this location. The proximity of the streets and the potential distraction to drivers coupled with probability of children playing in the area after dark when the fire pit would be in use cause concern. The residents have communicated to Public Works that if the fire pit is a concern that they would remove it as part of the permanent improvements.

Other considerations-

Fire Department

Staff discussed the installation of the fire pit on the island with Fire Marshall Todd Kerkhoff from CFD2. Mr. Kerkhoff offered that although installation of the fire pit at this location is not prohibited, the following sections of the City Code should be considered:

307.3 EXTINGUISHMENT AUTHORITY. When open burning creates or adds to a hazardous or objectionable situation, or a required permit for open burning has not been obtained, the Fire Code Official is authorized to order the extinguishment of the open burning operation.

307.5 ATTENDANCE. Open burning, bonfires, recreational fires and use of portable outdoor fireplaces shall be constantly attended until the fire is extinguished. A minimum of one (1) portable fire extinguisher complying with Section 906 with a minimum 4-A rating or other approved on-site fire extinguishing equipment such as dirt, sand, water barrel, garden hose or water truck, shall be available for immediate utilization.

Insurance

The following is a summary of information offered by the City's insurance representative regarding this topic:

Ultimately the City would be responsible if the City owns the property. It depends on several factors if the claim would be covered, including but not limited to if the fire pit was permitted, did the HOA name the City as an Additional Insured on their insurance coverage, and if their coverage meets City requirements. Public Entity insurance coverage is very broad and considers a variety of exposures within the City Limits, including streets, traffic islands and right of way, owned by the City.

General

Although installation of a fire pit and seating on public property is not prohibited; it is the responsibility of to the City to approve as it would any other installation on public property.

ATTACHMENTS

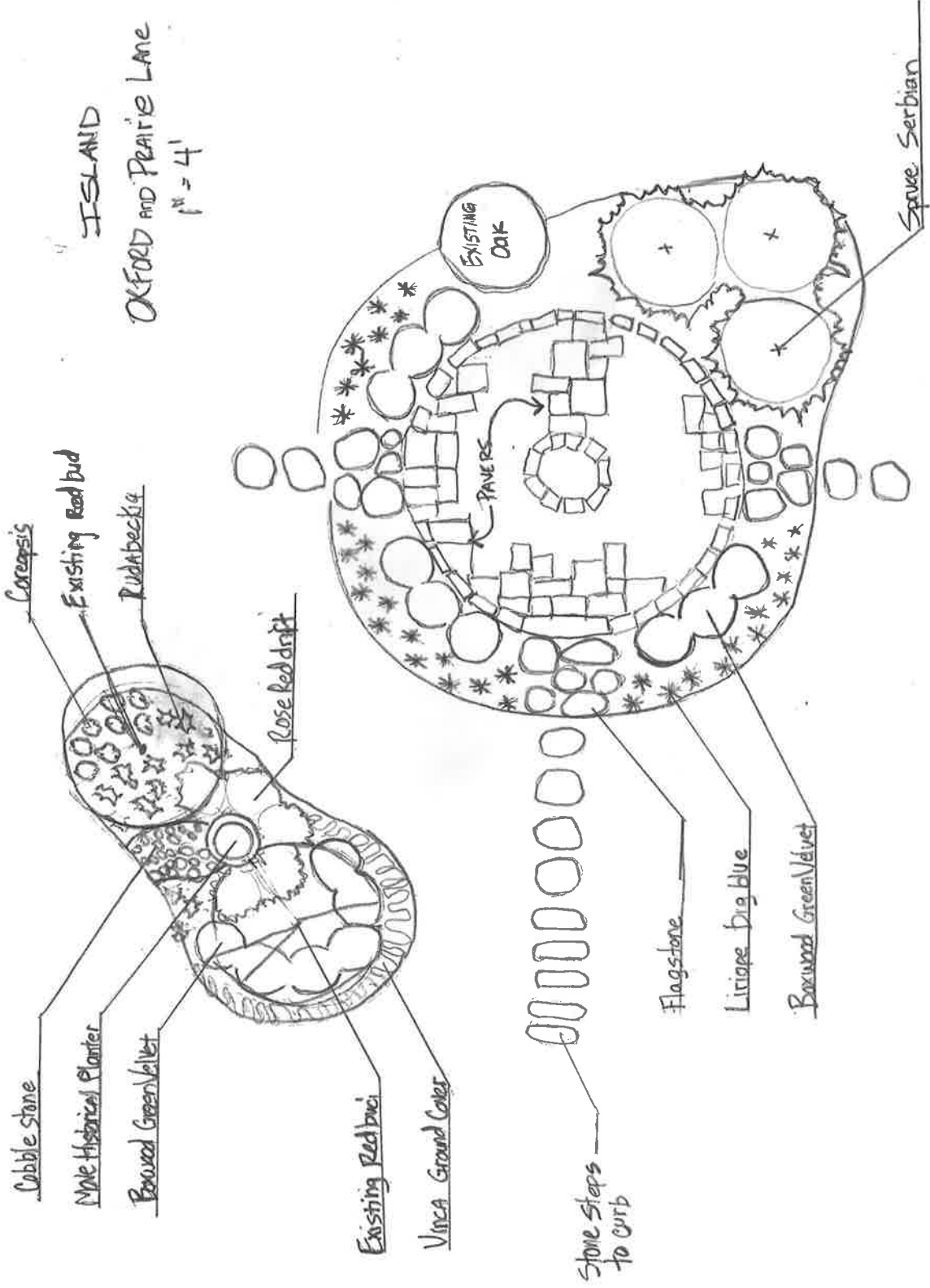
Plan of modifications and photo

PREPARED BY

Keith Bredehoeft, Public Works Director

January 15, 2015

ISLAND
OKFORD AND PRAIRIE LANE
1" = 4'





MAYOR'S ANNOUNCEMENTS

January 20, 2015

Committee meetings scheduled for the next two weeks:

Arts Council	01/21/2015	7:00 p.m.
VillageFest Committee	01/22/2015	7:00 p.m.
Council Committee of the Whole	02/02/2015	6:00 p.m.
City Council	02/02/2015	7:30 p.m.

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The Prairie Village Arts Council is pleased to present an exhibit by the Greater Kansas City Art Association in the R. G. Endres Gallery during the month of January.

Deffenbaugh observes the Martin Luther King, Jr. Holiday. Regular trash pickup will be delayed one day.

The League of Kansas Municipalities is hosting City Hall Day on Wednesday, February 4, 2015 in Topeka, KS. Please RSVP to mbuum@pvkansas.com.

The 2015 annual large item pick up has been scheduled. Items from homes on 75th Street and north of 75th Street will be collected on Saturday, April 11th. Items from homes south of 75th Street will be collected on Saturday, April 18th.

The Council Work Session will be held on Saturday, February 21st at Village Presbyterian Church beginning at 8:30 a.m.

INFORMATIONAL ITEMS
January 20, 2015

1. 2014 Crime Statistics
2. Council Committee of the Whole Minutes - January 5, 2015
3. JazzFest Committee Minutes - November 11, 2014
4. Board of Zoning Appeals Minutes - December 2, 2014
5. Planning Commission Minutes - December 2, 2014
6. Sister City Committee Minutes - December 6, 2014
7. Parks & Recreation Committee Minutes - December 10, 2014
8. Mark Your Calendar

PRAIRIE VILLAGE FINAL CRIME REPORT - 2014

CRIME	2010	2011	2012	2013	2014	AVERAGE	2014 +/- AVG
Homicide	0	0	0	1	0	0.20	-0.20
Rape	3	4	6	1	2	3.20	-1.20
Robbery	1	6	3	2	4	3.20	0.80
Assault	105	79	68	84	67	80.60	-13.60
Burglary	77	62	52	52	35	55.60	-20.60
Residence	68	58	45	45	26	48.40	-22.40
Business/Miscellaneous	9	4	7	7	9	7.20	1.80
Theft	273	230	215	184	192	218.80	-26.80
Auto Theft	18	17	13	23	14	17.00	-3.00
Arson	5	5	2	0	0	2.40	-2.40
Forgery	6	9	8	8	13	8.80	4.20
Fraud	21	20	20	24	40	25.00	15.00
Criminal Damage	243	145	111	96	51	129.20	-78.20
Sexual Offenses	12	12	9	11	10	10.80	-0.80
TOTAL	764	589	507	486	428	554.80	-126.80

ACCIDENTS	2010	2011	2012	2013	2014	AVERAGE	2014 +/- AVG
Fatal	1	2	0	2	0	1.00	-1.00
Street - Injury	32	24	25	30	35	29.20	5.80
Street - Property + \$1,000*	266	277	277	222	228	254.00	-26.00
Street - Property - \$1,000*	49	58	59	57	42	53.00	-11.00
Private - Injury	4	0	1	1	2	1.60	0.40
Private - Property	83	87	78	62	61	74.20	-13.20
Walk-In Property	47	55	37	39	37	43.00	-6.00
TOTAL	482	503	477	413	405	456.00	-51.00

MENTAL HEALTH	2010	2011	2012	2013	2014	AVERAGE	2014 +/- AVG
Suicide		2	1	3	2	2.00	0.00
Attempted Suicide		13	10	8	7	9.50	-2.50
Involuntary Committal		19	16	8	12	13.75	-1.75
Voluntary Committal		12	27	22	11	18.00	-7.00
All Other Mental Health		62	74	110	74	80.00	-6.00
TOTAL		108	128	151	106	123.25	-17.25

TOTAL CALLS	7,450	6,721	6,386	6,137	6,587	6,656.20	-69.20
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MISSION HILLS FINAL CRIME REPORT - 2014

CRIME	2010	2011	2012	2013	2014	AVERAGE	2014 +/- AVG
Homicide	0	0	0	0	0	0.00	0.00
Rape	1	0	0	0	0	0.20	-0.20
Robbery	0	0	1	0	0	0.20	-0.20
Assault	5	3	8	3	4	4.60	-0.60
Burglary	3	5	6	8	17	7.80	9.20
Residence	3	5	6	8	16	7.60	8.40
Business/Miscellaneous	0	0	0	0	1	0.20	0.80
Theft	24	46	26	26	34	31.20	2.80
Auto Theft	2	1	1	7	6	3.40	2.60
Arson	0	0	0	1	1	0.40	0.60
Forgery	0	0	0	0	1	0.20	0.80
Fraud	1	1	3	0	2	1.40	0.60
Criminal Damage	19	25	23	11	20	19.60	0.40
Sexual Offenses	0	0	1	0	0	0.20	-0.20
TOTAL	55	81	69	56	85	69.20	15.80

ACCIDENTS	2010	2011	2012	2013	2014	AVERAGE	2014 +/- AVG
Fatal	0	0	0	0	0	0.00	0.00
Street - Injury	3	2	1	0	0	1.20	-1.20
Street - Property + \$1,000*	24	24	32	32	19	26.20	-7.20
Street - Property - \$1,000*	15	7	9	4	4	7.80	-3.80
Private - Injury	0	0	0	1	0	0.20	-0.20
Private - Property	3	3	2	4	4	3.20	0.80
Walk-In - Property	4	0	2	1	4	2.20	1.80
TOTAL	49	36	46	42	31	40.80	-9.80

MENTAL HEALTH	2010	2011	2012	2013	2014	AVERAGE	2014 +/- AVG
Suicide		0	0	0	0	0.00	0.00
Attempted Suicide		0	1	1	0	0.50	-0.50
Involuntary Committal		4	0	5	0	2.25	-2.25
Voluntary Committal		0	1	2	0	0.75	-0.75
All Other Mental Health		3	9	6	5	5.75	-0.75
TOTAL		7	11	14	5	9.25	-4.25

TOTAL CALLS	1,564	1,442	1,359	1,341	1,437	1,428.60	8.40
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**PRAIRIE VILLAGE - MISSION HILLS
FINAL CRIME REPORT - 2014**

CRIME	2010	2011	2012	2013	2014	AVERAGE	2014 +/- AVG
Homicide	0	0	0	1	0	0.20	-0.20
Rape	4	4	6	1	2	3.40	-1.40
Robbery	1	6	4	2	4	3.40	0.60
Assault	110	82	76	87	71	85.20	-14.20
Burglary	80	67	58	60	52	63.40	-11.40
Residence	71	63	51	53	42	56.00	-14.00
Business/ Miscellaneous	9	4	7	7	10	7.40	2.60
Theft	297	276	241	210	226	250.00	-24.00
Auto Theft	20	18	14	30	20	20.40	-0.40
Arson	5	5	2	1	1	2.80	-1.80
Forgery	6	9	8	8	14	9.00	5.00
Fraud	22	21	23	24	42	26.40	15.60
Criminal Damage	262	170	134	107	71	148.80	-77.80
Sexual Offenses	12	12	10	11	10	11.00	-1.00
TOTAL	819	670	576	542	513	624.00	-111.00

ACCIDENTS	2010	2011	2012	2013	2014	AVERAGE	2014 +/- AVG
Fatal	1	2	0	2	0	1.00	-1.00
Street - Injury	35	26	26	30	35	30.40	4.60
Street - Property + \$1,000*	290	301	309	254	247	280.20	-33.20
Street - Property - \$1,000*	64	65	68	61	46	60.80	-14.80
Private - Injury	4	0	1	2	2	1.80	0.20
Private - Property	86	90	80	66	65	77.40	-12.40
Walk-In - Property	51	55	39	40	41	45.20	-4.20
TOTAL	531	539	523	455	436	496.80	-60.80

MENTAL HEALTH	2010	2011	2012	2013	2014	AVERAGE	2014 +/- AVG
Suicide		2	1	3	2	2.00	0.00
Attempted Suicide		13	11	9	7	10.00	-3.00
Involuntary Committal		23	16	13	12	16.00	-4.00
Voluntary Committal		12	28	24	11	18.75	-7.75
All Other Mental Health		65	83	116	79	85.75	-6.75
TOTAL		115	139	165	111	132.50	-21.50

TOTAL CALLS	9,014	8,163	7,745	7,478	8,024	8,084.80	-60.80
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COUNCIL COMMITTEE OF THE WHOLE
January 5, 2015

The Council Committee of the Whole met on Monday, January 5, 2015 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: 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. Also present were Captain Tim Schwartzkopf and Sgt. James Carney.

Quinn Bennion announced that Mayor Shaffer was disappointed that he could not be present for his final City Council meeting, but he is hospitalized for an unexpected medical procedure.

Laura Wassmer acknowledged the amount of time Mayor Shaffer has given to the City in his 25 years of service. There has been no better cheerleader for Prairie Village than Ron and she wished him well in his new position as Johnson County Commissioner and thanked him for his service and dedication to Prairie Village.

COU2015-01 Consider design contract with Indigo Design for 2015 park projects at Bennett and Taliaferro Parks

Keith Bredehoeft presented the contract for the design services for the 2015 Parks Projects. City Council approved 2015 funding for improvements to Taliaferro and Bennett Parks. Design is expected to be completed in time to allow for a construction project can be let in the Spring of 2015 for this work.

Improvements in Taliaferro Park include a new nature play area to enhance the play experience and sports field improvements and expansion for baseball and soccer. Bennett Park improvement features a new eight foot perimeter walking path and a new nature play area.

Once preliminary plans are developed, there will be a public meeting for residents to see the plans and offer comments on the improvements.

Indigo Design was the City's consultant for the Parks Master Plan and helped with the revised concepts in 2012 and thus was selected to design these improvements. Funding is available in the 2015 Capital Improvement Program.

Eric Mikkelson noted that this work was not bid and asked if staff was confident that the amount being paid for these services is reasonable. Keith Bredehoeft responded he had reviewed the costs and fees and found them to be reasonable.

Terrence Gallagher asked staff to emphasize to Indigo Design the need to stay within budgeted funds, noting the change order on the agenda for additional funds for Harmon Park Tennis Courts and the significant cost overage on the McCrum Park Project.

Brooke Morehead asked if Indigo Design had reviewed the Homestead property for possible park use when it was being considered and what that review cost. Quinn Bennion stated they were paid their standard hourly rate by the city for their services.

Ted Odell made the following motion, which was seconded by Terrence Gallagher and passed unanimously:

RECOMMEND THE CITY COUNCIL APPROVE A CONTRACT WITH INDIGO DESIGN, INC. IN THE AMOUNT OF \$19,300 FOR THE DESIGN OF THE 2015 PARKS PROJECTS IN BENNETT AND TALIAFERRO PARKS

**COUNCIL ACTION TAKEN
01/05/2015**

COU2015-02 Consider Design Agreement with Affinis Corporation for the design of the 2015 Paving Program and the 2015 CARS Project

Keith Bredehoeft presented an agreement with Affinis Corporation for the design of the 2015 Paving Program and the 2015 CARS Project. Construction is anticipated to begin in Summer 2015. Affinis Corp was selected to be the City's construction administration consultant for 2014, 2015, and 2016. Affinis Corp has been working for the City for the last several years and has performed very well.

CIP Funding is available for design in the corresponding Capital Improvement Projects:

2015 Paving Program (PAVP2015) -	\$79,944.00
2015 CARS Project (ROAV0003) -	\$56,336.00
Total	<u>\$136,280.00</u>

Jori Nelson noted the list of possible streets included some in Ward 1 and asked what the process was for determining if sidewalks were included in the scope of work. Mr. Bredehoeft reviewed the process established by Council Policy for the determination of sidewalk construction. During the design the best location for the sidewalk will be determined and the property owners will then be notified of the potential sidewalk. If 75% of the property owners respond that they do not want a sidewalk, one will not be constructed. Ms. Nelson asked when those letters would be sent. Mr. Bredehoeft responded he did not have a specific date but it would be in the near future and stated he would also send letters to the council representatives for the areas affected.

Laura Wassmer asked when Roe - 75th to 83rd would be completed. Mr. Bredehoeft replied it could be done this summer. Ms. Wassmer asked how long the street would be

closed. Mr. Bredehoeft stated the street would only be closed when crews are working and it would be open for peak travel hours.

Eric Mikkelson asked if the design fees being charged were consistent with standard market fees for this work. Mr. Bredehoeft assured Mr. Mikkelson that the fees reflected a fair market cost.

Eric Mikkleson made the following motion, which was seconded by Laura Wassmer and passed unanimously:

RECOMMEND THE CITY COUNCIL APPROVE THE DESIGN AGREEMENT WITH AFFINIS CORPORATION FOR THE DESIGN OF THE 2015 PAVING PROGRAM AND THE 2015 CARS PROJECT IN THE AMOUNT OF \$136,280.00
COUNCIL ACTION TAKEN
1/5/2015

COU2015-03 Consider Annual service agreement for 2015-2017 Materials Testing Services

Keith Bredehoeft stated bids were received by the City Clerk on Friday, December 19th. Three companies submitted bids for this program. Since this is an on-call contract, the low bidder was determined by estimating the number and type of tests that will be required and multiplying those times the unit prices submitted by each company. General materials tested include asphalt, concrete and soil.

Kaw Valley Engineering, Inc.	\$27,450.00
PSI, Inc.	\$34,715.00
Terracon Consultants, Inc.	\$36,975.00
Engineer's Estimate	\$33,550.00

It was noted that Kaw Valley Engineering had the previous three year contract for the testing program and they have performed well. Funds for this program are budgeted in each individual project.

Ted Odell made the following motion, which was seconded by Brooke Morehead and passed unanimously:

RECOMMEND THE CITY COUNCIL APPROVE THE 2015 TO 2017 MATERIALS TESTING SERVICES AGREEMENT WITH KAW VALLEY ENGINEERING, INC.
COUNCIL ACTION TAKEN
01/05/2015

Discussion on the procedure for filling a vacancy in the Office of Mayor

Katie Logan stated that Charter Ordinance No. 20 adopted in 2001 with Ordinance 2300 adopted in 2013 specifically addressing the process. The ordinance reads as follows:

1-208. VACANCIES IN GOVERNING BODY; HOW FILLED.

(a) In case of a vacancy occurring by reason of resignation, death, removal from office or when the mayor no longer resides in the city, the president of the council will fill the vacancy by serving as Mayor until the Council elects a new Mayor. The Council shall elect, by a majority of those Council Members present, a new Mayor from those Council Members serving at the time of the vacancy within thirty (30) days from the vacancy to serve until the next regularly scheduled City election. The vacancy in the Council created by the Council electing a new Mayor will be filled in accordance with Section 1-208(b) of the Prairie Village Municipal Code.

(b) In case of a vacancy occurring by reason of resignation, death, removal from office or when a councilmember no longer resides in the ward in which the council member has been elected, the mayor, by and with the consent of the remaining council members may appoint some suitable elector residing in such ward to fill the vacancy until the next election for that council position.

(C.O. No. 13, Sec. 3; C.O. No. 14, Sec. 2; Ord. 2300, Sec. 2, 2013)

Ms. Logan noted that the interim time frame is relatively short with the general election occurring in April. The Council could have the Council President serve as Interim Mayor for the entire period, if no one was elected by the Council. She noted the individual elected would be required to relinquish their Council seat as they cannot hold two positions at the same time. Although that individual could be reappointed to their seat by the new Mayor after the election, there is no guarantee that they would be reappointed.

Jori Nelson confirmed that the Council President acting as Interim Mayor would return to their council seat after the election of the Mayor.

Quinn Bennion noted that under past practice, when the Council President becomes Interim Mayor, the last past Council President would serve as the Council President.

Questions were raised on how a tie vote would be handled.

Executive Session

Jori Nelson moved pursuant to KSA 75-4319 (4) in order to discuss matters relating to confidential data relating to financial affairs or trade secrets of corporations, partnerships, trusts, and individual proprietorships that the Governing Body, recess into Executive Session in the Multi-Purpose Room for a period not to exceed 30 minutes for the purpose of consulting with the City Attorney on matters which are privileged in the attorney-client relationship. Present will be the City Council, City Administrator and City Attorney. The motion was seconded by Andrew Wang and passed unanimously.

The Council Committee of the Whole meeting was reconvened at 7:02 p.m.

STAFF REPORTS

Public Safety

- Chief Jordan stated staff have met with beekeeping individuals and the final draft of the bee ordinance will be presented to the Council at the January 20th meeting.
- Bank of America will be honoring all of the police officers involved in the successful capture and arrest of the individuals who robbed the bank's location at 95th & Mission.

Public Works

- Keith Bredehoeft noted crews were brought in at 7 p.m. on Saturday for the predicted snow. The snow amounts were not significant; however, a large amount of salt was used to treat the roads for ice.
- The fiber installation from City Hall to Public Works is now operating and the project is going well.
- Laura Wassmer asked about KCP&L tree trimming in Corinth Hills. Mr. Bredehoeft replied a formal permit is not needed, but sometime KCP&L will advise PW of work being done in the city.
- Jori Nelson asked about the mound of dirt and equipment remaining at McCrum Park. Mr. Bredehoeft responded the dirt will be graded, but noted there will be a berm created on the north side. The equipment is to be removed by the contractor.

Administration

- Nolan Sunderman reported there will be an informational meeting on the Synchronized Swim Team Program on January 14th at 5:30 p.m. in the MPR.
- City Hall Day will be held in Topeka on February 4th.
- The Annual City Council Worksession will be held on Saturday, February 21st beginning at 8:30 a.m.
- Kate Gunja announced the promotion of Rebecca Story to the Court Administrator position and the clerk position will be posted soon.
- Kate Gunja noted the City will again offer Christmas Tree Recycling at city parks through the middle of January. Deffenbaugh will pick up trees under 6' in height during the first two weeks of January.
- Lisa Santa Maria noted the city is in the process of closing out 2014, which will delay preparation of the 4th quarter report until the end of February. Any bills for 2014 need to be submitted now.
- Quinn Bennion stated the transition of the employee 401a and 457 pensions plans approved in December has gone well. Staff received quotes for fiduciary insurance that will be brought to the insurance committee for consideration.
- There will be a Farewell Reception for Mayor Shaffer on Wednesday, January 14th from 4:30 to 6:30 with presentations at 6 p.m. at Meadowbrook Country Club. The public is invited.

Laura Wassmer noted that the fatality in the recent house fire in Kansas City, Missouri was former Councilman Al Herrera's niece and expressed her condolences.

ADJOURNMENT

With no further business to come before the Council Committee of the Whole, Council President Ashley Weaver adjourned the meeting at 7:15 p.m.

Ashley Weaver
Council President

JazzFest Committee Minutes November 11, 2014

Present: Jack Shearer, JD Kinney, Donelea Hespe, Mike Polich, Dave Hassett, Amanda Hassett, Brian Peters, Meghan Buom, Larry Kopitnik and Joyce Hagen Mundy.

JD Kinney welcomed and introduced Dave and Amanda Hassett. Dave will be joining the committee and overseeing the food and beverage operations. They have worked the beer tent with JD the past two years. His appointment will go before the City Council on November 17th.

2015 Organizational Changes

As discussed at the last meeting, JD would like to have all sitting committee members engaged throughout the year and has asked committee members to take responsibility to oversee certain aspects of the festival. The following assignments were made:

Function	Committee Chair	Assistant
Volunteers	Jane Andrews	Diane Mares
Talent	Larry Kopitnik	Peggy Wright
Operations	Dan Andersen	Mike Polich
Food & Beverage	Dave Hassett	
Marketing	Jack Shearer	Kyle Kristofer
Development/Fund Raising	JD Kinney	Jack Shearer
Finances	JD Kinney	Brian Peters
VIP Operations	Donelea Hespe	
Council Liaison	Brooke Morehead	
Staff Support	Joyce Hagen Mundy	Meghan Buom
Facebook & Social Media	Meghan Buom	

JD asked the committee chairs to prepare brief descriptions of the function of their committee for the next meeting.

JD stated he would be working on revisions to the fundraising materials.

Follow-up Thank you

JD would like to send out a letter/postcard in early December to past donors thanking them for their past support and asking them to keep the festival in mind for 2015. The committee agreed to send out postcard, with a photo from the Jazz Festival. Larry Kopitnik will get a photo to JD. JD will design the postcard and staff would arrange for its printing and mailing. JD is looking at establishing a regular mailing timeline to sponsors.

Dan Andersen asked JD to investigate getting committee polo shirts early next year.

Talent

Larry Kopitnik noted the committee has discussed adding "blues" to the festival but noted the festival has become recognized and appreciated by the jazz community as the only true "jazz" festival in the area. If the festival were to expand to a two-day event, he felt the committee could consider adding "blues". Larry discussed possible talent options based on who has not been in the festival and who is already appearing in the area near the time of the festival. He noted that the past two years, the festival has featured two

headliners and noted that perhaps those funds could be combined to get a big name musician filling the rest of the line-up with recognized and new local talent. Some committee members noted they really like the local talent, especially the more upbeat acts.

Larry compared the city's festival with the 18th & Vine Festival that was held in October. He noted they sold 3000 tickets and had a huge budget, while the PV festival sold approximately the same amount with a much lower budget and continues to be recognized by the jazz community as the only "true jazz" festival in the area.

Joyce suggested that the website be updated to reflect the festivals history over the past five years acknowledging the level of talent that has been featured as well a recognition of on-going supporters of the festival.

Budget Update

Joyce reported that there had been no new charges or donations since the last meeting. The committee has a balance of approximately \$8000. JD will follow up with "Wilma's Good Food" for their percentage from the festival which has not been received. The budgeted \$10,000 from the City will be available after the first of the year and Dan Andersen will encourage the Arts Council to continue their \$1500 grant to the festival for 2015.

It was suggested that a timeline be created for the year establishing goals both financially and action based; i.e. line-up announced by this date; vendors secured by this date, etc.

Event Fundraiser

The committee discussed past fund raising events and decided to look into having a "beer tasting" event again at Johnny's. Jack Shearer will talk with Johnny's management and Crawford regarding the possibility. It was suggested the event be held late February/early March. Jack will report back at the next meeting.

Shawnee Mission East Student Involvement

The committee discussed ways of continuing and strengthening our ties with SME. Options discussed were encouraging the students to volunteer at the event, continue having the students open the festival, a possible educational/fundraising concert event. It was noted that this would be a possibility if grant funds were received. JD will talk with the principal at Shawnee Mission East to express our desire for maintaining a connection with the school.

Next Meeting

The next meeting will be held on Thursday, January 15th at 7 p.m. at Dan's House.

Adjournment

The meeting was adjourned at 8:30 p.m.

**BOARD OF ZONING APPEALS
CITY OF PRAIRIE VILLAGE, KANSAS
AGENDA
December 2, 2014
6:30 P.M.**

I. ROLL CALL

II. APPROVAL OF MINUTES - November 4, 2014

III. ACTION ITEM

**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
Zoning: R-1a Single Family Residential District
Applicant: Gerald Mancuso & Dr. Jana Goldsich**

**BZA2014-07 Request for a Variance from Section 19.06.035 "Rear Yard" for a
reduction from the 25' setback to 6'
3905 Delmar Drive
Zoning: R-1a Single Family Residential District
Applicant: Gregory Shondell**

IV. OTHER BUSINESS

V. OLD BUSINESS

VI. ADJOURNMENT

If you cannot be present, comments can be made by e-mail to
Cityclerk@Pvkansas.com

**BOARD OF ZONING APPEALS
CITY OF PRAIRIE VILLAGE, KANSAS
MINUTES
TUESDAY, DECEMBER 2, 2014**

ROLL CALL

The meeting of the Board of Zoning Appeals of the City of Prairie Village, Kansas was held on Tuesday, December 2, 2014 in the Council Chambers of the Municipal Building at 7700 Mission Road. Vice-Chairman Nancy Vennard called the meeting to order at 6:30 p.m. with the following members present: Bob Lindeblad, James Breneman, Gregory Wolf, Nancy Wallerstein and Larry Levy. Also present in their advisory capacity to the Board of Zoning Appeals were: Ron Williamson, Planning Consultant; Kate Gunja, Assistant City Administrator; Keith Bredehoeft, Public Works Director and Joyce Hagen Mundy, Board Secretary.

APPROVAL OF MINUTES

Nancy Wallerstein noted the first “not” should be removed from the first sentence on page 4 with the corrected sentence reading: “Bob Lindeblad noted that if the lettering was adjacent to a fascia location it would be called a wall sign, not a roof sign.” Nancy Wallerstein moved the minutes of the November 4, 2014 meeting of the Board of Zoning Appeals be approved as corrected. The motion was seconded by Bob Lindeblad and passed by a vote of 4 to 0 with James Breneman and Gregory Wolf abstaining.

**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**

Vice-Chairman Nancy Vennard called upon the applicant for BZA2014-04. Mr. Mancuso requested the Board continue this application for 30 days as his builder was preparing revised plans for consideration. The continuance was granted, Mr. Mancuso will submit revised plans to the staff for review by December 15th.

**BZA2014-07 Request for a Variance from Section 19.06.035 “Rear Yard” for a
reduction from the 25’ setback to 6’
3905 Delmar Drive**

Gregory Shondell, 3905 Delmar Drive, stated he is requesting a rear yard variance in order to convert the existing garage to a bedroom/office and a closet/storage room. The house was built in 1955 and is on a slab foundation. The applicant desires to maintain a ranch style home in order to accommodate the family in preparation for aging. The proposed addition is for a three-car garage. One of the bays would tandem stack two vehicles.

The lot has a 40-foot platted setback, but the house was built approximately 50 feet from the front property line. The house is also positioned at an angle on the lot which makes it more difficult to expand.

Mr. Shondell noted they had considered expansion with a second floor, but that would defeat the purpose of the ranch style home. Another option was to build a stand-alone structure in the rear yard. The city code does permit a stand-alone garage. A stand-alone garage must be 60 feet from the front property line and 3 feet from the rear or side property line, but cannot exceed 576 sq. ft. That is a 24' x 24' building, which would be a two-car garage rather than three. It would be difficult to put that size garage in the southeast corner of the lot.

The proposed addition would extend 19 feet into the rear yard setback. It was noted the existing home already encroaches the rear yard setback by 17 feet. The proposed garage would be located within the footprint of an existing shed that is currently on the property. Mr. Shondell noted that the shed would be unnecessary and removed if he was allowed to construct the three-car garage.

Larry Levy noted he visited this site and stated he would like to see a fence constructed or some landscape buffering planted. Mr. Shondell stated he was not comfortable with a fence but would be supportive of a landscape buffer.

Bob Lindeblad asked what was unique about this lot. Mr. Shondell responded the lot is elevated and house sets at an angle with the driveway in the shape of an "S" going around to the back making it very difficult to get cars out. He also added the house is built on a slab.

Larry Levy stated he felt the elevation of the lot and the placement of the existing house make this property unique. Nancy Vennard agreed that this lot had an unusually high elevation.

Mr. Lindeblad asked how big his existing garage was. Mr. Shondell responded it was a two car garage. The third garage would be located tandem to minimize the size of the footprint. Mr. Levy noted there is substantial yard on the east side of the house.

Bob Lindeblad confirmed the current rear yard setback was 17.4 feet. He asked if the construction could be moved more to the east. Mr. Williamson replied that doing so would also require a variance.

However, Mr. Williamson noted that because of the way the house is positioned on the lot, another option would be to add on to the front of the garage which is now the driveway. It appears there is adequate room to build this addition and still meet the setbacks.

Nancy Vennard led the Board in consideration of the essential criteria for the approval 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.

In order for the property to meet the condition of uniqueness, it must have some peculiar physical surroundings, shape, or topographical condition that would result in a practical difficulty as distinguished from a mere inconvenience to utilize the property without granting the variance.

The lot is not irregular in shape, but the house was located an additional 10 feet back from the street which limits the expansion area. It should also be noted that the house is on a slab foundation so an office/bedroom cannot be put in the basement.

Larry Levy noted the elevation of this lot is unusually high and moved that the Board find that the variance does arise from a condition unique to this property. The motion was seconded by Nancy Wallerstein and passed by a vote of 5 to 1 with Bob 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 existing house sets back approximately 17.5 feet from the rear property line, which is in violation of the 25-foot rear yard setback required by the Zoning Ordinance. It is a non-conforming building, and should not be enlarged. It was pointed out that this portion of the Homestead Country Club is being proposed for single-family lots which would abut this lot. Therefore, this proposed expansion could adversely affect the rights of adjacent property. The property to the east would not be affected because the garage is located on that side and the house sets at an angle. The lot to the west would not be affected.

Bob Lindeblad stated the variance would leave a 5' rear yard. The zoning required rear yard setback is 25'. Mr. Lindeblad noted the house currently has a 17.5' setback and that a two-car garage could be constructed without further violating the established setback.

Nancy Wallerstein moved that the Board find the variance would adversely affect the rights of the adjacent property owners. The motion was seconded by Gregory Wolf and passed by a vote of 4 to 2 with Larry Levy and James Breneman voting in opposition.

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 way the house is laid out on the site, and the fact that it is built on a slab foundation, makes it difficult to expand. The house also has an unusual configuration; however, it appears that expansion to the front of the garage may be an opportunity.

Nancy Vennard stated it appeared that the hardship would be having a two car garage rather than a three car garage. Mr. Shondell noted that he needs accommodations for three cars. Gregory Wolf confirmed the location of the existing shed on the property.

Gregory Wolf moved that the condition of unnecessary hardship upon the property owner cannot be found to exist. The motion was seconded by Bob Lindeblad and passed by a vote of 5 to 1 with Larry Levy voting in opposition.

D. Public Interest

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

The proposed variance would not adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare.

Gregory Wolf moved the Board find favorably on the criteria for Public Interest. The motion was seconded by Nancy Wallerstein and passed unanimously.

E. Spirit and Intent of the Regulation

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

The applicant is requesting a variance of the rear yard setback to reduce it from 25 feet to 5 feet, which is significant. Unless there is some major topographical feature that restricts development a variance should be minor.

Bob Lindeblad stated the intent of the rear yard setback is to maintain consistent yard setbacks throughout the City. He noted this setback on this property has already been reduced to 17' and moved that the Board find that the granting of the variance would be opposed to the general spirit and intent of these regulations. The motion was seconded by Gregory Wolf and passed unanimously.

Bob Lindeblad asked the applicant if he would be willing to accept a 17' variance and not build beyond the current setback.

David Waters advised the Board that in order to grant a 17' variance they would need to reconsider each criteria on that basis. Nancy Wallerstein stated she would like to see the actual plans prior to voting on the variance.

Gregory Wolf moved that application BZA 2014-07 be continued to the January 6th meeting of the Board of Zoning Appeals at which time the Board will consider a revised request for a variance of 17 feet. The motion was seconded by Bob Lindeblad and passed unanimously.

Mr. Shondell was advised to resubmit plans to staff for review by December 15th.

OTHER BUSINESS

It was noted that the Board will meet on January 6, 2015 to reconsider BZA2014-04 and BZA2014-07 which have been continued and will hear a new application for a rear yard setback variance at 5107 West 66th Terrace.

ADJOURNMENT

Vice Chairman Nancy Vennard adjourned the meeting of the Board of Zoning Appeals at 7:05 p.m.

Nancy Vennard
Vice-Chairman

PLANNING COMMISSION MINUTES
December 2, 2014

ROLL CALL

The Planning Commission of the City of Prairie Village met in regular session on Tuesday, December 2, 2014, in the Municipal Building Council Chambers at 7700 Mission Road. Chairman Bob Lindeblad called the meeting to order at 7:15 p.m. with the following members present: Nancy Vennard, Nancy Wallerstein, Larry Levy, James Breneman 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; Keith Bredehoeft, Director of Public Works and Joyce Hagen Mundy, City Clerk/Planning Commission Secretary.

APPROVAL OF MINUTES

Larry Levy moved for the approval of the minutes of November 4, 2014 as submitted. The motion was seconded by Nancy Wallerstein and passed by a vote of 4 to 0 with James Breneman and Gregory Wolf abstaining.

PUBLIC HEARINGS

**PC2014-08 Request for Amendment to Special Use Permit for Private School
 3531 Somerset Drive
 Zoning: R-1a
 Applicant: Kathy Morrison, Highlawn Montessori School**

Kathy Morrison, Director of Highlawn Montessori School at 3531 Somerset, provided a history of the school which was established in 1963 in Prairie Village and originally was located in the "Old Woolf Farmhouse" behind the library. They purchased this site from J.C. Nichols in 1969 and as a part of the purchase both parties agreed to certain restrictions. The restrictions were between J.C. Nichols and the Friends of Montessori Association. In general the restrictions limited the use of the property to a school or residential. When established in 1963, the school served 20 children ages three to six in one classroom.

The Governing Body approved the first phase of the Highlawn Montessori School as a Special Use Permit on March 7, 1977; the second phase was approved on April 16th, 1984; a third phase was approved on October 18, 1993; in June, 2009 the expansion to a lot to the east for playground and open space was approved; and on March 19, 2012 the addition of two new second floor classrooms on the east building was approved. The Highlawn Montessori School has had a long history in this neighborhood and has consistently grown and expanded to accommodate its students. Currently the Highlawn Montessori School has a capacity of approximately 168 students. There are five Primary

Classes of children ages three to six and two elementary classrooms for children from first to sixth grade. Each classroom can accommodate 24 children.

Highlawn's elementary program currently serves 46 students in grades 1 - 6 and is located in the 2 classroom, second story addition to the East Building that was completed in 2012. They are seeking permission to add a second story addition to the West building. The addition would include space for two additional elementary classrooms as well as a multi-purpose room that would be used for lunch, art, special programs or speakers and after school clubs. The addition of the two elementary classrooms would expand Highlawn's Elementary program from two multi-age classrooms serving 48 students in grades 1-6 to four classrooms with space for 48 additional students.

Mrs. Morrison stated she currently has 50 students on a waiting list for 1st grade. The expansion would bring the total student population to 216 students. During the 2012 expansion concerns were raised regarding traffic congestion. A traffic study was completed and changes were made to monitor traffic with the assistance of Sgt. Carney of the Prairie Village Police Department. At that time, changes were also made to Somerset creating an extra lane that allows vehicles to stack while waiting for students. Mrs. Morrison stated that she would continue to work with Sgt. Carney and noted the traffic study recently updated by GBA found that the small increases in the overall trip generation by the proposed expansion will not cause any particular traffic concerns during the critical weekday morning and afternoon peak traffic times when no vehicle queuing was currently observed on Somerset Drive beyond the adjacent Public Works facility driveway. It appears that the school's existing parking lots and dedicated right-turn lane are being used effectively during these times to minimize any traffic impacts on the adjacent segment of Somerset Drive. Mrs. Morrison noted that many of the families have students in both the pre-K and elementary programs with all students arriving and leaving during the elementary hours, not the peak pre-K traffic hours.

The architect for the project Craig Luebbert, with Nolte and Associates 9400 Reeds Road, Suite 200, reviewed the proposed plans for the expansion. Several meetings were held with city staff in the preparation of the plans. The plan adds 9 parking spaces to the site for a total of 22 spaces. City Code requires 20 spaces. The proposed west elevation adds the second story and creates an indentifying main entrance to the school with a tower element and curved entry. The construction materials and color will match the existing building.

Ron Williamson noted there have been several meetings on this project involving the City's Building Official, Sgt. James Carney and Fire Department representative. The primary concern has been with traffic and a condition of approval has been added to specifically address potential issues in this area.

Mr. Williamson noted additional language needed to be added to Condition 7 for clarification. The condition should read "That the Special Use Permit be approved for an indefinite period of time provided that the applicant obtains a building permit and starts construction on the building within two years after the date of approval by the Governing

Body unless the applicant shall reappear to the Planning Commission and Governing Body to receive an extension of time prior to the expiration.

Bob Lindeblad confirmed that the applicant had reviewed and accepts the recommended conditions of approval.

The applicant held a meeting on October 24th and a second meeting on November 19th in accordance with Planning Commission Citizen Participation Policy. Summaries of those meetings are attached. The issue of concern to the neighbors was parking for evening school events at the October meeting. No one appeared at the November meeting.

Chairman Bob Lindeblad opened the public hearing on this application.

Doug Lenhart, 3317 West 81st Street, stated his only concern was with overflow parking on Reinhardt and Windsor when school events occur. Vehicles park on both sides of the street creating a safety hazard in that fire and public safety vehicles are unable to access.

No one else was present to speak on this application and the public hearing was closed at 7:30 p.m.

Kathy Morrison responded that the police department has stated the streets are wide enough for access by public safety vehicles with cars parked on both sides of the street. She noted during all school events, her staff parks in the city's public works facility parking area leaving their parking lot open to parents. She also reviewed the times and number of all school events which have been significantly reduced and generally last for an hour or 90 minutes. The all-school picnic has been moved to Taliaferro Park and back to school nights have been set to only include two or three classrooms at a time.

Chairman Bob Lindeblad led the Commission in the following review of the factors for consideration for the approval of special use permits and the Golden Factors:

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

The property is zoned R-1A Single-Family Residential and has been developed for the Montessori School since 1977. The existing buildings set back approximately 32' from Somerset Drive and meet all other set back requirements. The proposed building height is 34' 11" which is within the 35' height limit of the regulations. The lot coverage is currently 10.5 percent and since the proposed expansion is on the second floor the lot coverage will not increase. The 30 percent lot coverage would allow approximately 23,138 sq. ft. The proposed expansion does comply with the intensity of use, yard and use regulations.

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

The proposal is to add two additional elementary classrooms and a multi-purpose room. Traffic is already congested in this area during drop off and more so during pick-up times. Traffic is stacked on Somerset Drive and it does present concerns for those entering and leaving the Public Works facility, as well as, those traveling through on Somerset Drive. The school has monitored the traffic and it seems to work reasonably well.

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

The addition of the second floor for the west wing of the facility will not cause substantial injury to the value of the property in the area. The school actually serves as somewhat of a buffer between the homes on Somerset Drive and the Public Works yard to the south.

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

This proposal is for two additional classrooms and a multi-purpose room and is not of a size that will dominate the neighborhood or hinder development or redevelopment. This neighborhood is completely developed.

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

The ordinance requires two off-street parking spaces per classroom and with 9 classrooms and a multi-purpose room that is 20 spaces. Currently there are 14 spaces on the site which includes 2 in the driveway in front of the playground. The ordinance is probably deficient in its requirement, since the parking spaces always seem to be full. The applicant has proposed 8 additional parking spaces for a total of 22 spaces, but that probably is not enough. The ordinance requires that parking must be 15 feet from the property line adjacent to a street and 8 feet from other property lines. The proposed parking meets that requirement.

6. Adequate utility, drainage and other necessary utilities have been or will be provided.

The proposed expansion will be on the second floor and will not create additional hard surface areas; therefore, a storm drainage plan has not been required.

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

No changes are proposed for access. Access is off Somerset Drive. The property is entered at the west drive and exited at the east drive. Traffic circulates around the parking area and children are dropped off and picked up at both the west and north entrances to the building. Traffic backs up on Somerset Drive and there is congestion on the street. A Traffic Study was prepared for the last application and has been updated. The Police Department also conducted a study and both concluded that the addition of the elementary level students should not create major problems. The existing traffic problem is caused by the preschool classes which run from 8:45 am to 11:45 am. The elementary students are dropped off between 8:00 and 8:15 am and picked up from 3:00 to 3:15 pm. The preschoolers are dropped off after and picked up before the elementary students. Currently the preschool is causing traffic concerns and perhaps staggering start times could alleviate this problem. Unfortunately, this is not a traffic problem that can be simply solved through calculations. The solution will need to be determined by actual experience. This is a technical issue that needs to be resolved by the applicant's traffic engineer and the Police Department; and it may take several scenarios to resolve it. A condition needs to be added that that affect.

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

This particular use does not appear to have any hazardous or toxic materials, hazardous processes or obnoxious odors related to its use. There may be some noise generated from the outdoor play of the children, but it should be mitigated through fencing and landscape screening on the adjacent property lines.

- 9. Architectural style and exterior materials are compatible with such styles and materials used in the neighborhood in which the proposed structure is to be built or located.**

The plans submitted indicate the materials will be similar to those used on the rest of the building; however, a new material, stone, has been introduced for the stair tower. The building design is still residential in character and is compatible with the neighborhood.

GOLDEN FACTORS FOR CONSIDERATION:

- 1. The character of the neighborhood;**

The neighborhood is predominately single-family residential with the exception of the Public Works Facility and the sewage pump station that are located to the southwest.

- 2. The zoning and uses of property nearby;**

North: R-1A Single-Family Residential - Single Family Dwellings

East: Leawood R-1 Single-Family Residential - Single Family Dwelling

South: R-1A Single-Family Residential - Public Works Maintenance Yard

West: RP-4 Planned Condominium District - Townhomes

3. The suitability of the property for the uses to which it has been restricted under its existing zoning;

The property has been used as a Montessori School since it occupied the site in 1977. The school has acquired additional property and has continued to expand over the years. The site is suitable for its existing use, but it is outgrowing the site.

4. The extent that a change will detrimentally affect neighboring property;

The proposal is to add two elementary school classrooms and a multi-purpose room which will increase traffic. Traffic is already a concern to the neighbors, but the addition of 48 elementary students should not cause any major traffic problems.

5. The length of time of any vacancy of the property;

The property has not been vacant since the facility was built in 1977.

6. The relative gain to public health, safety and welfare by destruction of value of the applicant's property as compared to the hardship on other individual landowners;

The proposed amendment to the Special Use Permit is to allow a more intense use of the property. This will provide a greater service to the public, but the only hardship that may affect the nearby landowners is increased traffic.

7. City staff recommendations;

Staff is concerned that this site will have reached its maximum development for a private school. The site can accommodate the buildings and the buildings are being designed in a residential flavor. The primary concern is the adequacy of the site to accommodate parking and traffic circulation.

8. Conformance with the Comprehensive Plan.

One of the primary objectives of Village Vision is to encourage reinvestment in the community to maintain the quality of life in Prairie Village. The Highlawn Montessori School is one of the amenities that set Prairie Village apart from other competing communities in the metropolitan area. This application is for the expansion of an existing use within the community and is consistent with Village Vision in encouraging reinvestment.

James Breneman noted that condition #4 references plans dated 10/3/2014; however, the site plan submitted for Planning Commission review is dated 11/19/2014. Mr. Williamson responded the dates should be corrected.

Gregory Wolf moved the Planning Commission find favorably on the factors for consideration and the Golden Factors and recommend the Governing Body approve the requested amendment to the Special Use Permit for a private school at 3531 Somerset Drive subject to the following conditions:

1. That any outdoor lighting installed shall be in accordance with the lighting ordinance.
2. That the following requirements be implemented to address traffic:
 - a. The Montessori School shall coordinate the parent and staff traffic education program with the Prairie Village Police Department Traffic Unit.

- b. If traffic is an issue for either the preschool or elementary classes, as determined by the Police Department, the applicant's traffic engineer will work with the Police Department to resolve the issue. This may result in staggering start times. This will be observed on a semester basis and adjustments will be made accordingly.
- 3. That the applicant use the driveway on the east lot to accommodate at least two parking spaces for staff.
- 4. That the materials be the same as the existing structure, with the exception of adding stone, and that the applicant construct the addition in accordance with the site plan dated 11/19/2014 and the elevation and floor plans dated 10/03/2014..
- 5. That the Special Use Permit be approved for a maximum of nine classrooms (5 primary and 4 elementary) and one multi-purpose room with a maximum enrollment of 24 students per classroom for a total that does not exceed 120 primary and 96 elementary students.
- 6. That the applicant protect existing major trees during the demolition and installation of new improvements.
- 7. That the Special Use Permit be approved for an indefinite period of time provided that the applicant obtains a building permit and starts construction on the building within two years after the date of approval by the Governing Body unless the applicant shall reappear to the Planning Commission and Governing Body to receive an extension of time prior to the expiration.
- 8. If the applicant is found to be in non-compliance with the conditions of the Special Use Permit, the permit will become null and void within 90 days of notification of non-compliance, unless the non-compliance is corrected.

The motion was seconded by Larry Levy and passed unanimously.

Chairman Bob Lindeblad led the Commission in the following review of the criteria for Site Plan for the expansion to Highlawn Montessori School at 3531 Somerset:

A. The site is capable of accommodating the buildings, parking areas, and drives with the appropriate open space and landscape.

The buildings, parking and open space meet the requirements of the zoning ordinance, however, more parking than is required by the ordinance is needed to serve this facility. The stacking area for vehicles particularly during the student drop off and pick-up times is not adequate on site to handle the demand, and cars stack up on Somerset Drive waiting for a class to let out. This problem is not unique to Highlawn Montessori, but is a problem shared by all schools. The applicant is providing 22 parking spaces on site; which the requirement is 20 spaces.

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

This site is currently served by utilities and they should be adequate to serve the proposed expansion.

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

This is a second story addition and the impervious surface will be increasing very little. The removal of the house on the lot to the east reduced the land surface area for the school significantly for the total site. The existing stormwater drainage should be

adequate to handle the minimal increase and a stormwater management plan was not required.

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

This is a concern because traffic stacking up on Somerset Drive causes congestion during drop off and pick-up times. The congestion apparently causes people to drive carefully along Somerset Drive and there are few accidents. This was addressed in detail in the Special Use Permit Application.

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

When the expansion was approved in 2012 it was pointed out that this site is nearing its maximum capacity to accommodate additional development. The site is irregularly shaped and it has elevation change that makes it a difficult site for design. The proposed expansion is a second story which makes good sense considering the challenges of the site. The proposed expansion is generally consistent with good land planning and site engineering design principals with the exception that the site cannot accommodate the traffic and vehicles stacking up on Somerset Drive.

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

The proposed second floor expansion will be connected to the second floor of the east building that was just completed. The proposed materials will generally be the same as used in the east building. Stone is being added to the west elevation at the entry which is a new material and it helps break up the building façade. The calculated building height will be approximately 29 feet and the height to the top of the ridgeline will be approximately 3 feet, which is well below the maximum height for a single-family dwelling. Although the building is large, it still retains a residential character.

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

One of the primary objectives of Village Vision is to encourage reinvestment in the community to maintain the quality of life in Prairie Village. The Highlawn Montessori School is one of the amenities that sets Prairie Village apart from other competing communities in the metropolitan area. This application is for the expansion of an existing use within the community and is consistent with Village Vision in encouraging reinvestment.

Gregory Wolf moved the Planning Commission approve the proposed site plan for the expansion of the Highlawn Montessori School subject to the following conditions:

1. That any outdoor lighting installed shall be in accordance with the lighting ordinance.
2. That the proposed addition use the same materials, except for the addition of stone, and be painted the same color as the existing buildings as shown on the elevations and floor plan drawings dated 10/3//2014 and the site plan dated 11/19/2014.

3. That the applicant protect existing major trees during the demolition and installation of new improvements.

The motion was seconded by Nancy Wallerstein and passed unanimously.

PC2014-09 Request for Special Use Permit for Homestead Country Club 6510 Mission Road

Chairman Bob Lindeblad recused himself from consideration of the next two applications due to a professional conflict of interest as an employee of BHC Rhodes.

Vice Chairman Nancy Vennard moved to the Chair.

Mark Johnson, with BHC Rhodes, 7101 College Blvd., noted he would be making comments on both the application for the Special Use Permit for Homestead Country Club and the related request for preliminary plat approval for Homestead Estates as they are closely related. To ensure the financial stability of the Club, Homestead Country Club is selling off the front 5.62 acres for development of 11 single-family lots. Homestead will be reduced in size from 14.48 acres to 8.86 acres. There will be some major changes in the Site Plan as a result of the sell-off. The existing Club House and pool concession building will be demolished and the north four tennis courts will be repurposed for parking. With the Club House removed, the need for parking will be significantly reduced. The Club will include the fitness center/restaurant, four paddle courts, the swimming pool and twelve tennis courts. Four of the courts are enclosed during the winter months with an air supported structure.

Mr. Johnson stated that both applicants have reviewed the staff comments and are in agreement with them .

Ron Williamson noted that due to filing requirements condition number 2 regarding the demolition of the Club House and pool concession needs to be revised as follows:

2. That the Club House and pool concession building be demolished 90 days after the recording of the Final Plat of Homestead Estates.

Staff also recommends the addition of condition #12 to read: That the applicant work with Public Works for approval of the storm water management plan. Keith Bredehoeft stated the preliminary storm drainage plan has been submitted and the city is working with them on preparation of the final storm drainage plan.

Ron Williamson noted this application is for only that portion of the property that will remain as the Homestead Country Club. The Special Use Permit covering the area to be sold off will automatically expire six months after it is abandoned or discontinued by ordinance.

The applicant held a neighborhood meeting on November 24, 2014, in accordance with the Planning Commission Citizen Participation Policy and nine neighbors attended. The majority of the questions were about the operation of the Homestead Country Club and

very little about the specifics of the application. The neighbors asked about the public street and parking.

Larry Levy said he would like to see a six foot fence separating the club property from the residential properties particularly on the west side if not around the entire club.

Marc Abbott, attorney with Polsellini, responded there has been discussion of a green buffer zone between the properties, but not a fence. Mr. Levy stated he feels it is the club's responsibility to provide privacy for the residents on the neighboring properties. He would like to see this provide some sound mitigation as well. Mr. Abbot restated the applicant is looking at a landscape buffer on the east side.

Brian Collins, Manager of Homestead Country Club, noted the club has to have a fence around its pool and they plan to add a green buffer.

Larry Levy stated his preference is to see fence surrounding the perimeter of the club. He feels this is necessary to secure the sale of the residential lots. Mr. Collins stated the owners will be aware of the surrounding property when they purchase the lot. The club will work with the developer on this issue.

Nancy Vennard asked the Commission if they wanted added as a condition that the applicant prepare and submit to staff a landscape and screening plan for review and approval. The Commissioners added this as condition 13.

Vice Chairman Nancy Vennard opened the public hearing on the request for a special use permit for Homestead Country Club.

Tim Butt, 3909 Delmar Drive, expressed the following concerns to the Commission: First, the City does not have an Architectural Review Board and he is concerned with a possible lack of cohesiveness among the eleven homes to be built. He noted at some time there was discussion about of four foot wrought iron fence surrounding the property. He wants to see some kind of visual barrier separating the properties, preferably landscaping and a fence. Mr. Butt noted parking issues from events held at the Country Club with cars parking along both sides of Delmar and fears with reduced parking this will be a problem. He would like to see the country club notify the City of events with more than 90 persons and have the city place no parking signs on one side of the street.

Nancy Vennard replied that without a clubhouse, the club will not be catering large events. She asked if the problem was at a particular time. Mr. Butt replied it was more often in the summer. Brian Collins responded they have worked with the police department and have an arrangement for parking in the Village Church Parking lot. There were two events this past summer and no parking signs were posted.

David Heim, 4009 Delmar Drive, stated he shares Mr. Butt's concerns particularly as they relate to the maintenance of greenspace and landscaping between the properties. He also noted past problems with stormwater runoff. Mr. Heim noted this property abuts

the new homes to be constructed and will be looking directly into their backyard so he would like to see some type of privacy barrier. Mr. Heim confirmed the maximum height allowed for a house is 35 feet. He wants to be certain the setback from the back property line is maintained.

Cindy Worthy, 4306 Homestead, stated that she would like to see consistency in the screening provided and that it should be around the entire country club property, not just the new homes.

Jim Bell, 4322 Homestead Circle, stated there was a deed restriction on this property that the property remains part of the Indian Fields Homes Association or if they form their own homes association that it follow the building and lot restrictions. He wants the City to make sure these restrictions are met. Mr. Corey Childress, the builder/developer for this property noted that these are to be high end homes in the \$2M range.

Ron Williamson responded that the new area is zoned R-1a and that the only issues addressed by the plat are easements and right-of-ways. David Waters, representing the City Attorney, stated the city is not involved in private deed restrictions. They are a private contract. The city's responsibility lies with the appropriate zoning.

Mary Ann Murray Simons, 4110 Homestead, stated that she hoped the fitness center would be painted as the paint is peeling and the dead landscaping along the platform tennis courts replaced. Brian Collins stated the Club is aware of these needs, but they are not in the current plans. Nancy Vennard asked what were the plans for improvement. Mr. Collins replied, not immediately, but eventually.

Kate Gunja stated the peeling paint is a maintenance code violation and she will have it investigated by the Code Enforcement Officer who will work with the Club.

With no one else wishing to address the Commission, the Public Hearing was closed at 8:15 p.m.

Vice Chairman Nancy Vennard led the Commission in the following review of the factors for consideration of Special Use Permits and the Golden Factors relative to this application:

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

The existing facilities comply with the intensity of use regulations, yard regulations and use limitations.

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

The applicant is requesting approval to continue the use of the existing facilities except for the Club House and pool concession building which will be removed and the north

four tennis courts. The club has been in operation for over 60 years and has not had an adverse effect on the welfare or convenience of the public.

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

The Homestead Country Club has operated at this location for over 60 years and has not caused any substantial injury to the value of property in the neighborhood. The proposal at this time is to reduce the size of the facility which should be a benefit to the surrounding neighborhood.

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

The proposed Special Use Permit is a reduction in the size of the Homestead Country Club operation. The immediate surrounding neighborhood is totally developed. It should be noted that several tear down/rebuilds have occurred in the area and the east 5.62 acres will be developed for single-family lots. The proposed use will not hinder development in the area.

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

The ordinance does not have a parking standard for a Country Club and based on the recent amendment to the Off-Street Parking Requirements, the Planning Commission, with the approval of the Governing Body, determines the parking assignment for such uses.

The parking requirement will be the total of the parking for each individual use. Staff has used standards from the Prairie Village Ordinance where appropriate and standards from other ordinances when the use is not included in the City Ordinance. The proposed use includes the tennis courts, platform tennis courts, restaurant, fitness center and swimming pool. The Club House will be demolished so parking will not be required for it.

The following is a discussion of each use and a recommended parking requirement:

- a. Restaurant: The restaurant is included in the Prairie Village Ordinance and it requires one space per 2.5 seats. The restaurant has 28 seats inside, which requires 11 spaces, and 35 seats outside, which requires 14 spaces, for a total of 25 spaces. This restaurant serves only members and their guests. It is not open to the public as other restaurants are. So the restaurant itself is not really a traffic

generator. It is suggested that the parking for the restaurant be reduced to half the normal requirement and require 13 spaces rather than 25.

- b. Fitness Center: This use is also included in the Parking Ordinance which requires one space for each 250 sq. ft. of gross floor area. The floor area is 3,234 sq. ft. which requires 13 spaces.
- c. Tennis Courts: The Parking Ordinance does not have a requirement for tennis courts. The north four tennis courts will be repurposed for a parking lot and the net result will be 12 tennis courts. There are also four platform tennis courts. The range in parking space requirements is from one to four, with two to three being the most common. Platform tennis courts are not mentioned in any ordinances. Since this is a multi-use area it is recommended that two spaces per court be required which would result in 24 spaces for the regular tennis courts and 8 spaces for the platform tennis courts. The platform tennis courts are only used from October through March, so they are seasonal. In cold weather 8 of the 12 tennis courts are not used.
- d. Swimming Pool: Very few cities have a parking requirement for private pools so the available data is very limited. Leawood is the only city in this area that has a requirement and it is 10 spaces per lifeguard. Homestead has four lifeguards and based on Leadwood's ordinance 40 spaces would be required.
- e. Parking Summary

Restaurant	13 spaces
Fitness Center	13 spaces
Tennis Courts	24 spaces
Platform Tennis Courts	8 spaces
Swimming Pool	<u>40 spaces</u>
	98 Total Spaces

The plan proposes 99 spaces and would meet this requirement.

This should accommodate normal use. Homestead has an agreement to use the Village Presbyterian Church parking lot for major events such as swimming meets or tennis tournaments.

The ordinance requires parking lots to be 15 feet from a public street and 8 feet from a property line. This may require some adjustment of the parking lot location.

6. Adequate utility, drainage and other necessary utilities have been or will be provided.

The applicant submitted a Storm Drainage Master Plan that also includes the area proposed for single-family development. Detention will be required and an area is shown on the proposed plan between the two parking lots. The Storm Drainage Report needs further analysis and the applicant will need to work with Public Works to resolve questions.

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

In the future Homestead Country Club will be served by Homestead Court which will be a public street. The street will terminate with a cul-de-sac which will provide access to Homestead. Until the street is constructed, Homestead will need an access easement so that access is provided continuously.

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

Recreational uses can generate noise because of outdoor activities; however, the noise should be no greater than the existing development has been. No hazardous or toxic manufacturing or obnoxious odors will be generated by the use.

- 9. Architectural style and exterior materials are compatible with such styles and materials used in the neighborhood in which the proposed structure is to be built or located.**

No new improvements are proposed. The Country Club will have the same facilities that exist with the exception of the Club House and pool concession building which will be demolished. The existing buildings were designed in a manner that is compatible with the surrounding residences.

GOLDEN FACTORS FOR CONSIDERATION:

- 1. The character of the neighborhood;**

The neighborhood is residential in character with a church and an elementary school to the south and a middle school to the north. The Country Club itself is surrounded by single-family dwellings.

- 2. The zoning and uses of property nearby;**

North: R-1A Single-Family District - Single Family Dwellings

East: R-1A Single-Family District - Vacant

South: R-1A Single-Family District - Single Family Dwellings

West: R-1A Single-Family District - Single Family Dwellings

- 3. The suitability of the property for the uses to which it has been restricted under its existing zoning;**

The property has been used as a Country Club through approval of a Special Use Permit. The use provides private recreational facilities for its members and has been an effective use of the property.

- 4. The extent that a change will detrimentally affect neighboring property;**

The facilities that will remain are the ones that exist now. The Club House will be demolished which should reduce traffic to the site which should have a positive effect on the neighboring properties.

- 5. The length of time of any vacancy of the property;**

The property has not been vacant for over 60 years.

6. The relative gain to public health, safety and welfare by destruction of value of the applicant's property as compared to the hardship on other individual landowners;

The Country Club is already developed and is an amenity for the residents of the area. The Country Club has been in existence for over 60 years and has not caused a hardship on other individual landowners.

7. City Staff Recommendations.

The Country Club is essentially the same operation with the exception of the Club House. It has operated in the neighborhood for over 60 years with minimal disruption of the neighborhood and it is recommended that the reduced operation be approved.

8. Conformance with the Comprehensive Plan.

Homestead Country Club is an amenity that provides value to the quality of life in Prairie Village. Residents of Prairie Village highly value the quality of life in the City and maintaining that high quality is of primary importance to the residents.

Gregory Wolf moved the Planning Commission find favorably on the factors for consideration and the Golden Factors recommend the Governing Body grant a Special Use Permit for a private club at 6510 Mission subject to the following conditions:

1. That the required parking of 98 spaces be approved for the project.
2. That the Club House and pool concession building be demolished within 90 days after the recording of the Final Plat of Homestead Estates.
3. That the air supported structure be allowed to be put in place from October 1st to April 30th each year, and the hours of operation be approved from 6:00 a.m. to 10:00 p.m., Monday through Friday, and 8:00 a.m. to 10:00 p.m., Saturday and Sunday.
4. That the Special Use Permit be approved for a Country Club/Private Club which includes swimming, physical fitness, tennis, other similar recreational facilities and dining activities including the sales of beer, wine and alcoholic beverages, all of which will be available only to members and their guests.
5. That the Club shall comply with all statutes of the State of Kansas and all ordinances of the City of Prairie Village relating to alcoholic liquor and/or cereal malt beverage and the sale or dispensing thereof.
6. That the Special Use Permit shall run with the land.
7. That any significant change to the exterior of any existing buildings, the replacement of buildings, the expansion of buildings, the construction of new buildings or changes to the site such as entrances and parking and major grading changes shall be submitted to the Planning Commission for Site Plan review and approval.
8. That the Special Use Permit be approved for an indefinite period of time, if however, it is discontinued or abandoned the Special Use Permit will expire in accordance with Section 19.20.055. Expiration of Special Use Permits.
9. If the applicant is found to be in non-compliance with the conditions of the Special Use Permit, the permit will become null and void within 90 days of notification of non-compliance, unless the non-compliance is corrected.
10. That the applicant obtain an easement of access to serve this property until Homestead Court is constructed.

11. That parking lots shall be 15 feet from the street and 8 feet from other property lines.
12. That the applicant work with Public Works for approval of the Final Storm Water Management Plan.
13. That the applicant prepare and submit to staff a landscape and screening plan for review and approval by Staff

The motion was seconded by James Breneman and passed by a vote of 4 to 0 with Larry Levy abstaining.

Vice Chairman Nancy Vennard led the Commission in the following review of the 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 proposed Country Club will be reduced in size from what currently exists. The Club House and pool concession building will be demolished and an existing bank of tennis courts will be converted to parking. The site is adequate to accommodate these needs and still provide open space and landscape.

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

Utilities currently serve the proposed facility and no additional utilities are anticipated.

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

A Storm Water Master Plan has been submitted and a detention pond will be provided on the site. Since this detention pond will also serve a portion of the new residential subdivision, it will need to be maintained in a fully functional condition. Details on storm drainage needs to be approved by the Public Works Department.

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

The site will be served by a public street when Homestead Estates is platted. The street is a cul-de-sac and will provide public access.

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

The development is really not changing much from what exists now. A new parking lot will be built and the Club House and pool concession building will be demolished. The remaining facilities are in keeping with good land planning and site engineering.

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

No new buildings or structures are proposed. The Country Club will have the same facilities that exist with the exception of the Club House and pool concession building, which will be demolished. The existing buildings were designed in a manner that is compatible with the surrounding residences.

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

One of the primary objectives of the comprehensive plan is to encourage the reinvestment in the community to maintain the quality of life in Prairie Village. The Homestead Country Club is one of the unique amenities that sets Prairie Village apart from competing areas south of I-435 and the City should support the Club in order to maintain its competitive position. This application is consistent with the comprehensive plan in encouraging reinvestment in the community.

James Breneman moved the Planning Commission approve the Site Plan for the Homestead Country Club as shown on the Homestead Country Club Special Use Permit submittal drawings dated October 27, 2014. The motion was seconded by Gregory Wolf and passed by a vote of 5 to 0.

NON-PUBLIC HEARINGS

PC2014-123 Preliminary Plat Approval - Homestead Estates 6510 Mission Road

Mark Johnson, with BHC Rhodes, stated that Evan Talan Homes has a contract to purchase the east 5.62 acres from the Homestead Country Club to develop 11 single-family lots. The 11 single-family lots vary in size from 14,500 sq. ft. to 22,560 sq. ft. in area. The minimum area in the R-1A District is 10,000 sq. ft. so the lots more than adequately meet that requirement. The lots will be served by a public street, Homestead Court. Homestead Court is a cul-de-sac that is approximately 770 ft. in length. The street will also provide access to the Homestead Country Club.

Ron Williamson noted Staff was initially concerned that the development of this portion of the tract would not preclude development of the remaining 8.86 acres in the event that should occur. The site has an unusual shape, but it appears that the remaining area could be reasonably developed for single-family dwellings and this proposed plat would not preclude that from happening.

There are two tracts of land at the intersection of Homestead Court and Mission Road.. These need to be identified and, if they are common space, covenants are needed to guarantee maintenance.

Mark Johnson responded that the area on the north side is for the placement of an identification monument sign for both the subdivision and country club. The area on the other side is open green space.

James Breneman noted the grading plans designate this area as a detention pond with an outlet.

Mr. Johnson stated this area was initially thought to be needed for drainage retention. Based on the preliminary stormwater management plan this is not needed so the area will stay as open green space. Keith Bredehoeft responded that if necessary, any detention basin will be located as shown.

Mr. Breneman questioned the retaining wall shown on the back of lot 11 and along the parking areas on Sheet 2. Mr. Johnson stated he will need to clarify this.

Mr. Breneman also noted that the contours on the plat and the legends for the contours do not match. Mr. Johnson stated that this will be corrected.

STREETS

The proposed subdivision will be served by a public street which will also provide access to the Homestead Country Club.

The proposed street, Homestead Court, is a cul-de-sac and is approximately 770 feet in length. The subdivision regulations state that cul-de-sacs shall generally not exceed 500 feet in length. The minimum diameter of the cul-de-sac paving is 80 feet back of curb to back of curb. The right-of-way diameter of the cul-de-sac appears to be 100 feet which should be adequate to meet the paving requirement.

Mr. Williamson noted that in order to approve the 770-foot cul-de-sac length, the Planning Commission will need to authorize a variation. The subdivision regulations provide for variations whenever it is found that the land included in a subdivision plat, presented for approval, is of such size or shape or is subject to, or is to be devoted to such usage that full conformity to the provisions of this title is impossible or impractical. In authorizing such variations or conditional exceptions, the Commission shall find the following:

1. That there are special circumstances or conditions affecting the property;
2. That the variation of exception is necessary for reasonable and acceptable development of the property in question;
3. That the granting of the variation or conditional exception will not be detrimental to the public welfare or injurious to other property in the vicinity in which the particular property is situated.

This is an irregular shaped property which would not allow for a looped street to be built. It is narrow at the entrance from Mission Road and the proposed layout is a practical solution. The proposed residential development is being planned around existing Homestead Country Club facilities and the proposed layout is reasonable and acceptable. The developer will be required to install fire hydrants as required by the Fire District for safety purposes. The proposed length of the cul-de-sac will not be detrimental to the public welfare or injurious to other property in the area.

SIDEWALKS

The subdivision regulations require sidewalks on both sides of the street; however, the City Policy is sidewalks on one side of residential streets and both sides of major streets. The applicant has proposed a sidewalk on the south side of Homestead Court which should serve the development and provide good pedestrian access to Homestead Country Club. Staff recommends approval of the sidewalk as proposed.

UTILITIES

Utilities already serve the site and the applicant is working with the various utility companies and agencies to provide necessary utilities; water, sewer, power, communications, gas, etc. to each lot. The applicant will need to work with the Fire District to determine the location of the fire hydrants. There is a water line easement along the south property line which is also in Lot 3. This easement will need to be vacated and the line relocated.

STORM DRAINAGE

The applicant has submitted a Storm Drainage Master Plan; however, it appears that additional analysis will be needed. The applicant needs to work with the Public Works Department to develop an acceptable solution for storm drainage. There are two parcels at the intersection of Mission Road and Homestead Court that are not identified on the plat. They need to be identified and if common areas, covenants need to be prepared to guarantee their maintenance.

BUILDING SETBACK LINES

Thirty-foot setback lines are platted on all the residential lots which is the minimum requirement of the R-1A Zoning District.

TREES

There are many mature trees on the site. Unfortunately, many of these will be lost due to the development. KCP&L is rebuilding its power lines on the north and south boundaries of the property and is removing many mature trees as a part of the project. The rebuilding of the power lines is not related to this project. The area has experienced numerous outages and the system needed to be upgraded. The applicant needs to preserve as many of the mature trees as possible.

EXISTING IMPROVEMENTS

The Homestead Club House, the pool concession building, and other improvements that are located on this property will need to be removed prior to the recording of the Final Plat. When the Final Plat is recorded the lots must be available for development and have no contingencies.

The applicant held a neighborhood meeting on November 13, 2014 and approximately 28 people were in attendance. The questions were related to how drainage would be handled, the new street, the proposed homes and construction while the homes were being built. The new street will be public and the storm drainage will be addressed with Public Works.

Vice Chairman Nancy Vennard led the Commission in the following review of the conditions for approval of the preliminary plat for Homestead Estates:

1. The size of the lots which currently abut the proposed subdivision:

There are six lots abutting the north side of the proposed subdivision and they range in area from 13,996 sq. ft. to 19,604 sq. ft., with the average being 15,745 sq. ft. There are

five lots abutting the south side and they range in size from 15,157 sq. ft. to 16,307 sq. ft., with the average being 15,668 sq. ft. The average for the 11 lots is 15,710 sq. ft.

2. The average size of lots which are within 300 feet of the proposed subdivision:

There are 24 lots within 300 feet in Prairie Village, and the average is 15,445 sq. ft. There are 7 lots in Mission Hills that are less than 25,000 sq. ft., and within 300 feet of the proposed subdivision. The average of these lots is 21,865 sq. ft. The proposed lots in the subdivision range in size from 14,500 sq. ft. to 22,560 sq. ft., with an average of 16,377 sq. ft. per lot.

3. The fact that the width of the lot is more perceptible and impacts privacy more than the depth or the area of the lot:

The R-1A Single-Family District requires a minimum lot width of 80 feet and a minimum lot depth of 125 feet. All the lots have a lot width in excess of 110 feet. It should be noted that the east lot line for Lot 1 is only 90 feet, but the average for the lot is 125 feet. The lot area is large and will provide an adequate building envelope.

4. The likelihood that the style and cost of homes to be built today may be quite different from those which prevailed when nearby development took place:

The trend in Prairie Village, as well as the metro area, is to build larger homes on infill lots. It therefore can be assumed that the new homes will be larger and higher priced than other existing homes in the area on similar sized lots. Most of the original homes in this area were built in the 50's, so the design and amenities will be significantly different. Also people want larger homes and less yard maintenance. It should be noted that several tear down rebuilds have occurred in the neighborhood which attests to the fact that it is a quality neighborhood.

5. The general character of the neighborhood relative to house sizes, aging condition of structures, street and traffic conditions, terrain, and quality of necessary utilities:

The general quality of the neighborhood is high quality single family dwellings, with an elementary school a short distance to the south and a middle school to the north. The area is ideal for families with children. Housing has been well maintained, new houses have been built and the area is very stable. Traffic is not a concern because there is immediate access to Mission Road and utilities are adequate.

6. The zoning and uses of nearby property:

North: R-1A Single-Family District - Single Family Dwellings
East: Residential Mission Hills - Single Family Dwellings
South: R-1A Single-Family District - Single Family Dwellings
West: R-1A Single-Family District - Homestead Country Club

7. The extent to which the proposed subdivision will, when fully developed, adversely or favorably affect nearby property:

The development of the proposed subdivision will provide 11 new lots to build new residences which should be a further stabilizing factor for the neighborhood. Unfortunately, the immediate neighbors will lose the green space they have enjoyed for over 50 years and there will be a loss of mature trees.

8. The relative gain to the public health, safety, and general welfare if the subdivision is denied as compared to the hardship imposed on the applicant:

There will be no relative gain to the general public if the subdivision is denied. This is a step forward to ensure the financial stability of Homestead Country Club so that it can provide a unique amenity to the area residents in the future.

9. Recommendations of the City's professional staff:

After performing a detailed review, it is the opinion of Staff that the proposed subdivision is a good proposed use of this area and the lot sizes are compatible with the surrounding neighborhood. Staff recommends that it be approved subject to a number of conditions.

10. The conformance of the proposed subdivision to the policies and other findings and recommendation of the City's Comprehensive Plan:

The proposed subdivision falls into two primary goals of the plan. Since Prairie Village is fully developed, growth can only occur through internal redevelopment and this subdivision provides an opportunity for growth. Also this subdivision is located in close proximity to schools, churches and shopping areas, and provides the opportunity to develop an area with a high quality of life, which is much desired by the residents of Prairie Village.

In accordance with Section 18.04.090.B., the Planning Commission determined that the following minimum standards for Homestead Estates were met:

1. No single-family lot shall have less width, depth, or area than is set out in appropriate lot size regulations for District R-1A:

The proposed subdivision complies with these requirements. The minimum lot width in R-1A is 80 feet; minimum lot depth is 125 feet, and the minimum lot area is 10,000 sq. ft.; compared to the minimum lot width of 114 feet and the minimum lot area of 14,500 sq. ft. in Homestead Estates Subdivision. The proposed subdivision meets these minimum requirements.

2. Lot width and area shall generally be equal to or greater than the average of the width or area of the existing lots within 300' of the proposed subdivision provided lots or tracts of greater than 25,000 sq. ft. may, if deemed reasonable by the Planning Commission, be excluded from such average:

The average lot width of the lots within 300 feet and located in Prairie Village is 108 feet. All the lots in the proposed subdivision are at least 110 feet in width.

3. The Planning Commission may require the submittal and subsequent recording of covenants to run with the land, such covenants to include such protective restrictions as minimum house floor area, general style and height of house, maintenance of any private streets, screening, preservation of existing vegetation, time allowed for completing construction or other reasonable requirements that will tend to blend the new construction into the existing neighborhood in the shortest possible time:

The applicant will need to submit covenants to guarantee the maintenance of the detention ponds and drainage, if needed.

Ron Williamson noted approval of the monument identification sign will need to come back to the Planning Commission for approval. Based on the discussion, Mr. Williamson suggested the addition of the following two conditions: #12. That the applicant resubmit three copies of the updated and revised Preliminary Plat for Homestead Estates and #13. That the proposed street trees be approved by the Tree Board.

Gregory Wolf moved the Planning Commission approve the Preliminary Plat of Homestead Estates and authorize the filing of the Final Plat subject to the following conditions:

1. That the applicant provide a sidewalk on the south side of Homestead Court.
2. That the final design of Homestead Court be subject to the approval of Public Works.
3. That the applicant pay for the construction of Homestead Court and the sidewalk.
4. That the applicant work with Public Works on the final design of the storm drainage system and that it be approved by Public Works prior to filing the Final Plat.
5. That the applicant prepare covenants to guarantee the maintenance of the storm drainage improvements and common areas, if any.
6. That the applicant protect and preserve as much existing vegetation as possible on the site during construction.
7. That the Club House and pool concession buildings be demolished within 90 days following the recording of the Final Plat of Homestead Estates.
8. That preliminary engineering plans, specifications, and an estimate of cost for the public improvements be prepared for streets, sidewalk and storm drainage, and be submitted with the Final Plat.
9. That the applicant provide fire hydrants as required by the Fire District.
10. That the applicant identify the two parcels on each side of Homestead Court at the intersection of Mission Road.
11. That the applicant vacate the water easement along the south property line and in Lot 3, and relocate the water line.
12. That the applicant resubmit three copies of the updated and revised Preliminary Plat for Homestead Estates
13. That the proposed street trees be approved by the Tree Board.

The motion was seconded by Nancy Wallerstein and passed 5 to 0.

Chairman Bob Lindeblad returned to chair the remainder of the meeting. He called for a ten minute recess. The meeting was reconvened at 8:45.

**PC2014-122 Final Plat Approval - Mission Chateau
8500 Mission Road**

Sterling Cramer, with Olsson Associates, stated the final plat has addressed the 14 conditions for approval of the preliminary plat by the Planning Commission on February

10, 2014. They have reviewed the staff comments and recommended conditions for approval for the final plat and accept them.

Ron Williamson noted Conditions 1, 2, 3 and 5 of the preliminary plat will be addressed as a part of Condition 13. Conditions 6, 8 and 11 are shown on the Final Plat. The applicant has submitted covenants as required in Condition 7. Conditions 9, 10 and 12 will be attached to the Final Plat.

The Subdivision Regulations require the following additional information to be submitted with the Final Plat:

- A. Covenants - submitted condition 7, some minor revisions are needed.
- B. Proof of Ownership - submitted
- C. Review by County Surveyor - submitted for information (The County Engineer will not review the Final Plat until it is approved by the City.)
- D. A Certificate showing all taxes and assessments have been paid - submitted
- E. Construction Documents for streets, sidewalks and storm drainage - submitted

The Final Plat has the Certificate of Property Owner, Certification of Surveyor, Planning Commission approval and Governing Body acceptance of easements and rights-of-way.

Mr. Williamson stated the City does not want the liability or responsibility for maintaining the storm drains within pipes, the detention pond and the Dykes Branch drainage way across the north end of Lot 10. However, it is critical that this storm drainage system not be impaired. Therefore, the following text needs to be added to the Final Plat:

Property Owner Maintenance of Drainage Easements and Improvements

The Owner of Lot 10 shall construct, install and maintain all drainage improvements (pipes, conduit, open drainage and detention areas) located in easements on Lot 10 and shall keep said improvements in good repair and fully functional.

If the City reasonably determines that the drainage improvements require repair or maintenance, including the removal of debris, the City shall provide written notice to such owner indicating the repair or maintenance needed. If said owner does not repair or perform such maintenance within a reasonable period of time, the City may perform the required maintenance or repair and said owner shall reimburse the City for the cost of such work. In undertaking any such repairs or maintenance, the City shall not disturb any improvements or Lot 10 unless necessary to perform such work.

The City shall have no liability associated with the repair and maintenance.

Mr. Williamson responded to several questions called in by a resident. The curb radius and the length of the cul-de-sac have been reviewed and approved by the Fire District. The width of the proposed road meets city criteria and is adequate to accommodate emergency vehicles. The cul-de-sac is approximately 1025 feet long and was approved because the loop driveway from Mission Chateau Senior Homes provides an alternate access.

Andrew Spitsnogle, attorney speaking on behalf of the Mission Valley Neighborhood Association, stated that they felt the final plat should not be approved until the city receives assurances that the applicant will complete the entire project. Mr. Spitsnogle

noted that if only the nine single family homes were constructed with only the road and cul-de-sac and not the loop road it would create a fire and safety risk as without the loop fire and emergency vehicles would not be able to turn around.

They do not feel the plat should be approved until the applicant has provided sufficient sureties that they are ready to go forth with the construction of the entire 18.4 acres. In addition urge the city to require the entire loop road to be publicly dedicated as it is essential for the safety of the entire development.

MVNA would like at a minimum that the city condition approval of the final plat on the applicant providing a sufficient surety to assure that the entire project will be constructed.

David Waters responded he is not aware of any requirement in the code that a surety be provided.

Ron Williamson suggested rewording item 3 adding that the loop drive to Mission Road be constructed at the same time as 85th Circle. He noted that was the intent, but the rewording would clarify it. Ron Williamson stated the drive has to be built to city standards to accommodate fire and safety vehicles.

Sterling Cramer responded that they understand the intent of the condition that the construction of the loop road and the driveway be completed together. There is no intention to build the nine single family homes without the rest of the development at this time.

Chairman Bob Lindeblad confirmed that condition #3 would read: That the west driveway connection and the loop drive to Mission Road from the Senior Housing Community to 85th Circle be constructed at the same time as 85th Circle.

Larry Levy questioned the maintenance of the street. Ron Williamson responded that 85th Circle is a public street that will be maintained by the City, the loop road. The islands and sidewalk will be maintained by the Homes Association and the drainage improvements maintained by the owners of Lot 10. This wording will be added to the final plat.

Larry Levy moved the Planning Commission approve the Final Plat for Mission Chateau subject to the following conditions:

1. That the applicant protect and preserve as much existing vegetation as possible along the property lines.
2. That all existing improvements be removed from the 85th Circle right-of-way and the nine single-family lots prior to recording the Final Plat.
3. That the west driveway connection and the loop drive to Mission Road from the Senior Housing Community to 85th Circle be constructed at the same time as 85th Circle.
4. That the applicant submit the Final Plat to the County Engineer after approval by the City.

5. Add Property Owner Maintenance of Drainage Easements and Improvements to text of Plat prior to submission to the Governing Body.
6. That the applicant make revisions to the proposed covenants as requested by Staff prior to submitting the Final Plat to the Governing Body.

The motion was seconded by Nancy Vennard and passed unanimously.

**PC2013-11 Request for extension to SUP for Mission Chateau
8500 Mission Road**

David Waters, representing the City Attorney, stated on January 6, 2014 the City granted a Special Use Permit for Mission Chateau subject to 14 conditions. Condition #4 provides that “if construction has not begun within twenty-four (24) months of the approval of the Special Use Permit by the Governing Body, the permit shall expire unless the applicant shall reappear to the Planning Commission and Governing Body to receive an extension of time prior to expiration.” This is the request before the Planning Commission.

Mr. Waters reviewed the following history of litigation that has taken place on this project:

- December 11, 2013 - neighboring property owners filed an action in the District Court of Johnson County against the City seeking to enjoin the City from considering the Mission Chateau SUP at the January 6, 2014 meeting. The plaintiffs did not pursue the temporary injunction and the application was considered.
- February 3, 2014 - neighboring property owners filed a First Amended Verified Petition against the City challenging the lawfulness of the adopting Ordinance on a number of issues.
- On September 12, 2014, the District Court issued an order finding that the Governing Body acted lawfully in passing Ordinance #2301 fully satisfying and fully complying with all aspects of Kansas law in its actions leading up to and throughout the passage of Ordinance 2301.
- On October 20, 2014 - MVS filed a motion to stay the expiration of the Mission Chateau SUP during the dependency of the lawsuit and any appeal therefrom.
- On October 30, 2014, the District Court denied MVS’s motion, while simultaneously denying the plaintiffs’ request to alter or amend its original order regarding the cross-motions for summary judgment.
- On October 30, 2014 - the plaintiffs filed an appeal of the District Court’s summary judgment rulings in the Kansas Court of Appeals, which is presently pending and in its early stages.
- On November 6, 2014 - MVS filed a cross-appeal, seeking review of the District Court’s decision which overruled MVS’s motion for a stay of the expiration during the pendency of action.
- On November 26, 2014 - MVS filed a motion with the Kansas Court of Appeals to transfer the appeal to the Supreme Court for review.

Mr. Waters noted the potential timeframe for these actions to move through the court system causing the applicant to be concerned that final action will not be taken until

after the expiration of the SUP per condition #4. Therefore, they are requesting an extension.

In the applicant's request to the City they contend that as a matter of law the City should rule that the 24 month period of construction be stayed pending the resolution of the appeals. However, they have formally requested an extension of the 24 month time period listed in condition four from the date that all appeals are final. In support of the request several case law references were presented.

The City Attorney has advised that there are no Kansas cases which have considered whether equity requires that conditions similar to condition #4 are automatically tolled or stayed if opponents to a special use permit appeal to the District Court. Kansas courts are not bound by case law from other states, and in any event the determination of whether such an equitable remedy should apply depends on the facts and circumstances of each case.

There are no Kansas statutes or provisions in the Prairie Village City Code which impose an automatic stay when zoning matters are appealed, by either automatically staying the right of the successful applicant to build, or automatically staying any time period in which the successful applicant is required to build.

Mr. Waters noted there is case law from other jurisdictions ruling in support of stays during litigation as well as some opposing it. It is not the Planning Commission decision to determine what the case law should be, but simply to consider a request for an extension.

In her memo to the Planning Commission the City Attorney stated that she believed it would not be unreasonable for the Planning Commission or Governing Body to deny an extension based on the following circumstances:

- MVS accepted the conditions of approval for the SUP including condition #4
- MVS opposed the injunction request in the District Court stating it should be up to MVS to take the risk that such structures must be removed if the case is ultimately decided in favor of the Marsh plaintiffs.
- Stays in zoning appeals in Kansas are not automatic, but may be requested by a party.
- The applicant could prevent the expiration of the SUP by beginning construction
- MVS is not without a remedy. The zoning regulations do not prohibit a reapplication for a special use permit should the permit expire.

Mr. Waters noted this is not a public hearing, although the Commission can chose to take comment, there are no criteria, standards or Golden Factors that must be met. The Commission should make a good faith consideration of the request. The Commission serves as a recommending body. The final decision will be made by the Governing Body. There is no protest petition or required vote to override the Commission's recommendation. The Planning Commission may recommend granting the request, recommend denying the request, recommend granting the request for a shorter time frame or send it forward with no recommendation.

Gregory Wolf asked if the requested extension was for the a specific period of time. Mr. Waters stated the request was for a 24 month period beginning after the final judgment of any appeals.

Bob Lindeblad asked what would constitute commencement of construction. Mr. Waters stated there is no definition for “commencement of construction” in the SUP. He feels it would be a determination of the Governing Body.

Timothy Sear, with Polsinelli representing MVS, LLC, reviewed again with the Commission the series of legal challenges that have been filed against this SUP noting the amount of time it has taken for resolution, although positive, of these challenges. Now an appeal of the ruling has been filed which will further delay final judgment until quite possibly beyond the established termination or expiration of the time period given in the Special Use Permit for Mission Chateau approved by the City on January 6, 2014 for the commencement of construction of the project. Mr. Sear reviewed the possible timetable for possible court appeals that will take well beyond the January 6, 2016 deadline.

MVS filed a motion to stay the expiration of the Mission Chateau SUP during the dependency of the lawsuit and any appeal therefrom to prevent the MVNA appeal of the court’s judgment in support of the SUP from essentially keeping the SUP in pending litigation until the expiration of the SUP per condition #4. On October 30, 2014, the District Court did deny MVS’s motion; however, not because there was no merit to the motion, but because there had not been an application made to the City for an extension and the judge felt he did not have jurisdiction to decide.

MVS is committed to this project and it is their sincere intention to proceed with it; however, as pointed out if the Courts determine there was a mistake made in the granting of the SUP any improvements made pursuant to the SUP would have to be removed and destroyed.

Mr. Sear stated that land use appeals in the state of Kansas are relatively rare, resulting in not a lot of case law rulings. However, numerous state courts have unanimously held that where the validity of a permit for construction was the subject of pending litigation, the local ordinance providing for the expiration of such permit was stayed or tolled by operation of law until the pending litigation had been fully and finally resolved.

They have found that courts that have dealt with this issue when there is not a statute that deals with this situation, with neither Kansas nor Prairie Village has, they have determined that it would be unreasonable to allow a permit to be lost simply by the delay of litigation as to the legality of the permit. No one has cited any contrary case law. Although it is all from outside Kansas, all courts that they have found that have dealt with this issue have determined that if there is not a statute dealing with the issue already to provide for a tolling of the expiration during the pendency of the legal challenge to the permit that equitably the expiration of the permit is to be tolled during the pendency of it.

Mr. Sear noted the memo from your city attorney regarding a case in Maine that opposed the extension, the judge's ruling found that because there was already a Maine statute that provided for the permit to be saved that tolling was not necessary.

All of the cases cited in their request unanimously stated that the mere specter of litigation regarding the legality of the permit makes it unreasonable to proceed with construction, especially when the stance of the City is that any improvements made would be required to be removed and destroyed if the legality of the permit was upheld. Mr. Sear asked if it would be responsible for the City would undertake a \$55M project under such terms.

Mr. Sear stated that MVS is doing everything possible to expedite this appeal process requesting the Kansas Supreme Court take an immediate transfer of this case from the Appeals Court to shorten the timetable for this process. However, he noted those motions are very seldom granted.

Mr. Sear stated in reference to the City Attorney's memo to the Planning Commission stating reasons why she feels it would not be unreasonable to deny this extension, they believe under the facts of this situation it would be unreasonable for the city to require what all these other states have refused to require - that is to go forward and expend this kind of money while there is litigation pending. The City Attorney points out in opposing the MVNA attempt to enjoin this project in the past that MVS has opposed those requests for injunction. He does not feel that should weigh against MVS getting the full right to exercise it right under the SUP permit. When the lawsuit was first filed and the plaintiff asked that the City and MVS be enjoined by the court from any activities related to the entire 18 acre tract, both the City and MVS opposed that injunction. No one contended that if the injunction was granted that additional time would be given to MVS at the tail end to cover the period of time for the injunction. The mere fact that MVS like the city opposed this effort to shut down this project through an injunction that that we told the court that risk if we started construction was on MVS is not an unusual position to take and should not weigh against the approval of an extension of time relative to the SUP permit.

They contend that although there is no Kansas case law on the tolling argument that if the Kansas Court were given this issue, that the Kansas court would likely follow these other states. However, that would only be determined if MVS is denied an extension and has to file a declaratory judgment against the City. They are not interested in more litigation and more delays, although they feel the Kansas Court would find the permit should be tolled, that is why they are requesting grant an extension beyond the date when all of the appeals end. There would be no harm to anyone in extending this permit for a period of time beyond the time period appeals process ends. The City has already determined that this project should be built in the City of Prairie Village. He stated the SUP should not be defeated by the mere filing of continuous legal appeals regardless of the outcome of the appeal. The SUP should only be defeated by the Court deciding the legality of the SUP based on the process followed by the City which has already been found to be valid.

In summing up the City Attorney presents in her memo of last week three statements a) In opposing the injunctive relief in the *Marsh* case, MVS willingly assumed the risks that an extension may not be granted.; b) MVS can prevent the SUP from expiring by beginning construction before January 6, 2016 and c) if the Mission Chateau SUP expires because MVS elects not to begin construction, then it may reapply for a special use permit.

Mr. Sear responded to (a) that MVS is at risk to construct before the appeal is over; however, that does not weigh against the City granting the extension. In fact it weighs in favor of the extension as it would be unreasonable to put at risk that kind of money when the City is saying if you build it and the City loses, as it is the City that is being challenged on the legality of the SUP, that it must be removed.

Mr. Sear responded to (b) it is the same argument worded differently. If the City would require us to remove improvements, if the City loses the appeal, it is unreasonable to require MVS to expend that kind of money during dependency of the appeal.

Finally (c) seems nonsensical in that this process has already gone on for two years. Why would anyone want to let the SUP expire due to pending litigation and require a new application to be filed to begin the entire process again.

MVS wants to proceed, they want the litigation to end; however, there is only so much they can do under the situation where the city is going to insist that improvements be torn out if the City loses the appeal by the MVNA.

Gregory Wolf asked if all the appeals were to end tomorrow, how long would it take to commence construction. Mr. Sear replied 10 to 14 months to get the contracts let and the demolition done, noting the abatement work that has been completed at the school. He noted it is in their benefit to begin as quickly as possible. Current interest rates are at their lowest and in financing \$40M even a change of 1% in the interest rate impacts the financing by \$400,000 per year. It is in their best interest to proceed as quickly as possible after appeals are completed.

Mr. Wolf asked for clarification on what is being requested. Mr. Sear responded they are seeking an extension in time. He noted "tolling" is court language. They are asking that pursuant to condition #4 of the SUP that it be extended for a period of two years beyond the end of the appeal process. He noted that is beyond the time that is needed. Mr. Wolf asked why they were then asking for two years. Mr. Sear replied the court decisions on tolling have determined in those states that if you have 24 months in the permit that you get 24 months after the legal challenge is over. So they are simply mirroring what has been done. He is quite certain that 12 or 14 months beyond the end of the appeals process would be acceptable to them.

Mr. Wolf asked why the issue was not addressed when the initial litigation was filed. Mr. Sear noted that any SUP application can result in litigation, however they rarely do and with filed rarely goes on the extent that the litigation has in this case.

He does not feel it was the City's intent by Condition #4 which is standard language in Special Use Permits issued by the City was meant to kill a project just by legal delay and not by delay of the developer. That is what the cases that they have cited stand for - developers are not going to forward in all likelihood in this situation and that is why even in the absence of a regulation or statute or a condition, the state courts that have heard this issue have said that it must be "tolled" otherwise the permit becomes meaningless even by a losing lawsuit being filed.

Mr. Wolf stated he is trying to understand why 24 months. Mr. Sear responded that as soon as the appeal was filed it became clear that the request for extension would need to be filed as the process would not end prior to January 6, 2016. Mr. Sear noted the similar situation faced by the City of Prairie Village in the length of time taken for the appeal of Councilman David Morrison and now subsequent appeal by the County to the Kansas Supreme Court.

Nancy Vennard stated the City has had to spend an enormous amount of money with meetings at offsite locations and now ongoing legal fees. She would not want to see the City go through this process again if the extension is not granted.

Gregory Wolf does not see the need for a 24 month extension. He feels they should be ready to begin once the litigation ends. Based on their comments, he could support a 14 month extension. Nancy Vennard noted she understand the rationale behind the 24 month request. Bob Lindeblad reminded the Commission that their action is only a recommendation to the Governing Body.

Nancy Wallerstein asked if the extension was not granted by the Governing Body, they could still start construction under the current SUP. What would constitute commencement of construction. Mr. Lindeblad responded that would be the decision of the Governing Body.

Nancy Wallerstein noted there is not a precedence either for or against extending an SUP. She stated they owned the land regardless of the outcome of the litigation.

Nancy Vennard acknowledged the extensive and costly preparation work that needed to be done prior to commencing construction in design, construction documents, etc. She also added that if they had to refile for the SUP there is no guarantee the current plans would be accepted by the Planning Commission and/or Governing Body at that time, noting the several changes that have taken place for the Mission Mall property.

Gregory Wolf stated in reality, if the extension is not granted, a lawsuit will be filed against the City for declarative judgment on the failure to grant the extension.

Mike Flanagan, General Counsel for the Tutera Group, stated that last week they met with Prairie Village staff to discuss the issue of what is "commencement of construction" which staff believed would be a decision of the Governing Body, but were checking with the City Attorney. The building permit process was discussed and expectations for and timetable for plan reviews. The possibility of a phased building permit was discussed.

They would need to seek a full building permit. He would expect the cost of full construction documents to be as Mrs. Vennard indicated several thousands of dollars. The lead time needed by public works, the building official and fire department for review of plans of this size is significant. He does believe the 14 month period of time would work for MVS to get the building permit approved. If the definition of commencement of construction was less, they could begin sooner. This needs to be determined. Mr. Flanagan noted that in regard to "tolling" you generally are either granted 24 months or nothing.

They feel it is appropriate to grant the extension as it is of no harm to anyone, it does not cost anything of the city and it allows the court, who is the appropriate party, to make its determination on whether the Special Use Permit is valid or if it should be revoked.

Chairman Bob Lindeblad opened the floor for comments from the public.

Andrew Spitsnogle, attorney speaking on behalf of the Mission Valley Neighborhood Association, noted that Mr. Sear made several comments regarding legal interpretations; however, Mr. Waters direction to the Commission was that it was not your job to make a legal determination. It is the job of your city attorney and her analysis is clear. "MVS wants the right, but not the obligation, to build within the 24 month period. This is contrary to what was approved in Ordinance 2301 and that she feels it would not be unreasonable for the Governing Body to deny an extension under the circumstances". They concur with her assessment.

Mr. Spitsnogle made the following additional comments:

- MVS request for an extension is premature - noting that the deadline does not expire until January 6, 2016 and that this was one of the reasons for the denial of their motion on October 30th.
- If the Governing Body intended for the SUP to be "stayed or tolled" it is their view that they would have included that language in the SUP
- The Ordinance was approved with full knowledge that a lawsuit would be filed challenging the validity of the Special Use Permit
- Concur that it would not be unreasonable to deny the two year extension as factors for approval change over time.

They do not feel the applicant should have another two years after the final judgment in which to begin construction on one of the most valuable pieces of land in the City.

Gregory Wolf asked Mr. Spitsnogle that their position was that it was reasonable to force the applicant to spend hundreds if not millions of dollars to begin construction that if you win will have to be removed and destroyed. This is what he is struggling with.

Mr. Spitsnogle responded that that point has not been reached yet and this request is premature. Mr. Wolf asked when would it be appropriate. Mr. Spitsnogle responded it is currently in the court of appeals and MVS has filed for an immediate transfer to the Supreme Court and they do not intend to oppose that filing. It is their intention to get

this resolved as quickly as possible. It is more than a year to the deadline and things change. He cannot say when it would be appropriate to make the request.

Nancy Wallerstein asked Mr. Sear to confirm that he stated it would be 12 months before the case was even heard before the Supreme Court. Mr. Sear replied there is no timetable and the motions are rarely granted. For example in the Morrison case, there was a motion to transfer that case to the Supreme Court and it was denied. If denied, then the Kansas Court of Appeals will continue to proceed until the Kansas Supreme Court says it is not theirs to decide. They believe they are looking at a period of time of at least a year to get a decision on whether to even hear the case.

Mr. Wolf asked Mr. Spitsnogle for his prediction as to how it will take for the appeal. He responded that he has no idea, but doesn't feel that is the issue before the Commission. The issue is whether it would be unreasonable to deny the request.

Mr. Wolf noted the legal costs the city has already incurred thousands of dollars of legal expense on this application and asked Mr. Spitsnogle if he felt that was in the best interest of the city to put itself in the position for yet another lawsuit with the filing a declaratory judgment if the extension is denied.

Mr. Spitsnogle stated he does not feel zoning decisions should be made on the basis of fear of legal costs and secondly he does not know that a separate law suit would be filed.

Bob Lindeblad closed the public comment at 10:00 p.m.

James Breneman believes the request for the extension is justified. He would not want to commit the amount of money that will need to be committed to commence construction with the potential that it may need to be eventually torn down. January 6, 2016 is 13 months away, they would have to begin preparation of construction documents now to meet that deadline. It would be unreasonable for the city not to approve the extension.

Larry Levy stated more harm is being done to the landowners in going through the court system to determine the validity prior to construction in the increased costs that they will occur. He does not see the request for the extension as unreasonable.

Greg Wolf moved the Planning Commission recommend that the 24 month deadline in the SUP shall be extended to 14 months after the termination of the pending litigation involving Mission Valley Chateau project. Termination means dismissal with prejudice or the issuance of a final judgment and all appeal and/or motion to reconsider deadlines/rights expire. Applicant shall notify the City of PV within three business days of the termination as defined herein that the termination has occurred and the 14 months have commenced. The motion was seconded by Larry Levy.

Nancy Wallerstein questioned if 14 months was sufficient time when under normal conditions they would have been given 24 months.

Bob Lindeblad stated he would support 14 months as the applicant has stated they can work within that timeframe. He feels it would be reasonable to grant the extension.

Larry Levy noted this could take 3 years. Mr. Wolf states the applicant knows the risk.

The motion was voted on and passed unanimously.

Next Meeting

At this time the Planning Commission has two Special Use Permit applications filed for the service stations at Mission Road and Tomahawk. The filing deadline is this Friday, so more items could be submitted.

ADJOURNMENT

With no further business to come before the Commission, Chairman Bob Lindeblad adjourned the meeting at 10:10 p.m.

Bob Lindeblad
Chairman

Nancy Vennard
Vice Chairman

Sister City Committee Minutes for 6 December 2014

Members present: Bob Glywa, Vera Glywa, Cindy Dwigans, Jim Hohensee, Peter Jarosewicz, Jori Nelson.

Also Present: Mary McGowan, A.J. Hoyt, Sally Hohensee

The committee approved the last week of January for the student reception.

On motion, the committee approved payment of the Sister City International dues.

PARKS AND RECREATION COMMITTEE

December 10, 2014

7:00 PM

City Hall

Minutes

The Parks and Recreation Committee met at 7:00 PM in City Hall. In attendance: Laura Wassmer, Chair, Eric Mikkelson, Vice Chair, Kevin Letourneau, Bill Sanderson, Kellie O'Toole, Matt Geary, Dianne Pallanich, Clarence Munsch, and Teen Council Representative Gabe Altenbernd. Staff: Nolan Sunderman and Bill Billings.

Ms. Wassmer called the meeting to order at 7:00 PM.

Public Participation

- There were no public participation comments.

Consent Agenda

1. Minutes from November 12, 2014

It was moved and seconded to approve the minutes from the November 12, 2014 meeting. The motion passed unanimously.

Reports

1. Public Works Report

Mr. Billings reviewed a list of the many park improvements and maintenance related accomplishments over the last month. They have been busy with leaf removal and mulching. They are near completion with McCrum Park as well as the tennis courts with just a few remaining items. Staff is also working to repaint trash and recycle lids to match the appearance throughout the parks as well as placing fresh labels on the recycle cans. They will be repainting the tennis shack and replacing park signs. They are also working on bench seats and backs for the tennis court benches.

2. Recreation Report

Mr. Sunderman updated the Committee on preparations for the 2015 pool season including hosting the information session for the synchronized swim team in January. Staff is also working on potential marketing ideas. It was recommended to utilize the assistance of the Teen Council as well as the area public and private schools. This will help determine the interest level to see if the program should still be offered. Mr. Sunderman provided an update on the 2015 Johnson County Track & Field Day scheduled for May 2, 2015. Meeting and discussions are expected to begin in late January and February for the event in May. Mr. Sunderman discussed the disc golf course and the number of positive comments received. It was recommended we utilize the pool to check discs out as we have not heard back from the YMCA. An update regarding the potential for a trial Pickleball League was provided and support was given

for the league on Tuesday evenings and Friday mornings. This will begin in late March/early April with the league lasting six weeks.

Mr. Sanderson discussed the idea to host a family swim night at the YMCA or the Shawnee Mission East Pool. After discussion, he requested to contact the Shawnee Mission School District to see if they would be open to potentially allowing access to the public during the winter months. Mr. Sanderson will report back at the next meeting.

3. Chairperson's Report

Ms. Wassmer provided an update on the numerous projects and issues being discussed with the City Council. Ms. Wassmer discussed the upcoming annual City Council Works Session which will occur in late January/early February including budget preparation for the 2016 budget. Ms. Wassmer also provided an update regarding the Mission Valley site as well the former Meadowbrook Country Club site.

New Business

1. Community Garden Fence – Ms. Wassmer introduced the idea of placing a fence around the community garden. This is being requested by Mr. Tom O'Brien. The request is to utilize the black chain link fence which the City already owns. It would also include landscaping around the fence to provide additional screening. A potential lock was also discussed due to recent theft during the last growing season. The Committee members voiced their concerns regarding the appearance of the fence in the park as well as the need for a lock. The Committee members felt this was a community garden and should not be fenced off from public view or access. The aesthetics were the main concern discussed by the Committee members. If visitors are causing issues, the Community Garden may want to discuss possible signage.
2. Statuary and Island Discussion – Ms. Wassmer discussed a recent development that has occurred at an island where the residents have constructed a fire pit and seating area without approval from the City. Ms. Wassmer stated this will be coming to the City Council for review. Ms. Wassmer has requested a letter be sent to area homes associations to remind them that islands are City property and to request permission and approval prior to any projects. This letter will also serve as a reminder for proper tips when caring for the statuary. Committee members discussed the possibility of relocating the urn where the fire pit is built, add a table structure, or add landscaping instead of the fire pit. It was also discussed as an option to make the homes association remove the structure and return it to its previous state. Fire code issues as well as open burning concerns were also discussed. This is planned to be discussed at the January 20 City Council meeting.

Old Business

- There was no old business discussed.

Information Items

- January 14, 2015
 - Synchronized Swim Team Information Session at 5:30 p.m. in the MPR
 - Next Committee Meeting will be at 7:00 p.m. in the Council Chambers.

Adjournment – The meeting was adjourned at 8:00 p.m.

**Council Members
Mark Your Calendars
January 20, 2015**

January 2015	Greater Kansas City Art Association exhibit in the R.G. Endres Gallery
January 19	City offices closed in observance of Martin Luther King, Jr. Holiday
January 20	City Council Meeting
February 2015	Kermit Dyer & Ed Harper exhibit in the R.G. Endres Gallery
February 2	City Council Meeting
February 4	LKM City Hall Day in Topeka
February 13	Artist reception in the R. G. Endres Gallery 6:30 - 7:30 p.m.
February 16	City offices closed in observance of Presidents' Day
February 17	City Council Meeting
February 21	Council Worksession 8:30 - 2:00 at Village Presbyterian Church
March 2015	Mid Ameica Pastel Society exhibit in the R.G. Endres Gallery
March 2	City Council Meeting
March 13	Artist reception in the R. G. Endres Gallery 6:30 - 8:00 p.m.
March 16	City Council Meeting

