

CITY OF PRAIRIE VILLAGE

September 8, 2015

Council Committee Meeting 6:00 p.m.

City Council Meeting 7:30 p.m.



Back Row: Ashley Weaver, Eric Mikkelson, Sheila Myers, Dan Runion, Terrence Gallagher, David Morrison, Ted Odell
Front Row: Ruth Hopkins, Jori Nelson, Laura Wassmer, Brooke Morehead, Steve Noll (Not pictured: Andrew Wang)

**COUNCIL COMMITTEE OF THE WHOLE
Council Chambers
Tuesday, September 08, 2015
6:00 PM**

AGENDA

BROOKE MOREHEAD, COUNCIL PRESIDENT

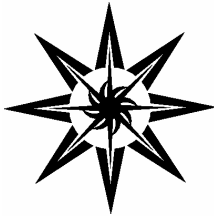
AGENDA ITEMS FOR DISCUSSION

*COU2015-32 Consider approval of a construction contract with Linaweaver
Construction for 2015 drainage repair program
Keith Bredehoeft

Presentation by Consolidated Fire District 2 regarding station location
Chief Lopez

Council priority list update
Quinn Bennion

***Council Action Requested the same night**



PUBLIC WORKS DEPARTMENT

Council Committee Meeting Date: September 8, 2015

Council Meeting Date: September 8, 2015

CONSIDER CONSTRUCTION CONTRACT FOR THE DRAIN15X - 2015 DRAINAGE REPAIR PROGRAM

RECOMMENDATION

Move to authorize the Mayor to sign the construction contract with Linaweaver Construction, Inc. for the DRAIN15X-2015 DRAINAGE REPAIR PROGRAM for \$110,000.

BACKGROUND

This project includes replacement or repair on various drainage inlet locations throughout the city and a pipe replacement.

On August 7, 2015, the City Clerk opened bids for the project. Three acceptable bids were received:

| | |
|-------------------------------|--------------|
| Linaweaver Construction, Inc. | \$ 94,450.00 |
| Pyramid Excavation | \$127,127.00 |
| Kansas Heavy Construction | \$125,000.00 |
| Engineer's Estimate | \$ 95,890.00 |

The Engineer has reviewed all bids and has recommended award of the low bid.

The contract will be awarded for \$110,000. Given the bids we should be able to include a few more inlet locations than originally anticipated.

FUNDING SOURCES

Funding is available under the CIP project DRAIN15x.

RELATION TO VILLAGE VISION

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. Construction Agreement with Linaweaver Construction, Inc.

PREPARED BY

Melissa Prenger, Senior Project Manager

September 1, 2015



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
8/28/2015

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

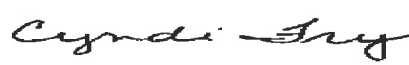
| PRODUCER The Reilly Company LLC 608 Delaware St. P.O. Box 9 Leavenworth KS 66048-0009 | CONTACT NAME: Cyndi Fry PHONE (A/C, No, Ext): (913) 682-1234 FAX (A/C, No): (913) 682-8136 E-MAIL ADDRESS: cyndi.fry@reillyinsurance.com | | | | | | | | | | | | | |
|--|---|-------------------------------|--------|------------------------------------|-------|-------------|--|-------------|--|-------------|--|-------------|--|-------------|
| | <table border="1"> <tr> <th>INSURER(S) AFFORDING COVERAGE</th> <th>NAIC #</th> </tr> <tr> <td>INSURER A Allied/Nationwide Mutual</td> <td>42579</td> </tr> <tr> <td>INSURER B :</td> <td></td> </tr> <tr> <td>INSURER C :</td> <td></td> </tr> <tr> <td>INSURER D :</td> <td></td> </tr> <tr> <td>INSURER E :</td> <td></td> </tr> <tr> <td>INSURER F :</td> <td></td> </tr> </table> | INSURER(S) AFFORDING COVERAGE | NAIC # | INSURER A Allied/Nationwide Mutual | 42579 | INSURER B : | | INSURER C : | | INSURER D : | | INSURER E : | | INSURER F : |
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| INSURER E : | | | | | | | | | | | | | | |
| INSURER F : | | | | | | | | | | | | | | |
| INSURED Linaweaver Construction, Inc. 719 E. Gilman Rd. Lansing KS 66043 | | | | | | | | | | | | | | |

COVERAGES **CERTIFICATE NUMBER** Master 15 **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

| INSR LTR | TYPE OF INSURANCE | ADDL INSR | SUBR WVD | POLICY NUMBER | POLICY EFF (MM/DD/YYYY) | POLICY EXP (MM/DD/YYYY) | LIMITS |
|----------|--|-----------|----------|----------------------------------|-------------------------|-------------------------|--|
| A | GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> Blanket Additional Insd <input checked="" type="checkbox"/> Contractual GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC | | | ACP 7221325678 | 6/30/2015 | 6/30/2016 | EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 |
| | AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO ALL OWNED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input type="checkbox"/> SCHEDULED AUTOS NON-OWNED AUTOS | | | ACP 7221325678 | 6/30/2015 | 6/30/2016 | COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ PIP-Basic \$ 4,500 |
| A | <input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB CLAIMS-MADE DED <input checked="" type="checkbox"/> RETENTION \$ 0 | | | ACP 7221325678 | 6/30/2015 | 6/30/2016 | EACH OCCURRENCE \$ 5,000,000 AGGREGATE \$ 5,000,000 |
| A | WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below Y/N <input checked="" type="checkbox"/> N/A | | | ACP 7221325678 | 6/30/2015 | 6/30/2016 | <input checked="" type="checkbox"/> WC STATUTORY LIMITS OTH-ER E.L. EACH ACCIDENT \$ 500,000 E.L. DISEASE - EA EMPLOYEE \$ 500,000 E.L. DISEASE - POLICY LIMIT \$ 500,000 |
| A | Leased/Rented Equipment Installation Floater | | | ACP 7221325678 ACP 7221325678 | 6/30/2015 6/30/2015 | 6/30/2016 6/30/2016 | Limit \$327,000 Limit \$200,000 |

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)
 Project: Drain 15 X, 2015 Drainage Program. City of Prairie Village, Kansas is named as additional insured including Waiver of Subrogation where required by written contract. 30 day Notice of Cancellation applies.

| | |
|--|---|
| CERTIFICATE HOLDER City of Prairie Village, Kansas Dept of Public Works 3535 Somerset Drive Prairie Village, KS 64114 | CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE Cyndi Fry/CYNDI  |
|--|---|

CONSTRUCTION AGREEMENT

For

**DRAIN15X:
2015 DRAINAGE PROGRAM**

BETWEEN

CITY OF PRAIRIE VILLAGE, KS

AND

LINAWEAVER CONSTRUCTION, INC.

**CONSTRUCTION CONTRACT
FOR
PROJECT
DRAIN15X
BETWEEN
THE CITY OF PRAIRIE VILLAGE, KANSAS
AND
LINAWEAVER CONSTRUCTION, INC.**

THIS AGREEMENT, is made and entered into this ____ day of _____, 20__, by and between the City of Prairie Village, Kansas, hereinafter termed the "**City**", and, LINAWEAVER CONSTRUCTION INC. hereinafter termed in this agreement, "**Contractor**", for the construction and completion of Project DRAIN15X, the "**Project**" designated, described and required by the Project Manual and Bid Proposal, to wit:

WITNESSETH:

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

WHEREAS, the Contractor, in response to the advertisement, has submitted to the City in the manner and at the time specified, a sealed Bid Proposal in accordance with the Bid Documents;

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

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

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

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

1. **DEFINITIONS:** Capitalized terms not defined herein shall have the meanings set forth in the General Conditions.

1.1 Following words are given these definitions:

ADVERSE WEATHER shall have the meaning set forth in Section 9.3 hereof.

APPLICATION FOR PAYMENT shall mean a written request for compensation for Work performed on forms approved by the City.

BID shall mean a complete and properly signed proposal to do the Work or designated portion thereof, for the price stipulated therein, submitted in accordance with the Bid Documents.

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

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

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

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

CERTIFICATE FOR PAYMENT shall mean written certification from the Project Manager stating that to the best of the project manager's knowledge, information and belief, and on the basis of the Project Manager's on-site visits and inspections, the Work described in an Application for Payment has been completed in accordance with the terms and conditions of the Contract Documents and that the amount requested in the Application for Payment is due and payable.

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

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

CONTRACT or **CONTRACT DOCUMENTS** shall consist of (but not necessarily be limited to) the Plans, the Specifications, all addenda issued prior to and all modifications issued after execution of this Agreement, (modifications consisting of written amendments to the Agreement signed by both parties, Change Orders, written orders for minor changes in the Work issued by the Project Manager) this Construction Contract between the City and Contractor (sometimes referred to herein as the "**Agreement**"), the accepted Bid Proposal, Contractor's Performance Bond, Contractor's Maintenance Bond, Statutory Bond, the Project Manual, the General Conditions, the Special Conditions and any other documents that have bearing the Work prescribed in the Project. It is understood that the Work shall be

carried out and the Project shall be constructed fully in accordance with the Contract Documents.

CONTRACT PRICE shall be the amount identified in the Construction Agreement between the City and the Contractor as the total amount due the Contractor for Total Completion of the Work as per the Contract Documents.

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

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

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

FIELD ORDER shall mean a written order issued by the Project Manager that orders minor changes in the Work, but which does not involve a change in the Contract Price or Contract Time.

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

GENERAL CONDITIONS shall mean the provisions in the document titled "General Conditions - General Construction Provisions" attached hereto and incorporation herein by reference.

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

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

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

PLANS shall mean and include all Shop Drawings which may have been prepared by or for the City as included in the Project Manual or submitted by the Contractor to the City during the progress of the Work, all of which show the character and scope of the work to be performed.

PROJECT shall mean the Project identified in the first paragraph hereof.

PROJECT MANAGER shall mean the person appointed by the Public Works Director for this Contract.

PROJECT MANUAL shall contain the General Conditions, Special Conditions, Specifications, Shop Drawings and Plans for accomplishing the work.

PROJECT SEGMENTS shall have the meaning set forth in Section 7.1 hereof.

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

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

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

SPECIAL CONDITIONS shall mean the provisions in the document titled "Special Conditions" attached hereto and incorporation herein by reference.

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

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

TOTAL COMPLETION shall mean all elements of a Project Segment or the Total Project Work is complete including all subsidiary items and "punch-list" items.

TOTAL PROJECT WORK shall have the meaning set forth in Section 7.1 hereof.

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

UNUSUALLY SEVERE WEATHER shall have the meaning set forth in Section 9.4 hereof.

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

WORK SCHEDULE shall have the meaning set forth in Section 7.2 hereof.

- 1.2 Whenever any word or expression defined herein, or pronoun used instead, occurs in these Contract Documents; it shall have and is mutually understood to have the meaning commonly given. Work described in words, which so applied have a well-known technical or trade meaning shall be held to refer to such, recognized standards.
- 1.3 Whenever in these Contract Documents the words "as ordered," "as directed", "as required", "as permitted", "as allowed", or words or phrases of like import are used, it is understood that the order, direction, requirement, permission or allowance of the Project Manager is intended.
- 1.4 Whenever any statement is made in the Contract Documents containing the expression "it is understood and agreed", or an expression of like import, such expression means the mutual understanding and agreement of the parties hereto.
- 1.5 The words "approved", "reasonable", "suitable", "acceptable", "properly", "satisfactorily", or words of like effect in import, unless otherwise particularly specified herein, shall mean approved, reasonable, suitable, acceptable, proper or satisfactory in the judgment of the Project Manager.
- 1.6 When a word, term or phrase is used in the Contract, it shall be interpreted or construed, first, as defined herein; second, if not defined, according to its generally accepted meaning in the construction industry; and, third, if there is no generally accepted meaning in the construction industry, according to its common and customary usage.
- 1.7 All terms used herein shall have the meanings ascribed to them herein unless otherwise specified.

2. ENTIRE AGREEMENT:

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

3. INTENT AND INTERPRETATION

- 3.1 The intent of the Contract is to require complete, correct and timely execution of the Work. Any Work that may be required, including construction, labor, materials, tools, equipment and transportation, implied or inferred by the Contract Documents, or any one or more of them, as necessary to produce the intended result, shall be provided by the Contractor for the Contract Price.

- 3.2 All time limits stated in the Contract Documents are of the essence of the Contract.
- 3.3 The Contract is intended to be an integral whole and shall be interpreted as internally consistent. What is required by any one Contract Document shall be considered as required by the Contract.
- 3.4 The specification herein of any act, failure, refusal, omission, event, occurrence or condition as constituting a material breach of this Contract shall not imply that any other, non-specified act, failure, refusal, omission, event, occurrence or condition shall be deemed not to constitute a material breach of this Contract.
- 3.5 The Contractor shall have a continuing duty to read, carefully study and compare each of the Contract Documents and shall give written notice to the Project Manager of any inconsistency, ambiguity, error or omission, which the Contractor may discover, or should have discovered, with respect to these documents before proceeding with the affected Work. The review, issuance, or the express or implied approval by the City or the Project Manager of the Contract Documents shall not relieve the Contractor of the continuing duties imposed hereby, nor shall any such review be evidence of the Contractor's compliance with this Contract.
- 3.6 The City has prepared or caused to have prepared the Project Manual. **HOWEVER, THE CITY MAKES NO REPRESENTATION OR WARRANTY AS TO ACCURACY OR FITNESS FOR PARTICULAR PURPOSE INTENDED OR ANY OTHER WARRANTY OF ANY NATURE WHATSOEVER TO THE CONTRACTOR CONCERNING SUCH DOCUMENTS.** By the execution hereof, the Contractor acknowledges and represents that it has received, reviewed and carefully examined such documents, has found them to be complete, accurate, adequate, consistent, coordinated and sufficient for construction, and that the Contractor has not, does not, and will not rely upon any representation or warranties by the City concerning such documents as no such representation or warranties have been made or are hereby made.
- 3.7 As between numbers and scaled measurements in the Project Manual, the numbers shall govern; as between larger scale and smaller scale drawings, (e.g. 10:1 is larger than 100:1) the larger scale shall govern.
- 3.8 The organization of the Project Manual into divisions, sections, paragraphs, articles (or other categories), shall not control the Contractor in dividing the Work or in establishing the extent or scope of the Work to be performed by Subcontractors.
- 3.9 The Contract Documents supersedes all previous agreements and understandings between the parties, and renders all previous agreements and understandings void relative to these Contract Documents.
- 3.10 Should anything be omitted from the Project Manual, which is necessary to a clear understanding of the Work, or should it appear various instructions are in conflict, the Contractor shall secure written instructions from the Project Manager before proceeding with the construction affected by such omissions or discrepancies.
- 3.11 It is understood and agreed that the Work shall be performed and completed according to the true spirit, meaning, and intent of the Contract Documents.

- 3.12 The Contractor's responsibility for construction covered by conflicting requirements, not provided for by addendum prior to the time of opening Bids for the Work represented thereby, shall not extend beyond the construction in conformity with the less expensive of the said conflicting requirements. Any increase in cost of Work required to be done in excess of the less expensive work of the conflicting requirements will be paid for as extra work as provided for herein.
- 3.13 The apparent silence of the Project Manual as to any detail, or the apparent omission from them of a detailed description concerning any point, shall be regarded as meaning that only the best general practice is to be used. All interpretations of the Project Manual shall be made on the basis above stated.
- 3.14 The conditions set forth herein are general in scope and are intended to contain requirements and conditions generally required in the Work, but may contain conditions or requirements which will not be required in the performance of the Work under contract and which therefore are not applicable thereto. Where any stipulation or requirement set forth herein applies to any such non-existing condition, and is not applicable to the Work under contract, such stipulation or requirement will have no meaning relative to the performance of said Work.
- 3.15 KSA 16-113 requires that non-resident contractors appoint an agent for the service of process in Kansas. The executed appointment must then be filed with the Secretary of State, Topeka, Kansas. Failure to comply with this requirement shall disqualify the Contractor for the awarding of this Contract.

4. CONTRACT COST

The City shall pay the Contractor for the performance of the Work embraced in this Contract, and the Contractor will accept in full compensation therefore the sum (subject to adjustment as provided by the Contract) of ONE HUNDRED TEN THOUSAND DOLLARS AND ZERO CENTS (~~\$110,000.00~~) for all Work covered by and included in the Contract; payment thereof to be made in cash or its equivalent and in a manner provided in the Contract Documents.

5. WORK SUPERINTENDENT

- 5.1 The Contractor shall provide and maintain, continually on the site of Work during its progress, an adequate and competent superintendent of all operations for and in connection with the Work being performed under this Contract, either personally or by a duly authorized superintendent or other representative. This representative shall be designated in writing at the preconstruction meeting.
- 5.2 The superintendent, or other representative of the Contractor on the Work, who has charge thereof, shall be fully authorized to act for the Contractor, and to receive whatever orders as may be given for the proper prosecution of the Work, or notices in connection therewith. Use of Subcontractors on portions of the Work shall not relieve the Contractor of the obligation to have a competent superintendent on the Work at all times.
- 5.3 The City shall have the right to approve the person who will be the Superintendent based on skill, knowledge, experience and work performance. The City shall also have the right to request replacement of any superintendent.

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

6. PROJECT MANAGER

- 6.1 It is mutually agreed by and between the parties to this Agreement that the Project Manager shall act as the representative of the City and shall observe and inspect, as required, the Work included herein.
- 6.2 In order to prevent delays and disputes and to discourage litigation, it is further agreed by and between the parties to this Agreement that the Project Manager shall, in good faith and to the best of its ability, determine the amount and quantities of the several kinds of work which are to be paid for under this Contract; that the Project Manager shall determine, where applicable, questions in relation to said Work and the construction thereof; that Project Manager shall, where applicable decide questions which may arise relative to the execution of this Contract on the part of said Contractor; that the Project Manager's decisions and findings shall be the conditions precedent to the rights of the parties hereto, to any action on the Contract, and to any rights of the Contractor to receive any money under this Contract provided, however, that should the Project Manager render any decision or give any direction which, in the opinion of either party hereto, is not in accordance with the meaning and intent of this Contract, either party may file with the Project Manager and with the other party, within thirty (30) days a written objection to the decision or direction so rendered and, by such action, may reserve the right to submit the question to determination in the future.
- 6.3 The Project Manager, unless otherwise directed or agreed to by the City in writing, will perform those duties and discharge those responsibilities allocated to the Project Manager as set forth in this Contract. The Project Manager shall be the City's representative from the effective date of this Contract until final payment has been made. The Project Manager shall be authorized to act on behalf of the City only to the extent provided in this Contract. The City and Project Manager may, from time to time, designate Inspectors to perform such functions.
- 6.4 The City and the Contractor shall communicate with each other in the first instance through the Project Manager.
- 6.5 The Project Manager shall be the initial interpreter of the requirements of the Project Manual and the judge of the performance by the Contractor. The Project Manager shall render written graphic interpretations necessary for the proper execution or progress of the Work with reasonable promptness on request of the Contractor.
- 6.6 The Project Manager will review the Contractor's Applications for Payment and will certify to the City for payment to the Contractor those amounts then due the Contractor as provided

in this Contract. The Project Manager's recommendation of any payment requested in an Application for Payment will constitute a representation by Project Manager to City, based on Project Manager's on-site observations of the Work in progress as an experienced and qualified design professional and on Project Manager's review of the Application for Payment and the accompanying data and schedules that the Work has progressed to the point indicated; that, to the best of the Project Manager's knowledge, information and belief, the quality of the Work is in accordance with the Project Manual (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Project Manual, to a final determination of quantities and classifications for Unit Price Work if such is called for herein, and to any other qualifications stated in the recommendation); and that Contractor is entitled to payment of the amount recommended. However, by recommending any such payment Project Manager will not thereby be deemed to have represented that exhaustive or continuous on-site inspections have been made to check the quality or the quantity of the Work beyond the responsibilities specifically assigned to Project Manager in the Project Manual or that there may not be other matters or issues between the parties that might entitle Contractor to be paid additionally by the City or the City to withhold payment to Contractor.

- 6.7 The Project Manager may refuse to recommend the whole or any part of any payment if, in Project Manager's opinion, it would be incorrect to make such representations to City. Project Manager may also refuse to recommend any such payment, or, because of subsequently discovered evidence or the results of subsequent inspections or tests, nullify any such payment previously recommended, to such extent as may be necessary in the Project Manager's opinion to protect the City from loss because:
- The Work is defective, or completed Work has been damaged requiring correction or replacement,
 - The Contract Price has been reduced by Written Amendment or Change Order,
 - The City has been required to correct Defective Work or complete Work in accordance with the Project Manual.
- 6.8 The City may refuse to make payment of the full amount recommended by the Project Manager because claims have been made against City on account of Contractor's performance or furnishing of the Work or liens have been filed in connection with the Work or there are other items entitling City to a set-off against the amount recommended, but City must give Contractor written notice (with a copy to Project Manager) stating the reasons for such action.
- 6.9 The Project Manager will have the authority to reject Work which is defective or does not conform to the requirements of this Contract. If the Project Manager deems it necessary or advisable, the Project Manager shall have authority to require additional inspection or testing of the Work for compliance with Contract requirements.
- 6.10 The Project Manager will review, or take other appropriate action as necessary, concerning the Contractor's submittals, including Shop Drawings, Product Data and Samples. Such review, or other action, shall be for the sole purpose of determining general conformance with the design concept and information given through the Project Manual.
- 6.11 The Project Manager shall have authority to order minor changes in the Work not involving a change in the Contract Price or in Contract Time and consistent with the intent of the

Contract. Such changes shall be effected by verbal direction and then recorded on a Field Order and shall be binding upon the Contractor. The Contractor shall carry out such Field Orders promptly.

- 6.12 The Project Manager, upon written request from the Contractor shall conduct observations to determine the dates of Substantial Completion, Total Completion and the date of Final Acceptance. The Project Manager will receive and forward to the City for the City's review and records, written warranties and related documents from the Contractor required by this Contract and will issue a final Certificate for Payment to the City upon compliance with the requirements of this Contract.
- 6.13 The Project Manager's decisions in matters relating to aesthetic effect shall be final if consistent with the intent of this Contract.
- 6.14 The Project Manager will **NOT** be responsible for Contractor's means, methods, techniques, sequences, or procedures or construction, or the safety precautions and programs incident thereto and will not be responsible for Contractor's failure to perform the Work in accordance with the Project Manual. The Project Manager will not be responsible for the acts or omissions of the Contractor or any Subcontractor or any of its or their agents or employees, or any other person at the site or otherwise performing any of the Work except as may otherwise be provided.
- 6.15 Any plan or method of work suggested by the Project Manager, or other representatives of the City, to the Contractor, but not specified or required, if adopted or followed by the Contractor in whole or in part, shall be used at the risk and responsibility of the Contractor, and the Project Manager and the City will assume no responsibility therefore.
- 6.16 It is agreed by the Contractor that the City shall be and is hereby authorized to appoint or employ, either directly or through the Project Manager, such City representatives or observers as the City may deem proper, to observe the materials furnished and the work performed under the Project Manual, and to see that the said materials are furnished, and the said work performed, in accordance with the Project Manual therefore. The Contractor shall furnish all reasonable aid and assistance required by the Project Manager, or by the resident representatives for proper observation and examination of the Work and all parts thereof.
- 6.17 The Contractor shall comply with any interpretation of the Project Manual by the Project Manager, or any resident representative or observer so appointed, when the same are consistent with the obligations of the Project Manual. However, should the Contractor object to any interpretation given by any subordinate Project Manager, resident representative or observer, the Contractor may appeal in writing to the City Director of Public Works for a decision.
- 6.18 Resident representatives, observers, and other properly authorized representatives of the City or Project Manager shall be free at all times to perform their duties, and intimidation or attempted intimidation of any one of them by the Contractor or by any of its employees, shall be sufficient reason, if the City so decides, to annul the Contract.
- 6.19 Such observation shall not relieve the Contractor from any obligation to perform said Work strictly in accordance with the Project Manual.

7. WORK SCHEDULE:

- 7.1 The Work is comprised of one large project (sometimes referred to as “**Total Project Work**”) and, in some cases, is partitioned into smaller subprojects referred to in this Agreement as “**Project Segments**.” A Contract Time shall be stated in the Contract Documents for both the Total Project Work and, when applicable, the Project Segments.
- 7.2 At the time of execution of this Contract, the Contractor shall furnish the Project Manager with a schedule (“**Work Schedule**”) setting forth in detail (in the critical path method) the sequences proposed to be followed, and giving the dates on which it is expected that Project Segments will be started and completed within the Contract Time. The Work Schedule is subject to approval by the City.
- 7.3 Monthly Work Schedule reports shall accompany the Contractor's pay request for Work completed. Where the Contractor is shown to be behind schedule, it shall provide an accompanying written summary, cause, and explanation of planned remedial action. Payments or portions of payments may be withheld by the City upon failure to maintain scheduled progress of the Work as shown on the approved Work Schedule.
- 7.4 At a minimum the Contractor shall update and submit the Work Schedule for review weekly, unless otherwise agreed upon by the City.
- 7.5 The Contractor, within ten (10) calendar days after being instructed to do so in a written notice from the City, shall commence the Work to be done under this Contract.
- 7.6 If at any time, in the opinion of the Project Manager or City, proper progress is not being maintained; changes shall be proposed in the Work Schedule and resubmitted for consideration and approval.
- 7.7 If the Contractor has not completed Project Segments and is within a non-performance penalty period, it shall not be allowed to undertake a new Project Segment until the Project Segment in dispute is completed, unless expressly permitted by the City.
- 7.8 The operation of any tool, equipment, vehicle, instrument, or other noise-producing device is prohibited to start before or continue after the hours of 7 AM and 10 PM, Monday through Friday (except Fridays which shall be until Midnight) and 8 AM and midnight on Weekends (except Sunday which shall be 10 PM). Violation of this requirement is Prima Facie Violation of City Municipal Code 11-202.
- 7.9 No work shall be undertaken on Saturdays, Sundays and Holidays (Christmas, New Years, Martin Luther King's Birthday, President's Day, Memorial Day, Independence Day, Labor Day and Thanksgiving) without the express written approval of the City Project Manager. If it is necessary to perform proper care, maintenance, or protection of work already completed or of equipment used, or in the case of an emergency verbal permission may be obtained through the Project Manager.
- 7.10 Night work may be established by the Contractor, as a regular procedure, with the written permission of the City; such permission, however, may be revoked at any time by the City if the Contractor fails to maintain adequate equipment for the proper prosecution and control of all operations performed as part of the Work.

7.11 The Contractor shall provide 24 hours notice prior to commencing any work to the City Project Manager. The Contractor shall communicate immediately any changes in the Work Schedule to the Project Manager for approval by the City.

8. DELAYS AND EXTENSIONS OF TIME

8.1 In executing the Contract, the Contractor expressly covenants and agrees that, in undertaking the completion of the Work within the Contract Time, it has taken into consideration and made allowances for all of the ordinary delays and hindrances incident to such Work, whether growing out of delays in securing materials, workers, weather conditions or otherwise. No charge shall be made by the Contractor for hindrances or delays from any cause during the progress of the Work, or any portion thereof, included in this Contract.

8.2 Should the Contractor, however, be delayed in the prosecution and completion of the Work by reason of delayed shipment orders, or by any changes, additions, or omissions therein ordered in writing by the City, or by strikes or the abandonment of the Work by the persons engaged thereon through no fault of the Contractor, or by any act taken by the U.S. Government such as the commandeering of labor or materials, embargoes, etc., which would affect the fabrication or delivery of materials and/or equipment to the Work; or by neglect, delay or default of any other contractor of the City, or delays caused by court proceedings; the Contractor shall have no claims for damages or additional compensation or costs for any such cause or delay; but it shall in such cases be entitled to such extension of the time specified for the completion of the Work as the City and the Project Manager shall award in writing on account of such delays, provided, however, that claim for such extension of time is made by the Contractor to the City and the Project Manager in writing within one (1) week from the time when any such alleged cause for delay shall occur.

9. ADVERSE WEATHER:

9.1 Extensions of time for Adverse Weather shall be granted only under the conditions as hereinafter provided.

9.2 For conditions of weather or conditions at the site, so unusual as not to be reasonably anticipated, as determined by the Project Manager, an average or usual number of inclement days when work cannot proceed are to be anticipated during the construction period and are not to be considered as warranting extension of time.

9.3 "**Adverse Weather**" is defined as atmospheric conditions or the impact thereof at a definite time and place, which are unfavorable to construction activities such that they prevent work on critical activities for 50 percent or more of the Contractor's scheduled workday.

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

9.5 Time Extensions for Unusually Severe Weather: In order for any request for time extension due to Unusually Severe Weather to be valid, the Contractor must document all of the following conditions:

- The weather experienced at the Work site during the Contract period is more severe than the Adverse Weather anticipated for the Work location during any given month.

- The Unusually Severe Weather actually caused a delay to the completion of the Work.
- The delay must be beyond the control and without fault or negligence by the Contractor.

9.6 The following schedule of monthly-anticipated Adverse Weather delays will constitute the baseline for monthly weather time evaluations. The Contractor's Work Schedule must reflect these anticipated adverse weather delays in all weather affected activities:

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

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

- 9.7 Upon receipt of the Notice to Proceed, and continuing throughout the Contract, the Contractor shall record on its daily construction report, the occurrence of Adverse Weather and resultant impact to the Work Schedule.
- 9.8 The number of actual Adverse Weather delay days shall include days affected by actual Adverse Weather (even if Adverse Weather occurred in the previous month), and shall be calculated chronologically from the first to the last day of each month, and be recorded as full workdays.
- 9.9 If the number of actual Adverse Weather delay days in a given month exceeds the number of days anticipated above, the difference shall be multiplied by 7/5 to convert any qualifying workday delays to calendar days. The resulting number of qualifying lost days shall be added to the Contract Time.
- 9.10 The determination that Unusually Severe Weather occurred does not automatically mean an extension of time will be granted. The Contractor must substantiate the Unusually Severe Weather delayed work activities on the critical path of the Work Schedule.
- 9.11 Full consideration for equivalent fair weather workdays shall be given. If the number of actual Adverse Weather delays in a given month is less than the number of days anticipated as indicated above, the difference shall be multiplied by 7/5 to convert any workday increases to calendar days. The resulting number of qualifying extra days will be accumulated and subtracted from any future month's days lost due to unusually severe weather.
- 9.12 The net cumulative total of extra days/lost days shall not result in a reduction of Contract Time and the date of Substantial Completion shall not be changed because of unusually favorable weather.
- 9.13 In converting workdays to calendar days, fractions 0.5 and greater shall be rounded up to the next whole number. Fractions less than 0.5 shall be dropped.
- 9.14 The Contractor shall summarize and report all actual Adverse Weather delay days for each month to the Project Manager by the tenth (10th) day of the following month. A narrative indicating the impact of Adverse Weather conditions on the Work Schedule shall be included.

- 9.15 Any claim for extension of time due to Unusually Severe Weather shall be submitted to the Project Manager within 7 days of the last day of the commencement of the event giving rise to the delay occurred. Resolution of any claim shall follow the procedures described above.
- 9.16 The Contractor shall include and indicate the monthly-anticipated Adverse Weather days, listed above, in the Work Schedule. (Reference Section 7.1 for Work Schedule requirements)
- 9.17 The Contractor shall indicate the approved Adverse Weather days (whether less or more than the anticipated days) in its Work Schedule updates.

10. LIQUIDATED DAMAGES

- 10.1 Contractor agrees that time is of the essence and any term pertaining to Contractor timely performing so as to achieve Total Completion within the Contract Time is a material provision of this Contract. Further, the parties acknowledge that City's damages in the event of delay are difficult to ascertain and consequently agree that, in the event and to the extent that actual date of Total Completion is delayed beyond the Contract Time for the Total Project Work or Project Segments attributable solely or concurrently to (i) an act or omission of Contractor or any of its subcontractors or suppliers, or (ii) in whole or in part, to any other event or condition within the Contractor's reasonable control (and not for reasons solely attributable to City), the Contractor shall be assessed a liquidated damage, and not as a penalty, in the amount set forth in the Special Conditions for each calendar day beyond the applicable Contract Time. Such amount shall be deducted from any amounts due Contractor under this Agreement.
- 10.2 Further, the Contractor agrees that, in the event Contractor does not carry out such Work at such rates of progress as required by the Work Schedule approved by the City, the City may, at its option and without Contractor receiving any additional compensation therefore, require Contractor to increase the number of qualified supervisory personnel and/or workers and the amount of equipment employed in the performance of the Work to such extent as City may deem necessary or desirable. In addition, City, at its option, may supplement Contractor's manpower by entering into contracts with other contractors to perform the Work. All costs that are incurred by City, in this regard, including reasonable attorney's fees, shall be deducted from any sums due Contractor or City may make demand on Contractor for reimbursement of such costs.

11. PAYMENT PROCEDURE

- 11.1 Based upon Applications for Payment submitted to the Project Manager by the Contractor and Certificates for Payment issued by the Project Manager, the City shall make progress payments on account of the contract sum to the Contractor as provided below and elsewhere in the Contract Documents.
- 11.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month or on a mutually agreed date by City and Contractor.
- 11.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the City no later than the time of payment. The Contractor further warrants that upon submittal on the first day of each month of an Application for Payment, all Work for which payments have been received from the City shall be free and clear of liens, claims,

security interest or other encumbrances in favor of the Contractor or any other person or entity whatsoever.

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

- Evidence that the Work will not be completed in the time required for substantial or final completion;
- Persistent failure to carry out the Work in accordance with the Contract;
- Damage to the City or a third party to whom the City is, or may be, liable;
- Evidence that the Work is not progressing according to agreed upon schedule by both parties.

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

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

12. COMPLETION AND FINAL PAYMENT

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

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

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

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

13. CLAIMS BY THE CONTRACTOR

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

- 13.8 In connection with any claim by the Contractor against the City for compensation in excess of the Contract Price, any liability of the City for the Contractor's costs shall be strictly limited to direct costs incurred by the Contractor and shall not include standby costs, indirect costs or consequential damages of the Contractor. The City shall not be liable to the Contractor for claims of third parties.
- 13.9 If the Contractor is delayed in progressing any task which at the time of the delay is then critical or which during the delay becomes critical, as the sole result of any act or neglect to act by the City or someone acting in the City's behalf, or by changes ordered in the Work, unusual delay in transportation, unusually adverse weather conditions not reasonably anticipated, fire or any causes beyond the Contractor's control, then the date for achieving Final Acceptance of the Work shall be extended upon the written notice and claim of the Contractor to the City, for such reasonable time as the City may determine. Any notice and claim for an extension of time by the Contractor shall be made not more than seven calendar days after the occurrence of the event or the first appearance of the condition-giving rise to the claim and shall set forth in detail the Contractor's basis for requiring additional time in which to complete the Work. In the event the delay to the Contractor is a continuing one, only one notice and claim for additional time shall be necessary. If the Contractor fails to make such claim as required in this subparagraph, any claim for an extension of time shall be waived.
- 13.10 The Contractor shall delay or suspend the progress of the work or any part thereof, whenever so required by written order of the City, and for such periods of time as required; provided, that in the event of such delay or delays or of such suspension or suspensions of the progress of the work, or any part thereof, the time for completion of work so suspended or of work so delayed by such suspension or suspensions shall be extended for a period equivalent to the time lost by reason of such suspension or suspensions; but such order of the City or Project Manager shall not otherwise modify or invalidate in any way, any of the provisions of this Contract. In the event that the work shall be stopped by written order of the City, any expense, which, in the sole opinion and judgment of the City, is caused by the City, shall be paid by the City to the Contractor.
- 13.11 In executing the Contract Documents, the Contractor expressly covenants and agrees that, in undertaking to complete the Work within the time herein fixed, it has taken into consideration and made allowances for all hindrances and delays incident to such work, whether growing out of delays in securing materials or workers or otherwise. No charge shall be made by the Contractor for hindrances or delays from any cause during the progress of the work, or any portion thereof, included in this Contract, except as provided herein.
- 13.12 In addition to the Project Manual particular to Mobilization found elsewhere in this document, additional mobilization shall not be compensable for work outside of the designated areas for work deemed essential by the City. A quantity of work equal to as much as 10% of the total Contract may be required to be performed beyond the boundaries of the designated work areas
- 14. CHANGES IN THE WORK**
- 14.1 Changes in the Work within the general scope of this Contract, consisting of additions, deletions, revisions, or any combination thereof, may be ordered without invalidating this Contract, by Change Order or by Field Order.

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

written notice from the insurer or the Contractor at least thirty (30) days prior to material modification or cancellation of any policy listed on the Certificate.

15.2 The Contractor, upon receipt of notice of any claim in connection with this Agreement, shall promptly notify the City, providing full details thereof, including an estimate of the amount of loss or liability. The Contractor shall monitor and promptly notify the City of any reduction in limits of protection afforded under any policy listed in the Certificate (or otherwise required by the Contract Documents) if the Contractor's limits of protection shall have been impaired or reduced to such extent that the limits fall below the minimum amounts required herein. The Contractor shall promptly reinstate the original limits of liability required hereunder and shall furnish evidence thereof to the City.

15.3 Minimum Requirements Commercial General Liability Policy Limits -

| | |
|--|-------------|
| General Aggregate: | \$2,000,000 |
| Products / Completed Operations Aggregate: | \$2,000,000 |
| Personal & Advertising Injury: | \$1,000,000 |
| Each Occurrence: | \$1,000,000 |

Policy MUST include the following conditions:

- A. Pollution Liability (Applicable only to contracts involving pollutants such as asbestos & lead abatement, sludge or other waste abatement, etc.)
- B. NAME CITY OF PRAIRIE VILLAGE AS "ADDITIONAL INSURED"

15.4 Automobile Liability Policy shall protect the Contractor against claims for bodily injury and/or property damage arising from the ownership or use of any owned, hired and/or non-owned vehicle.

Limits (Same as Commercial General Liability) -
 Combined Single Limits, Bodily Injury and Property Damage - Each Accident:

Policy MUST include the following condition:
 NAME CITY OF PRAIRIE VILLAGE AS "ADDITIONAL INSURED"

15.5 Umbrella Liability. The Umbrella / Excess Liability must be at least as broad as the underlying general liability and automobile liability policies.

Limits -

| | |
|-------------------|-------------|
| Each Occurrence | \$1,000,000 |
| General Aggregate | \$1,000,000 |

15.6 Workers' Compensation. This insurance shall protect the Contractor against all claims under applicable state workers' compensation laws. The Contractor shall also be protected against claims for injury, disease or death of employees which, for any reason, may not fall within the provisions of workers' compensation law. The policy limits shall not be less than the following:

| | |
|------------------------|-----------|
| Workers' Compensation: | Statutory |
| Employer's Liability: | |

| | |
|---------------------------|-------------------------|
| Bodily Injury by Accident | \$100,000 each accident |
| Bodily Injury by Disease | \$500,000 policy limit |
| Bodily Injury by Disease | \$100,000 each employee |

- 15.7 The City will only accept coverage from an insurance carrier who offers proof that it:
- Is authorized to do business in the State of Kansas;
 - Carries a Best's policy holder rating of A- or better; and
 - Carries at least a Class VIII financial rating, **or**
 - Is a company mutually agreed upon by the City and Contractor.
- 15.8 Subcontractor's Insurance. If a part of the Agreement is to be sublet, the Contractor shall either:
- A. Cover all subcontractor's in its insurance policies, or
 - B. Require each subcontractor not so covered to secure insurance which will protect subcontractor against all applicable hazards or risks of loss as and in the minimum amounts designated.
- Whichever option is chosen, Contractor shall indemnify and hold harmless the City as to any and all damages, claims or losses, including attorney's fees, arising out of the acts or omissions of its Subcontractors.
- 15.9 Prior to commencing any work, Contractor shall provide City with certificates evidencing that (1) all Contractor's insurance obligations required by the contract documents are in full force and in effect and will remain in effect until Contractor has completed all of the work and has received final payment from City and (2) no insurance coverage will be canceled, renewal refused, or materially changed unless at least thirty (30) days prior written notice is given to City. Contractor's property insurance shall not lapse or be canceled if City occupies a portion of the work. Contractor shall provide City with the necessary endorsements from the insurance company prior to occupying a portion of the work.
- 15.10 Waiver of Subrogation. All insurance coverage required herein shall contain a waiver of subrogation in favor of the City. Contractor's insurance policies shall be endorsed to indicate that Contractor's insurance coverage is primary and any other insurance maintained by City is non-contributing as respects the work of Contractor.
- 15.11 Additional Insurance. Excess Liability coverage or additional insurance covering special hazards may be required on certain projects. Such additional insurance requirements shall be as specified in Special Conditions.
- 15.12 Bonds and Other Performance Security. Contractor shall provide a Performance Bond, Maintenance Bond and a Statutory Bond in the amount of one hundred percent (100%) of the Contract Price to cover the entire scope of Work and any other specific performance security that may be indicated in this Contract. With each bond there shall be filed with the City one copy of "Power of Attorney" certified to include the date of the bonds.

16. INDEMNITY

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

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

- 16.2 For purposes of this Contract, and without in any way limiting indemnification obligations that may be set forth elsewhere in the Contract, the Contractor hereby agrees to indemnify, defend and hold harmless the City from any and all Loss where Loss is caused or incurred or alleged to be caused or incurred in whole or in part as a result of the negligence or other actionable fault of the Contractor, his/her employees, agents, Subcontractors and suppliers.
- 16.3 It is agreed as a specific element of consideration of this Contract that this indemnity shall apply notwithstanding the joint, concurring or contributory or comparative fault or negligence of the City or any third party and, further, notwithstanding any theory of law including, but not limited to, a characterization of the City's or any third party's joint, concurring or contributory or comparative fault or negligence as either passive or active in nature.
- 16.4 Nothing in this section shall be deemed to impose liability on the Contractor to indemnify the City for Loss when the negligence or other actionable fault the City is the sole cause of Loss.
- 16.5 With respect to the City's rights as set forth herein, the Contractor expressly waives all statutory defenses, including, but not limited to, those under workers compensation, contribution, comparative fault or similar statutes to the extent said defenses are inconsistent with or would defeat the purpose of this section.

17. SUCCESSORS AND ASSIGNS

- 17.1 The City and Contractor bind themselves, their successors, assigns and legal representatives to the other party hereto and to successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in this Contract.
- 17.2 The Contractor shall not assign or sublet the work, or any part thereof, without the previous written consent of the City, nor shall it assign, by power of attorney or otherwise, any of the money payable under this Contract unless by and with the like written consent of the City. In case the Contractor assigns all, or any part of any moneys due or to become due under this Contract, the instrument of assignment shall contain a clause substantially to the effect that it is agreed that the right of the assignee in and to any moneys due or to become due to the Contractor shall be subject to all prior liens of all persons, firms and corporations for services rendered or materials supplied for the performance of the Work called for in this Contract.
- 17.3 Should any Subcontractor fail to perform in a satisfactory manner, the work undertaken, its subcontract shall be immediately terminated by the Contractor upon notice from the City.

Performing in an unsatisfactory manner is defined as consistently having more than 10% of work unacceptable. The Contractor shall be as fully responsible to the City for the acts and omissions of the subcontractors, and of persons either directly or indirectly employed by them, as Contractor is for the acts and omissions of persons directly employed. Nothing contained in this Contract shall create any contractual relations between any Subcontractor and the City, nor shall anything contained in the Contract Documents create any obligation on the part of the City to pay or to see to the payment of any sums due any Subcontractor.

- 17.4 The Contractor shall not award subcontracts which total more than forty-five (45%) of the Contract Price and shall perform within its own organization work amounting to not less than fifty-five percent (55%) of the total Contract Price. Approval by the City of any Subcontractor shall not constitute a waiver of any right of the City to reject Defective Work, material or equipment not in compliance with the requirements of the Contract Documents. The Contractor shall not make any substitution for any Subcontractor accepted by the City unless the City so agrees in writing.
- 17.5 The Contractor shall not subcontract, sell, transfer, assign or otherwise dispose of the Contract or any portion thereof without previous written consent from the City. In case such consent is given, the Contractor, shall be permitted to subcontract a portion thereof, but shall perform with his/her own organization work amounting to not less than fifty five (55%) of the total Contract Price. No subcontracts, or other transfer of Contract, shall release the Contractor of its liability under the Contract and bonds applicable thereto.
- 17.6 The Contractor shall cause appropriate provisions to be inserted in all subcontracts relative to the Work to bind Subcontractors to the Contractor by the terms of the Contract Documents insofar as applicable to the work of the Subcontractor and to give the Contractor the same power to terminate any Subcontract as the City has to terminate the Contractor under any provisions of the Contract Documents.
- 17.7 Prior to the City's approval of the Contract bid, the successful bidder shall submit to the City for acceptance, a list of names of all Subcontractors proposed for portions of the work and shall designate which work each is to perform.
- 17.8 The City shall, prior to the City's approval of the Contract bid, notify the successful bidder, in writing, if the City, after due investigation, has reasonable objection to any Subcontractor on such list, and the Contractor shall substitute a Subcontractor acceptable to the City at no additional cost to the City or shall be allowed to withdraw his/her Bid, and the City shall either re-bid the Work or accept the next best lowest and responsible bidder. The failure of the City to make objection to a Subcontractor shall constitute an acceptance of such Subcontractor but shall not constitute a waiver of any right of the City to reject Defective Work, material or equipment not in conformance with the requirements of the Project Manual.

18. NON-DISCRIMINATION LAWS

- 18.1 The Contractor agrees that:
- A. The Contractor shall observe the provisions of the Kansas Act Against Discrimination (K.S.A. 44-1001 et seq.) and shall not discriminate against any person in the performance of Work under the present contract because of race, religion, color, sex, disability, national origin, ancestry or age;

- B. In all solicitations or advertisements for employees, the Contractor shall include the phrase, "equal opportunity employer," or a similar phrase to be approved by the Kansas Human Rights Commission (Commission);
 - C. If the Contractor fails to comply with the manner in which the Contractor reports to the commission in accordance with the provisions of K.S.A. 44-1031 and amendments thereto, the Contractor shall be deemed to have breached the present contract and it may be cancelled, terminated or suspended, in whole or in part, by the contracting agency;
 - D. If the Contractor is found guilty of a violation of the Kansas Act Against Discrimination under a decision or order of the Commission which has become final, the Contractor shall be deemed to have breached the present contract and it may be cancelled, terminated or suspended, in whole or in part, by the contracting agency; and
 - E. The Contractor shall include the provisions of Subsections A through D in every subcontract or purchase order so that such provisions will be binding upon such Subcontractor or vendor.
 - F. The provisions of this Section shall not apply to a contract entered into by a Contractor: (1) Who employs fewer than four employees during the term of such contract; or (2) Whose contracts with the City cumulatively total \$5,000 or less during the fiscal year of the City.
- 18.2 The Contractor further agrees that it shall abide by the Kansas Age Discrimination In Employment Act (K.S.A. 44-1111 et seq.) and the applicable provision of the Americans With Disabilities Act (42 U.S.C. 12101 et seq.) as well as all other federal, state and local laws.
- 19. FEDERAL LOBBYING ACTIVITIES [THIS PROVISION ONLY APPLIES IF THE CITY IS RECEIVING FEDERAL FUNDS]**
- 19.1 31 USCS Section 1352 requires all subgrantees, Contractors, Subcontractors, and consultants/Architects who receive federal funds via the City to certify that they will not use federal funds to pay any person for influencing or attempting to influence a federal agency or Congress in connection with the award of any federal contract, grant, loan, or cooperative agreements.
- 19.2 In addition, contract applicants, recipients, and subrecipients must file a form disclosing any expenditure they make for lobbying out of non-federal funds during the contract period.
- 19.3 Necessary forms are available from the City and must be returned to the City with other Contract Documents. It is the responsibility of the general contractor to obtain executed forms from any Subcontractors who fall within the provisions of the Code and to provide the City with the same.
- 20. RELATIONS WITH OTHER CONTRACTORS:**
- 20.1 The Contractor shall cooperate with all other contractors who may be performing work on behalf of the City, and workers who may be employed by the City, or any other entity on any work in the vicinity of the Work to be done under this Contract, and the Contractor shall so conduct his/her operations as to interfere to the least possible extent with the work of such

contractors or workers. The Contractor shall be responsible for any injury or damage, that may be sustained by other contractors, workers, their work or employees of the City, because of any fault or negligence on the Contractor's part, and shall, at his/her own expense, repair or pay for such injury or damage. If the work of the Contractor is delayed because of any acts or omissions of any other Contractor or Contractors, the Contractor shall have no claim against the City on that account other than for an extension of time.

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

21. RIGHT OF CITY TO TERMINATE

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

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

22. MISCELLANEOUS:

22.1 The Contractor warrants to the City that all labor furnished to progress the Work under the Contract will be competent to perform the tasks undertaken, that the product of such labor will yield only first-class results, that materials and equipment furnished will be of good quality and new unless otherwise permitted by this Contract, and that the Work will be of good quality, free from faults and defects and in strict conformance with the Project Manual. All Work not conforming to these requirements may be considered defective.

22.2 The Contractor shall obtain and pay for all permits, fees and licenses necessary or ordinary for the Work. The Contractor shall comply with all lawful requirements, including federal and state laws, City and County laws and ordinances and building codes, applicable to the Work and shall give and maintain copies of all notices required by applicable law pertaining to the Work.

22.3 Provision for Emergencies. Whenever, in the opinion of the City, the Contractor has not taken sufficient precaution for the safety of the public or the protection of the Work to be constructed under this Contract, or of adjacent structures or property which may be injured by process of construction, and whenever, in the opinion of the City, an emergency shall arise and immediate action shall be considered necessary in order to protect property interests and to avoid personal injury and/or death, then the City, with or without notice to the Contractor, shall provide suitable protection to the said interests by causing such Work to be done and materials to be furnished at places as the City may consider necessary and adequate. The cost and expense of such Work and material so furnished shall be borne by the Contractor and, if the same shall not be paid on presentation of the bills therefore, such costs shall be deducted from any amounts due or to become due the Contractor. The performance of such emergency Work shall in no way relieve the Contractor of responsibility for damages which may occur during or after such precaution has been duly taken.

22.4 Both the business address of the Contractor given in the Bid or proposal upon which this Contract is founded, and the Contractor's Office near the Work, is hereby designated as the places to which all notices, letters, and other communications to the Contractor may be mailed or delivered. The delivering at either of the above named addresses, or depositing in any mailbox regularly maintained by the Post Office, of any notice, letter or other communication so addressed to the Contractor, and the date of said service shall be the date of such delivery or mailing. Such addresses may be changed at any time by an instrument in writing, executed by the Contractor, presented, and delivered to the Project Manager and to the City. Nothing herein contained shall be deemed to preclude or render inoperative the service of any notice, letter, or communication upon the Contractor personally.

22.5 It is mutually agreed by and between the parties to this Contract that all royalties and fees for and in connection with patents, or patent infringement, claims for materials, articles, apparatus, devices or equipment (as distinguished from processes) used in or furnished for

the work shall be included in the Contract Price and the Contractor shall satisfy all demands that may be made at any time for such, and the Contractor shall at its cost and expense, defend any and all suits or proceedings that may be instituted at any time against the City for infringement or alleged infringement of any such patents involved in the work, and Contractor shall pay any award of damages.

- 22.6 The right of general administration of the City shall not make the Contractor an agent of the City, and the liability of the Contractor for all damages to persons, firms, and corporations, arising from the Contractor's execution of the Work, shall not be lessened because of such general administration, but as to all such persons, firms, and corporations, and the damages, if any, to them or their property. The Contractor herein is an independent Contractor in respect to the work.
- 22.7 For a period of time, from the inception of the Contract to three (3) years from the date of final payment under the Contract, the Contractor and subcontractors shall maintain books, accounts, ledgers, invoices, drafts, pages and other records pertaining to the performance of this Contract. At all reasonable times during this period these records shall be available within the State of Kansas at a field or permanent business office for inspection by authorized representatives of the City or of any other agency, which has contributed funds in connection with the Contract or to which the City is obligated to make such inspections available. In addition, this requirement shall be included in all subcontracts entered into in connection with this Contract.
- 22.8 Titles, subheadings used herein, and other Contract Documents are provided only as a matter of convenience and shall have no legal bearing on the interpretation of any provision of the Contract Documents.
- 22.9 No waiver of any breach of this Contract shall be construed to be a waiver of any other subsequent breach.
- 22.10 Should any provision of this Agreement or other Contract Documents be determined to be void, invalid, unenforceable or illegal for whatever reason, such provision(s) shall be null and void; provided, however, that the remaining provisions of this Agreement and/or the other Contract Documents shall be unaffected thereby and shall continue to be valid and enforceable.
- 22.11 Without in any manner limiting Contractor's responsibilities as provided elsewhere in the Contract Documents, the Contractor shall assume full responsibility for the protection of all public and private property, structures, sewers, and utilities, for both above ground and underground facilities, along, beneath, above, across or near the site or sites of the Work being performed under this Agreement, or which are in any manner affected by the prosecution of the Work or the transportation of men/women or materials in connection therewith. Barriers shall be kept in place at all times to protect persons other than those engaged on or about the Work from accident, and the Contractor will be held responsible for all accidents to persons or property resulting from the acts of Contractor or its employees.
- 22.12 The Contractor shall keep fully informed of all existing and current regulations of the City, county, state, and federal laws, which in any way limit or control the actions or operations of those engaged upon the work, or affecting materials supplied, to or by them. The Contractor shall at all times observe and comply with all ordinances, laws, and regulations,

and shall protect and indemnify the City and the City's officers and agents against any claims or liability arising from or based on any violation of the same.

- 22.13 Nothing contained in the Contract Documents shall create, or be interpreted to create, privity or any other contractual agreement between the City and any person or entity other than the Contractor.
- 22.14 Duties and obligations imposed by the Contract Documents, rights, and remedies available hereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.
- 22.15 No action or failure to act by the City, Project Manager or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval or acquiescence in a breach hereunder, except as may be specifically agreed in writing.
- 22.16 Contractor specifically acknowledges and confirms that: (i) it has visited the site, made all inspections it deems appropriate and has read and fully understands the Contract Documents, including all obligations and responsibilities undertaken by it as specified herein and in other Contract Documents and knowingly accepts the same; (ii) it has furnished copies of all Contract Documents to its insurance carrier(s) and its surety(ies); and (iii) its insurance carrier(s) and surety(ies) agree to be bound as specified herein, in the Contract Documents and in the insurance policy(ies) and bonds as to liability and surety coverage.
- 22.17 It is specifically agreed between the parties executing this Agreement that the Contract Documents are not intended to create any third party beneficiary relationship nor authorize anyone not a party to this Agreement to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of this Agreement. The duties, obligations and responsibilities of the parties to this Agreement with respect to third parties shall remain as imposed by law.
- 22.18 This Agreement is entered into, under and pursuant to, and is to be construed and enforceable in accordance with the laws of the State of Kansas. Venue of any litigation arising in connection with this Agreement shall be the State courts of Johnson County, Kansas.

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

CITY OF PRAIRIE VILLAGE

LINAWEAVER CONSTRUCTION, INC.

By: _____
(signed)

By: Mark Linaweaver
(signed)

Laura Wassmer

Mark Linaweaver
(typed name)

Mayor

Vice President
(typed title)

City of Prairie Village

Linaweaver Construction, Inc.
(typed company name)

7700 Mission Road

719 Gilman RD.
(typed address)

Prairie Village, Kansas 66208

Lansing, KS 66043
(typed city, state, zip)

913.351.3474
(typed telephone number)

913.351.2749
(date of execution)

SEAL

ATTEST:

APPROVED BY:

City Clerk, Joyce Hagen-Mundy

City Attorney, Catherine Logan

(If the Contract is not executed by the President of the Corporation, general partner of the Partnership, or manager of a limited liability company, please provide documentation, which authorizes the signatory to bind the corporation, partnership or limited liability company. If a corporation, the Contractor shall furnish the City a current certificate of good standing, dated within ten (10) days of the date of this Contract.)

PERFORMANCE BOND

Bond Number KSC67190

KNOW ALL MEN BY THESE PRESENTS that we, the undersigned Linaweaver Construction, Inc., hereinafter referred to as the "Contractor", and Merchants Bonding Company (Mutual), a Corporation organized under the laws of the State of Iowa, and authorized to transact business in the State of Kansas as Surety, are held firmly bound unto the City of Prairie Village, Kansas, hereinafter referred to as "City", in the penal sum of One Hundred Ten Thousand and 00/100 DOLLARS (\$ 110,000.00), lawful money of the United States of America, for the payment of which sum, well and truly to be made, we bind ourselves and our heirs, executors, administrators, successors, and assigns, jointly and severally, by these presents:

THE CONDITION OF THE FOREGOING OBLIGATION IS SUCH THAT:

WHEREAS, the above bonded Contractor has, on the ____ day of _____, 20____, entered into a written Contract with the aforesaid City for furnishing all materials, equipment, tools, superintendence, labor and other facilities and accessories for the construction of certain improvements as designated, defined and described in the said Contract and the Conditions thereof, and in accordance with the Specifications and Plans therefore; a copy of said Contract being attached hereto and made a part hereof.

NOW, THEREFORE, if the said Contractor shall and will, in all particulars, well, duly and faithfully observe, perform and abide by each and every covenant, condition and part of the said Contract, and the Conditions, Specifications, Plans and other Contract Documents thereto attached or, by reference, made a part thereof, according to the true intent and meaning in each case, and if said Contractor shall replace all defective parts, material and workmanship for a period of two years after acceptance by the City, then this obligation shall be and become null and void; otherwise it shall remain in full force and effect;

PROVIDED FURTHER, if said Contractor fails in any particular to duly and faithfully observe, perform and abide by each and every covenant, condition, and part of the said Contract and the Conditions, Specifications, Plans and other Contract Documents, thereto attached, or, by reference made a part thereof, according to the true intent and meaning in each case, or if said Contractor shall fail to replace all defective parts, material and workmanship for a period of two years after acceptance by the City then the surety will pay the costs to complete the project and/or the costs to repair any defective parts for the period of two years after acceptance, and any other damages incurred by the owner in procuring completion and/or repair, such amount not exceeding the amount of this obligation, together with interest as provided by law.

PROVIDED FURTHER, that if the said Contractor fails to duly pay for any labor, materials, sustenance's, provisions, provender, gasoline, lubricating oils, fuel oils, greases, coal, equipment and tools consumed or used in said work, groceries and foodstuffs, and all insurance premiums, compensation ;liability and otherwise, or any other supplies or materials used or consumed by such Contractor or his, their, or its subcontractors in performance of the Work contracted to be done, the Surety will pay the same in any amount not exceeding the amount of this obligation, together with interest as provided by law;

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

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

CONTRACTOR

BY: Mark [Signature]
(SEAL)

VICE PRESIDENT
(Official Title)

SURETY COMPANY

BY _____
(SEAL)

[Signature]
Attorney-in-Fact David S. Salavitch

BY: Not Required
(State Representative)

(Accompany this bond with Attorney-in-Fact's authority form
the Surety Company certified to include the date of the bond)

MERCHANTS
BONDING COMPANY,™
POWER OF ATTORNEY

Know All Persons By These Presents, that MERCHANTS BONDING COMPANY (MUTUAL) and MERCHANTS NATIONAL BONDING, INC., both being corporations of the State of Iowa (herein collectively called the "Companies") do hereby make, constitute and appoint, individually,

David S Salavitch; Luke P Sealer; Robert L Cox II

their true and lawful Attorney(s)-in-Fact, to make, execute, seal and deliver on behalf of the Companies, as Surety, bonds, undertakings and other written obligations in the nature thereof, subject to the limitation that any such instrument shall not exceed the amount of:

FIVE MILLION (\$5,000,000.00) DOLLARS

This Power-of-Attorney is granted and is signed and sealed by facsimile under and by authority of the following By-Laws adopted by the Board of Directors of Merchants Bonding Company (Mutual) on April 23, 2011 and adopted by the Board of Directors of Merchants National Bonding, Inc., on October 24, 2011.

"The President, Secretary, Treasurer, or any Assistant Treasurer or any Assistant Secretary or any Vice President shall have power and authority to appoint Attorneys-in-Fact, and to authorize them to execute on behalf of the Company, and attach the seal of the Company thereto, bonds and undertakings, recognizances, contracts of indemnity and other writings obligatory in the nature thereof."

"The signature of any authorized officer and the seal of the Company may be affixed by facsimile or electronic transmission to any Power of Attorney or Certification thereof authorizing the execution and delivery of any bond, undertaking, recognizance, or other suretyship obligations of the Company, and such signature and seal when so used shall have the same force and effect as though manually fixed."

In connection with obligations in favor of the Florida Department of Transportation only, it is agreed that the power and authority hereby given to the Attorney-in-Fact includes any and all consents for the release of retained percentages and/or final estimates on engineering and construction contracts required by the State of Florida Department of Transportation. It is fully understood that consenting to the State of Florida Department of Transportation making payment of the final estimate to the Contractor and/or its assignee, shall not relieve this surety company of any of its obligations under its bond.

In connection with obligations in favor of the Kentucky Department of Highways only, it is agreed that the power and authority hereby given to the Attorney-in-Fact cannot be modified or revoked unless prior written personal notice of such intent has been given to the Commissioner-Department of Highways of the Commonwealth of Kentucky at least thirty (30) days prior to the modification or revocation.

In Witness Whereof, the Companies have caused this instrument to be signed and sealed this 15th day of August, 2015.



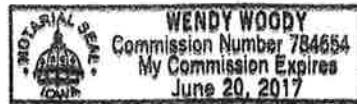
MERCHANTS BONDING COMPANY (MUTUAL)
MERCHANTS NATIONAL BONDING, INC.

By *Larry Taylor*

President

STATE OF IOWA
COUNTY OF Dallas ss.

On this 15th day of August, 2015, before me appeared Larry Taylor, to me personally known, who being by me sworn did say that he is President of the MERCHANTS BONDING COMPANY (MUTUAL) and MERCHANTS NATIONAL BONDING, INC.; and that the seals affixed to the foregoing instrument are the Corporate seals of the Companies; and that the said instrument was signed and sealed in behalf of the Companies by authority of their respective Boards of Directors.



Wendy Woody
Notary Public, Polk County, Iowa

(Expiration of notary's commission does not invalidate this instrument)

I, William Warner, Jr., Secretary of the MERCHANTS BONDING COMPANY (MUTUAL) and MERCHANTS NATIONAL BONDING, INC., do hereby certify that the above and foregoing is a true and correct copy of the POWER-OF-ATTORNEY executed by said Companies, which is still in full force and effect and has not been amended or revoked.

In Witness Whereof, I have hereunto set my hand and affixed the seal of the Companies on this _____ day of _____



William Warner Jr.
Secretary

MAINTENANCE BOND

Bond Number KSC67190

Bond _____

KNOW ALL MEN BY THESE PRESENTS:

That we, Linaweaver Construction, Inc., as Principal and Merchants Bonding Company (Mutual) as Surety, are held and firmly bound unto the City of Prairie Village, Kansas, in the full and just sum of One Hundred Ten Thousand Dollars and 00/100 (\$110,000.00) for the payment of which, well and truly to be made, we, and each of us, bind ourselves, our heirs, executors and assigns, themselves, and its successors and assigns, jointly and severally, firmly by these presents.

Dated this _____ day of _____, 20__.

The Conditions of this obligation are such that Principal Linaweaver Construction, Inc. upon completion of the Contract for street improvements, dated _____ which is incorporated herein by reference, and upon acceptance by the City of Prairie Village, Kansas, in accordance with the approved Contract Documents, Plans and Specifications, with no unacceptable deviations thereof, has agreed to guarantee the construction and installation, including all materials and workmanship, for the period of two years beginning on the date the City so accepts said work, said date being the formal acceptance date.

The said Surety, for value received, hereby stipulates and agrees that no changes, extension of time, alteration or addition to the terms of the Contract to the work to be performed thereunder, or the specifications accompanying the same, shall in any way affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract or to the specifications. Surety further agrees that any person to whom there is due any sum for labor or material furnished, as herein before stated, or said person's assigns, may bring action on this bond for the recovery of said indebtedness; PROVIDED, that no action shall be brought on said bond after twenty-four months from the completion of said public improvements.

NOW, THEREFORE, if said Principal shall guarantee and maintain the work referred to above in accordance with the Contract for a period of two (2) years from date of formal acceptance, then this obligation shall be null and void, otherwise to remain in full force and effect.


PROVIDED FURTHER, that if said Principal fails to duly and faithfully guarantee and maintain said work, the Surety will pay for the same in any amount not exceeding the amount of this obligation, together with interest as provided by law.

Signed, sealed and delivered the day and year first above written

By: 

Countersigned: _____

By: Not Required
Kansas Resident Agent

By: 
Attorney-in-Fact David S. Salavitch

Power of Attorney attached.

MERCHANTS
BONDING COMPANY,™
POWER OF ATTORNEY

Know All Persons By These Presents, that MERCHANTS BONDING COMPANY (MUTUAL) and MERCHANTS NATIONAL BONDING, INC., both being corporations of the State of Iowa (herein collectively called the "Companies") do hereby make, constitute and appoint, individually,

David S Salavitch; Luke P Sealer; Robert L Cox II

their true and lawful Attorney(s)-in-Fact, to make, execute, seal and deliver on behalf of the Companies, as Surety, bonds, undertakings and other written obligations in the nature thereof, subject to the limitation that any such instrument shall not exceed the amount of:

FIVE MILLION (\$5,000,000.00) DOLLARS

This Power-of-Attorney is granted and is signed and sealed by facsimile under and by authority of the following By-Laws adopted by the Board of Directors of Merchants Bonding Company (Mutual) on April 23, 2011 and adopted by the Board of Directors of Merchants National Bonding, Inc., on October 24, 2011.

"The President, Secretary, Treasurer, or any Assistant Treasurer or any Assistant Secretary or any Vice President shall have power and authority to appoint Attorneys-in-Fact, and to authorize them to execute on behalf of the Company, and attach the seal of the Company thereto, bonds and undertakings, recognizances, contracts of indemnity and other writings obligatory in the nature thereof."

"The signature of any authorized officer and the seal of the Company may be affixed by facsimile or electronic transmission to any Power of Attorney or Certification thereof authorizing the execution and delivery of any bond, undertaking, recognizance, or other suretyship obligations of the Company, and such signature and seal when so used shall have the same force and effect as though manually fixed."

In connection with obligations in favor of the Florida Department of Transportation only, it is agreed that the power and authority hereby given to the Attorney-in-Fact includes any and all consents for the release of retained percentages and/or final estimates on engineering and construction contracts required by the State of Florida Department of Transportation. It is fully understood that consenting to the State of Florida Department of Transportation making payment of the final estimate to the Contractor and/or its assignee, shall not relieve this surety company of any of its obligations under its bond.

In connection with obligations in favor of the Kentucky Department of Highways only, it is agreed that the power and authority hereby given to the Attorney-in-Fact cannot be modified or revoked unless prior written personal notice of such intent has been given to the Commissioner-Department of Highways of the Commonwealth of Kentucky at least thirty (30) days prior to the modification or revocation.

In Witness Whereof, the Companies have caused this Instrument to be signed and sealed this 15th day of August, 2015.



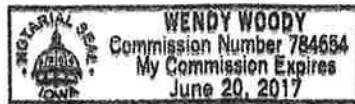
MERCHANTS BONDING COMPANY (MUTUAL)
MERCHANTS NATIONAL BONDING, INC.

By *Larry Taylor*

President

STATE OF IOWA
COUNTY OF Dallas ss.

On this 15th day of August, 2015, before me appeared Larry Taylor, to me personally known, who being by me sworn did say that he is President of the MERCHANTS BONDING COMPANY (MUTUAL) and MERCHANTS NATIONAL BONDING, INC.; and that the seals affixed to the foregoing instrument are the Corporate seals of the Companies; and that the said instrument was signed and sealed in behalf of the Companies by authority of their respective Boards of Directors.



Wendy Woody
Notary Public, Polk County, Iowa

(Expiration of notary's commission does not invalidate this instrument)

I, William Warner, Jr., Secretary of the MERCHANTS BONDING COMPANY (MUTUAL) and MERCHANTS NATIONAL BONDING, INC., do hereby certify that the above and foregoing is a true and correct copy of the POWER-OF-ATTORNEY executed by said Companies, which is still in full force and effect and has not been amended or revoked.

In Witness Whereof, I have hereunto set my hand and affixed the seal of the Companies on this _____ day of _____,



William Warner Jr.
Secretary

STATUTORY BOND

Bond Number KSC67190

KNOW ALL MEN BY THESE PRESENTS: That we Linaweaver Construction, Inc. as Contractor, and Merchants Bonding Company (Mutual) with General Offices in the City of West Des Moines, Iowa and authorized to transact business in the State of Kansas, as surety, are held and firmly bound unto the CITY OF PRAIRIE VILLAGE, KANSAS, and the STATE OF KANSAS, in the penal sum of

One Hundred Ten Thousand and 00/100 DOLLARS (\$ 110,000.00) lawful money of the United States of America, plus any change orders in excess thereof as approved by the City, for the payment of which sum well and truly to be made, we bind ourselves and our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents:

THE CONDITION OF THE FOREGOING OBLIGATION IS SUCH THAT:

WHEREAS, the said Contractor has on the ___ day of _____, 20___, entered into a Contract with the City of Prairie Village, Kansas for furnishing all tools, equipment, materials and supplies, performing all labor and constructing public improvements described in the said Contract, all in accordance with specifications and other contract documents on file in the office of City Clerk, City Hall, 7700 Mission Road, Prairie Village, Kansas.

NOW, THEREFORE, if the said Contractor or the Subcontractors of the Contractor shall pay all indebtedness incurred for supplies, materials or labor furnished, or equipment used or consumed in connection with, or in or about the construction or making of, the improvements described in the above-mentioned Contract Documents, including gasoline, lubricating oils, fuel oils, greases, coal and similar items used or consumed directly in furtherance of such public improvement, this obligation shall be void; otherwise, it shall remain in full force and effect.

The said Surety, for value received, hereby stipulates and agrees that no changes, extension of time, alteration or additions to the terms of the Contract to the work to be performed there under, or the specifications accompanying the same, shall in any way affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract or to the Specifications.

The said Surety further agrees that any person to whom there is due any sum for labor or material furnished, as hereinbefore stated, or said person's assigns, may bring action on this bond for the recovery of said indebtedness; PROVIDED that no action shall be brought on said bond after six months from the completion of said public improvements.

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

Linaweaver Construction, Inc.
CONTRACTOR
BY: Mark Z (SEAL)
BY: _____
Attorney-in-Fact

Merchants Bonding Company (Mutual)
SURETY COMPANY
BY: David S. Salavitch (SEAL)
David S. Salavitch, Attorney in fact
BY: Not Required
Kansas Agent

MERCHANTS
BONDING COMPANY,™
POWER OF ATTORNEY

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David S Salavitch; Luke P Sealer; Robert L Cox II

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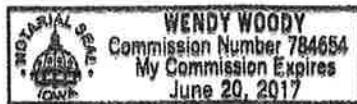
MERCHANTS BONDING COMPANY (MUTUAL)
MERCHANTS NATIONAL BONDING, INC.

By *Larry Taylor*

President

STATE OF IOWA
COUNTY OF Dallas ss.

On this 15th day of August, 2015, before me appeared Larry Taylor, to me personally known, who being by me sworn did say that he is President of the MERCHANTS BONDING COMPANY (MUTUAL) and MERCHANTS NATIONAL BONDING, INC.; and that the seals affixed to the foregoing instrument are the Corporate seals of the Companies; and that the said instrument was signed and sealed in behalf of the Companies by authority of their respective Boards of Directors.



Wendy Woody
Notary Public, Polk County, Iowa

(Expiration of notary's commission does not invalidate this instrument)

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In Witness Whereof, I have hereunto set my hand and affixed the seal of the Companies on this _____ day of _____



William Warner Jr.
Secretary

Priority / Initiative List

| # | Scope | 2015 | 2016 | 2017 | Initiative/project | Comments |
|----|-------|------|------|------|---|--|
| 1 | Lg | X | X | | Meadowbrook property development - park, TIF, park plan | TIF, IRB contemplated with bond issue. Planner & attorney review. |
| 2 | Lg | C | | | Review revised plan for former Mission Valley school site | SUP approved August 2015 |
| 3 | Lg | X | X | | Mission Rd - 71st to 75th - enhancements / pedestrian | Work group & public meetings held. Concept designs are being drafted. |
| 4 | Lg | X | | | Prairie Village HOA overlay district - HOA and resident group exploring overlay district | May be expanded to city-wide. Presentation to Council in October 2015. |
| 5 | Lg | | | | Review and update the City Code book | Attorney costs for legal review |
| 6 | Lg | | X | | Review & update zoning code (allowable uses, SUP process) | |
| 7 | Lg | | | | Review and update City policies | Attorney costs for legal review |
| 8 | Med | X | X | | Coordination of installation of Google Fiber network | |
| 9 | Med | X | X | | Coordination of installation of ATT GigaPower product | |
| 10 | Med | X | X | | Discussions with First Washington about future plans for the two shopping centers | Depends on scope and CID funds |
| 11 | Med | | | | Kansas City Christian school upgrades / expansion | Timeframe unknown |
| 12 | Med | X | X | | Efforts to secure additional parkland | Depends on location, scope. Currently pursuing Meadowbrook Park. |
| 13 | Med | X | | | Reestablish / strengthen the Island Committee & develop plan for island statutory maintenance. Inventory audit being conducted. | Audit nearing completion. |
| 14 | Med | C | | | Comprehensive review of committees, role and structure | New Council Policy adopted / implemented |
| 15 | Med | X | X | | Desire for more maintenance code inspections. Promote homeownership, review rental licensing program and property maintenance ordinance | Council approved adding Full FTE starting in 2015 (from 0.5 FTE) |
| 16 | Med | | X | | Explore a more proactive approach to the location and size of wireless tower facilities. Compliance with FCC updates. | May include a consultant |
| 17 | Med | | X | | Restructure of the Prairie Village Foundation | City / Foundation funded PT position at \$50k per year |
| 18 | Med | | | | Initiate a bike/ped master plan | Estimated at \$30k city cost w/ grant in 2016 |
| 19 | Med | | | | More effective / proactive communication with residents | |
| 20 | Med | X | | | Explore curbside city-wide glass recycling | pilot program to start Fall 2015 |
| 21 | Med | | | | Determine and develop economic development strategies and incentives | Attorney costs for legal review |
| 22 | Med | | | | Consider developing small business program: business incubator. Look into JCCC programs | Depends on scope. Use Econ Dev funds. |
| 23 | Med | X | | | Research and possibly pursue restrictions for short term rentals or lodging in residential neighborhoods (such as Airbnb) | May already be included in rental licensing |
| 24 | Med | X | | | Discussion & enforcement of screening of garbage receptacles | Discussion w/ Council in July. Awareness, education, courtesy notices and enforcement started. |
| 25 | Med | | | | Establish or reenergize dormant homes associations where they do not currently exist | |
| 26 | Med | | | | Develop form based codes and comprehensive plan amendments | Planning & attorney costs for review |

Priority / Initiative List

| # | Scope | 2015 | 2016 | 2017 | Initiative/project | Comments |
|----|-------|------|------|------|---|--|
| 27 | Med | | | | Research the possibility of initiating a transportation program for seniors and special needs residents | Based on other cities' experience - \$40k annual |
| 28 | Med | | | | Proactive approach for regional transit related topics | |
| 30 | Sm | — | → X | | Installation of KCPL electric charging station at City Hall complex - second round | Electricity cost for stations \$2k per year |
| 31 | Sm | X | | | Explore the purchase of the city's street light and/or traffic signal system. Audit currently underway. | Other cities experience 3 to 5 year payback. Then significant cost savings. |
| 32 | Sm | C | | | Conduct cost recovery study & review of city fees | Reviewed by Fin Comm - recommendations for end of year fee review |
| 33 | Sm | C | | | Selection of a new planning consultant | Gould Evans selected |
| 34 | Sm | X | | | Explore the use/cost of body-cams in PD | Early estimates are \$35k for the department |
| 35 | Sm | | X | | Research and review KP&F plan | |
| 36 | Sm | X | X | | Organize Ward meetings - Ward 1 held meeting summer 2014 | Minimal. Primary cost is for mailer. |
| 37 | Sm | | X | | Ordinances related to public antenna networks | |
| 38 | Sm | | | X | Review of Code of Ethics | |
| 39 | Sm | | | | Pedestrian crossings - education/enforcement/evaluation of signage for optimum compliance | Cost associated with new signage. |
| 40 | Sm | | | | Revisit use of the Consent Agenda | |
| 41 | Sm | | | | Explore the use of alternative fuel vehicles | |
| 42 | Sm | | | | Determine level of involvement in Community of All Ages - MARC initiative | |
| 43 | Sm | | | | Review of smoking ordinance and e-cigarettes | |
| 44 | Sm | | | | Explore other alternatives to the City owned fuel tanks | |
| 45 | Sm | | | | Program to encourage neighborhood block parties | Estimate of \$2k annual |
| 46 | Sm | | | | Cultivate an environment that celebrates diversity | |
| 47 | Sm | X | | | Review of solicitation ordinance in relation to ice cream trucks | Staff initiated. To be reviewed with fee schedule at end of 2015 |
| 48 | Sm | | | | MARC solar initiative - involvement level of the City TBD | |
| 49 | Sm | | | | political sign regulations - as reqd by changes in state statute | |
| 50 | Sm | X | | | Revisions to the election cycle - as reqd by changes to the state statutes | Research underway. Changes to charter ordinance and Council ordinances required. |
| 51 | Sm | | | | site plan & PUD reinspections - systematic resinspection of approved SUP | |

Key

Lg, Med, Sm Large, Medium & Small. Estimated scope of council & staff time commitment and involvement

X Initiative is underway, committed or significantly in progress

C Completed

Sept 3, 2015 version

Prepared by Q. Bennion

**COUNCIL MEETING AGENDA
CITY OF PRAIRIE VILLAGE
Council Chambers
Tuesday, September 08, 2015
7:30 PM**

- I. **CALL TO ORDER**
- II. **ROLL CALL**
- III. **PLEDGE OF ALLEGIANCE**
- IV. **INTRODUCTION OF STUDENTS & SCOUTS**
- V. **PUBLIC HEARING**

A public hearing on the creation of a Redevelopment District in the City of Prairie Village, Kansas

Consider approval of an ordinance making findings and establishing a redevelopment district (TIF district) for the Meadowbrook area

- VI. **PUBLIC PARTICIPATION**

(5 minute time limit for items not otherwise listed on the agenda)

- VII. **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 the regular City Council meeting minutes - August 17, 2015
- 2. Approve claims ordinance 2932
- 3. Approve request for Alcoholic Beverage Waiver for Harmon Park for the Prairie Village Jazz Festival
- 4. Ratify the Mayor's appointment of Melissa Brown to the Planning Commission with a term expiring in April 2016
- 5. Approve issuance of a Cereal Malt Beverage License for Minit Mart at 9440 Mission Road
- 6. Authorize the Mayor to execute a proclamation recognizing October 5-9, 2015 as "Peanut Butter Week" in Prairie Village

By Committee

- 7. Approve a request to have KCPL install a new street light on the south side of W. 63rd Street near 4618 W. 63rd Street

VIII. **COMMITTEE REPORTS**

Council Committee of the Whole

COU2015-32 Consider approval of a construction contract with Linaweaver
Construction for 2015 drainage program

IX. **MAYOR'S REPORT**

X. **STAFF REPORTS**

XI. **OLD BUSINESS**

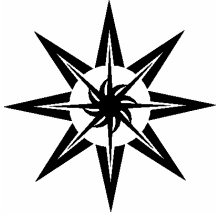
XII. **NEW BUSINESS**

XIII. **ANNOUNCEMENTS**

XIV. **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



ADMINISTRATION

City Council Meeting Date: Sept. 8, 2015

Consider approval of an ordinance making findings and establishing a redevelopment district (TIF district) for the Meadowbrook area

RECOMMENDED MOTION:

Move that Council approve an ordinance making findings and establishing a redevelopment district (TIF district) for the Meadowbrook area pursuant to KSA 12-1770.

BACKGROUND:

The City of Prairie Village, Johnson County, Johnson County Park & Rec District (JCPRD), JoCo Wastewater and VanTrust Real Estate LLC, have been working together to redevelop the former Meadowbrook Country Club. As currently proposed, the Meadowbrook redevelopment project would establish a nearly 90 acre public park and a mixed-use development to include a senior living project, luxury apartments, townhomes, single-family residential homes, and a boutique hotel.

The Meadowbrook redevelopment project anticipates the creation of a TIF district to fund the park acquisition, park improvements and other public infrastructure items. Kansas state statutes outline the authority and process of creating and administering a TIF district. A TIF district is an economic development tool for financing certain eligible redevelopment costs from future revenues as a result of increased property taxes and other local taxes (sales taxes, transient guest taxes) within a defined geographic area. A TIF establishes a base level at the current property tax assessed valuation and any increase or increment in the property tax assessed valuation within the defined geographic area is then captured over a defined period and used to pay for eligible redevelopment costs within the TIF district/development area. The process for establishing and administering a TIF is detailed in Kansas State Statutes (KSA 12-1770 et seq.). Cities have the authority to create TIF districts after their governing bodies hold a public hearing and find the area to be eligible.

A TIF district must meet at least one of the eligible area definitions outlined in the TIF Act as determined by the Governing Body. An eligible area can be a “blighted area, conservation area, enterprise zone, intermodal transportation area, major tourism area or a major commercial entertainment and tourism area or bioscience development area.” The proposed ordinance will designate the Meadowbrook and adjoining commercial area on the South as a conservation area per K.S.A 12-1770a(d) as attached.

To assist the City Council in their determination, Confluence, the planning consultant retained for this project, completed a conservation district eligibility study which summarizes the age and status of the property within the proposed TIF district. The proposed TIF district area includes the former Meadowbrook Country Club and the commercial properties within the Meadowbrook Shopping Village at 95th Street and Nall Ave.

Currently, the plans for the Meadowbrook project include TIF financing for 20 years or less. All property taxes which the owner is currently required to pay will continue. Once improvements are made to the property the increment or increase in the property tax revenue is captured to pay for eligible redevelopment costs for the proposed project including parkland acquisition, public streets, sewer, public infrastructure, street lighting, lakes, community center, trails, etc. The project elements financed by TIF funds will be detailed in the development agreement by and between the City and VanTrust and through other related agreements. The amount of TIF financing is currently estimated between \$15M to \$18M.

As part of the establishment of a TIF district, notifications were sent to other governmental entities and all property owners and tenants within the proposed district. The Johnson County Board of Commissioners and the Shawnee Mission School District Board of Education each have 30 days following the conclusion of the public hearing related to the creation of the TIF district to pass a resolution that the establishment of the TIF district would have an adverse effect on the County or School District.

An informational meeting was held Thursday, August 27th at the Meadowbrook clubhouse. The purpose of the meeting was to present information regarding the TIF district with the business and property owners. There were approximately six business owners in attendance at the meeting.

Creating the TIF district is the first step in the TIF process. Creating the TIF district does not bind the City to approve the project, provide any funding, issue any bonds or approve any TIF project plans within the TIF district.

PV City Council adopted a public financing policy and associated application in 2009. The primary purposes of the TIF funds generated from the Meadowbrook project are the acquisition of the parkland, development of the park, and the public infrastructure items in the new right-of-way. The TIF district is being initiated by the City. Since the TIF application is drafted for the private developer interest, a TIF application is less applicable to the city or other governmental entity as the beneficiary. It was determined that it was not necessary for the City or the JCPRD to complete the City's own TIF application.

City Staff has been assisted by Bond Counsel Gary Anderson with Gilmore & Bell, Financial Advisor Jeff White with Columbia Capital Management, City Attorney Katie Logan with Lathrop & Gage, and planning consultant PJ Novick with Confluence.

ATTACHMENTS:

- Ordinance making findings and establishing a redevelopment district
- Resolution calling for a public hearing for the redevelopment district
- Redevelopment District Plan for the Meadowbrook Redevelopment District
- K.S.A 12-1770a(d). – Conservation TIF statute
- Eligibility Study compiled by Confluence
- Updated Meadowbrook Development schedule

PREPARED BY:

Quinn Bennion, City Administrator

Date: Sept. 3, 2015

(Published in The Legal Record on September __, 2015)

ORDINANCE NO. _____

AN ORDINANCE OF THE GOVERNING BODY OF THE CITY OF PRAIRIE VILLAGE, KANSAS MAKING FINDINGS AND ESTABLISHING A REDEVELOPMENT DISTRICT PURSUANT TO K.S.A. 12-1770 ET SEQ., AND AMENDMENTS THERETO.

WHEREAS, pursuant to the provisions of K.S.A. 12-1770 et seq., as amended (the “Act”), the City of City of Prairie Village, Kansas (the “City”) is authorized to establish redevelopment districts within a defined area of the City which is an area for which the City has made a finding that that such area is “conservation area” as defined in the Act, and is therefore an “eligible area” as said term is defined in the Act; and

WHEREAS, the Governing Body adopted Resolution No. 2015-02 on August 3, 2015 calling for a public hearing considering the establishment of a redevelopment district to be held by the Governing Body on September 8, 2015; and

WHEREAS, notice of the public hearing was given as required by the Act; and

WHEREAS, the public hearing was held on September 8, 2015 and closed on the same day;

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

SECTION 1. The Governing Body hereby finds that the real property described in **Exhibits A and B** (the “Redevelopment District”) attached hereto is an eligible area for being designated as a redevelopment district pursuant to the Act because the real property is a “conservation area” as defined in the Act. The Governing Body hereby finds that notice of the public hearing was given as required by the Act.

SECTION 2. The Governing Body hereby finds that the real property described in **Exhibits A and B** is the same real property designated in the notice of public hearing given as required by the Act and Resolution No. 2015-02.

SECTION 3. The Governing Body hereby finds that the conservation, development or redevelopment of the Redevelopment District is necessary to promote the general and economic welfare of the City.

SECTION 4. The Governing Body hereby establishes the Redevelopment District, which shall consist of two (2) project areas, depicted on the map attached hereto as **Exhibit A**. The district plan is hereby approved, and consists of buildings and facilities to be constructed within the Redevelopment District generally described as follows:

- **Park and Village Project Area** - Recreational, residential and mixed-use development consisting of some or all of the following uses: single family, townhomes, multi-family apartments, and senior living residential; an inn or hotel; a public park and any other facilities or improvements associated with or incidental to such uses including commercial services and

offices, trails, landscaped areas, water features and detention facilities, parking lots, shelters, recreational structures, off-street parking, traffic improvements, sanitary sewer improvements and any other utility improvements and infrastructure necessary or incidental to the uses and improvements described above and permitted under the Act.

- **Commercial Project Area** - A neighborhood retail and neighborhood office development consisting of some or all of the following uses: retail, office, residential, and any other facilities or improvements associated with or incidental to such uses including green space, landscaped areas, water features and detention facilities, parking lots and facilities, off-street parking, streets and traffic signals, any other public and private infrastructure, and other items permitted under the Act.

SECTION 5. The Act authorizes the issuance by the City of bonds to finance all or a portion of the costs of implementing the district plan. Said bonds may be issued to reimburse expenditures made on or after the date which is 60 days before the date of passage of this Ordinance, pursuant to Treasury Regulation §1.150-2 in the maximum principal amount of \$20,000,000.

SECTION 6. This Ordinance shall take effect and be in force from and after its passage and publication as provided by law.

ADOPTED by the Governing Body this September 8, 2015.

SIGNED by the Mayor this September ____, 2015.

Mayor

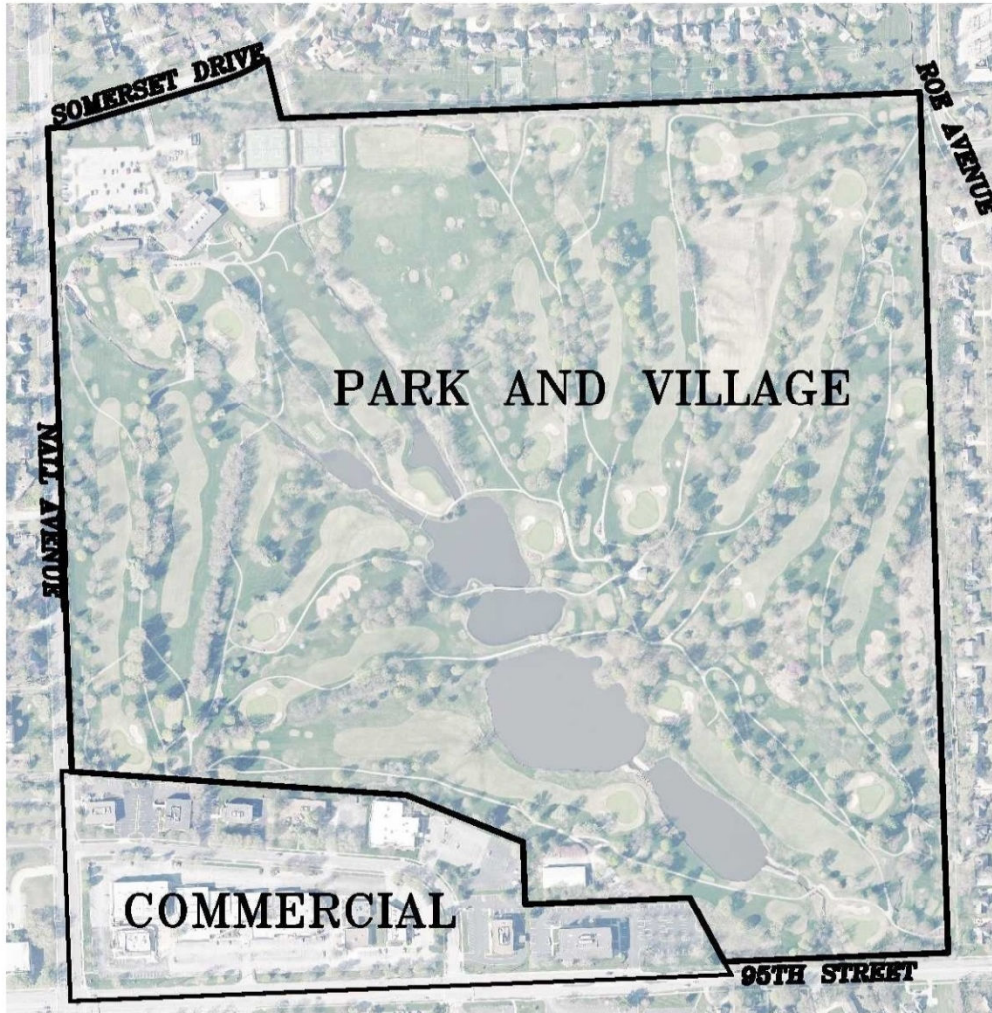
(SEAL)

City Clerk

EXHIBIT A

**MAP OF REDEVELOPMENT DISTRICT
AND PROJECT AREAS**

The following property located in Johnson County, Prairie Village, Kansas:



SCALE: 1"=500'



Z:\P\120457\DWG\Exhibits\Project Location.dwg Layout:1-P Jul 20, 2015 - 10:12am



PLANNING
ENGINEERING
IMPLEMENTATION

PHELPS ENGINEERING, INC (913) 393-1155
1270 N. Winchester Fax (913) 393-1166
Olathe, Kansas 66061 www.phelpsengineering.com

CERTIFICATE OF AUTHORIZATION KANSAS LAND
SURVEYING - LS-82
ENGINEERING - E-301
CERTIFICATE OF AUTHORIZATION MISSOURI
LAND SURVEYING-2007001128
ENGINEERING-2007005058

PROJECT NO. 120457
DATE: 7/20/15
BY: DAU

EXHIBIT B

LEGAL DESCRIPTION OF REDEVELOPMENT DISTRICT

The following property located in Johnson County, Prairie Village, Kansas:

Park and Village Project Area:

LOTS 1 THROUGH 12, INCLUSIVE, AND LOT A, EXCEPT THE SOUTH 10 FEET THEREOF, BLOCK B, MEADOWBROOK ACRES, A SUBDIVISION IN THE CITY OF PRAIRIE VILLAGE, JOHNSON COUNTY, KANSAS;

AND ALL OF THE SOUTHWEST ONE-QUARTER (SW $\frac{1}{4}$) OF SECTION THIRTY-THREE (33) TOWNSHIP TWELVE (12) RANGE TWENTY-FIVE (25) IN THE CITY OF PRAIRIE VILLAGE, JOHNSON COUNTY, KANSAS, EXCEPT THAT PART PLATTED AS MEADOWBROOK ACRES; AND EXCEPT THE SOUTH 40 FEET THEREOF IN 95TH STREET; AND EXCEPT THE WEST 30 FEET THEREOF IN NALL AVENUE;

AND EXCEPT A TRACT DESCRIBED AS FOLLOWS: BEGINNING AT THE SOUTHWEST CORNER OF SECTION 33, TOWNSHIP 12 SOUTH, RANGE 25 EAST, JOHNSON COUNTY, KANSAS; THENCE NORTH $0^{\circ} 00' 00''$ EAST ALONG THE WEST LINE OF SAID SECTION 33, A DISTANCE OF 700.00 FEET TO A POINT; THENCE SOUTH $83^{\circ} 50' 00''$ EAST A DISTANCE OF 1,030.00 FEET TO A POINT; THENCE SOUTH $65^{\circ} 35' 00''$ EAST, A DISTANCE OF 375.00 FEET TO A POINT; THENCE SOUTH $0^{\circ} 00' 00''$ WEST, A DISTANCE OF 429.24 FEET TO A POINT ON THE SOUTH LINE OF SAID SECTION 33; THENCE SOUTH $89^{\circ} 47' 09''$ WEST ALONG THE SOUTH LINE OF SAID SECTION 33 A DISTANCE OF 1,365.51 FEET TO THE PLACE OF BEGINNING;

AND EXCEPT A TRACT DESCRIBED AS FOLLOWS: ALL THAT PART OF THE SOUTHWEST $\frac{1}{4}$ OF SECTION 33, TOWNSHIP 12 SOUTH, RANGE 25 EAST, NOW IN THE CITY OF PRAIRIE VILLAGE, JOHNSON COUNTY, KANSAS, MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTHEAST CORNER OF THE SOUTHWEST $\frac{1}{4}$ OF SAID SECTION 33, THENCE SOUTH $89^{\circ} 47' 09''$ WEST, ALONG THE SOUTH LINE OF THE SOUTHWEST $\frac{1}{4}$ OF SECTION 33, A DISTANCE OF 676.70 FEET, TO THE TRUE POINT OF BEGINNING OF SUBJECT TRACT; THENCE CONTINUING SOUTH $89^{\circ} 47' 09''$ WEST, ALONG THE SOUTH LINE OF THE SOUTHWEST $\frac{1}{4}$ OF SAID SECTION 33, A DISTANCE OF 605 FEET; THENCE NORTH $0^{\circ} 00' 00''$ EAST, A DISTANCE OF 240 FEET; THENCE NORTH $89^{\circ} 47' 09''$ EAST ALONG A LINE PARALLEL TO THE SOUTH LINE OF THE SOUTHWEST $\frac{1}{4}$ OF SAID SECTION 33, A DISTANCE OF 490 FEET; THENCE SOUTH $25^{\circ} 38' 32''$ EAST, A DISTANCE OF 265.74 FEET TO THE TRUE POINT OF BEGINNING OF SUBJECT TRACT;

ALSO: A PART OF THE NORTHWEST $\frac{1}{4}$ OF SECTION 33, TOWNSHIP 12, RANGE 25, JOHNSON COUNTY, KANSAS, MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING AT A POINT ON THE SOUTH LINE AND 88.86 FEET EAST OF THE SOUTHWEST CORNER OF THE NORTHWEST $\frac{1}{4}$ OF SAID SECTION 33; THENCE NORTH 75° EAST, ALONG THE SOUTH LINE OF SOMERSET DRIVE, AS ESTABLISHED BY THE PLAT OF WEST RIDING, A SUBDIVISION OF LAND NOW IN THE CITY OF PRAIRIE VILLAGE, JOHNSON COUNTY, KANSAS, A DISTANCE OF 454.01 FEET, TO A POINT OF CURVATURE; THENCE NORTHEASTERLY, ALONG THE SOUTH LINE OF SAID SOMERSET DRIVE, SAID SOUTH LINE BEING ON A CURVE TO THE LEFT HAVING A RADIUS OF 640 FEET, A DISTANCE OF 176.13 FEET; THENCE SOUTH $11^{\circ} 43' 23''$ EAST, A DISTANCE OF 183.42 FEET, TO A POINT ON THE SOUTH LINE OF THE NORTHWEST $\frac{1}{4}$ OF SAID SECTION 33; THENCE SOUTH $89^{\circ} 26' 38''$ WEST,

ALONG THE SOUTH LINE OF THE NORTHWEST $\frac{1}{4}$ OF SAID SECTION 33, A DISTANCE OF 637.59 FEET, TO THE POINT OF BEGINNING.

Commercial Project Area:

ALL THAT PART OF THE SOUTHWEST QUARTER OF SECTION 33, TOWNSHIP 12 SOUTH, RANGE 25 EAST, IN THE CITY OF PRAIRIE VILLAGE, JOHNSON COUNTY, KANSAS, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

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(Published in **The Legal Record** on August 25, 2015)

RESOLUTION NO. _____

A RESOLUTION CALLING AND PROVIDING FOR THE GIVING OF NOTICE OF A PUBLIC HEARING ON THE ADVISABILITY OF CREATING A REDEVELOPMENT DISTRICT IN THE CITY OF PRAIRIE VILLAGE, KANSAS PURSUANT TO K.S.A. 12-1770 ET SEQ..

Section 1. The City of Prairie Village, Kansas (the “City”) is considering the establishment of a redevelopment district pursuant to K.S.A. 12-1770 *et seq.*, as amended (the “Act”).

Section 2. Notice is hereby given that a public hearing will be held by the City to consider establishment of a redevelopment district on **September 8, 2015 at 7:30 p.m.**, or as soon thereafter as the matter can be heard, at the Prairie Village City Hall, Council Chambers, 7700 Mission Road, Prairie Village, Kansas, under the authority of the Act

Section 3. The proposed redevelopment district is generally described as an area bounded by Roe Avenue on the east, W. 95th Street on the south, Nall Avenue on the west, and W. 91st Street, as if extended in the City. A map of the redevelopment district is attached hereto as **Exhibit A**. The proposed redevelopment district is legally described as shown on **Exhibit B** hereto.

Section 4. The district plan for the proposed redevelopment district provides for the redevelopment district to include two project areas. The buildings and facilities to be constructed within the project area are generally described as follows:

- **Park and Village Project Area** - Recreational, residential and mixed-use development consisting of some or all of the following uses: single family, townhomes, multi-family apartments, and senior living residential; an inn or hotel; a public park and any other facilities or improvements associated with or incidental to such uses including commercial services and offices, trails, landscaped areas, water features and detention facilities, parking lots, shelters, recreational structures, off-street parking, traffic improvements, sanitary sewer improvements and any other utility improvements and infrastructure necessary or incidental to the uses and improvements described above and permitted under the Act.
- **Commercial Project Area** - A neighborhood retail and neighborhood office development consisting of some or all of the following uses: retail, office, residential, and any other facilities or improvements associated with or incidental to such uses including green space, landscaped areas, water features and detention facilities, parking lots and facilities, off-street parking, streets and traffic signals, any other public and private infrastructure, and other items permitted under the Act.

Section 5. A description and map of the proposed redevelopment district and the district plan are available for inspection and copying in the offices of the City Clerk, City Hall, 7700 Mission Road, Prairie Village, Kansas, Monday through Friday (other than holidays) between 8:00 a.m. and 5:00 p.m.

Section 6. The Governing Body will consider the findings necessary for the establishment of a redevelopment district after conclusion of the public hearing.

Section 7. The City Clerk is hereby authorized and directed to publish this resolution once in the official city newspaper not less than one week or more than two weeks preceding the date set for the public hearing. The City Clerk is also authorized and directed to mail a copy of this resolution via certified mail, return receipt requested to the board of county commissioners, the board of education of any school district levying taxes on property within the proposed redevelopment district, and to each owner and occupant of land within the proposed redevelopment district, not more than 10 days following the date of the adoption of this Resolution.

Section 7. Effective Date. This Resolution shall be effective upon adoption by the Governing Body of the City.

ADOPTED August 3, 2015.

**CITY OF PRAIRIE VILLAGE,
KANSAS**

By: _____
Mayor

[SEAL]

ATTEST:

City Clerk

EXHIBIT A

MAP OF PROPOSED REDEVELOPMENT DISTRICT

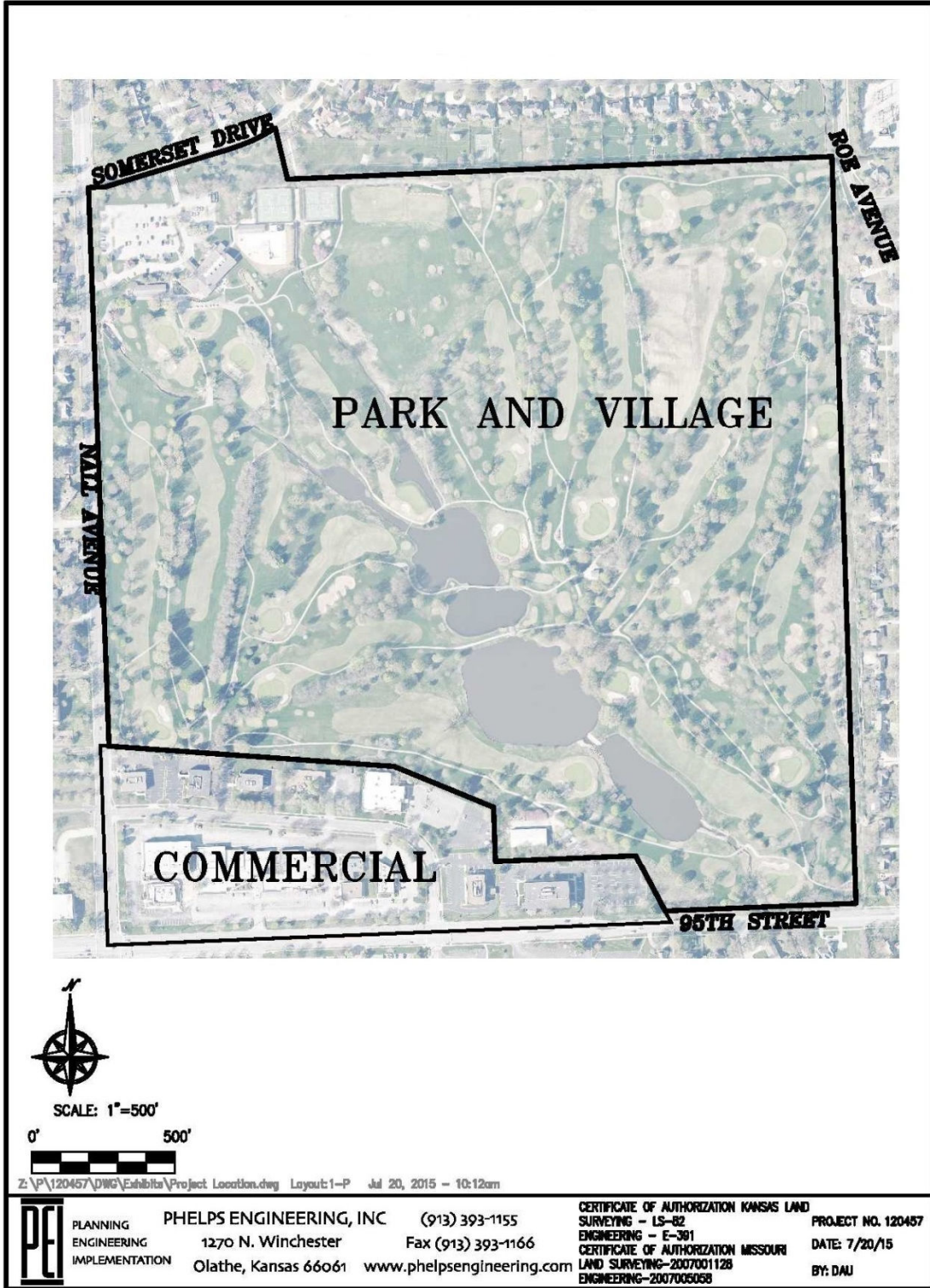


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AND ALL OF THE SOUTHWEST ONE-QUARTER (SW ¼) OF SECTION THIRTY-THREE (33) TOWNSHIP TWELVE (12) RANGE TWENTY-FIVE (25) IN THE CITY OF PRAIRIE VILLAGE, JOHNSON COUNTY, KANSAS, EXCEPT THAT PART PLATTED AS MEADOWBROOK ACRES; AND EXCEPT THE SOUTH 40 FEET THEREOF IN 95TH STREET; AND EXCEPT THE WEST 30 FEET THEREOF IN NALL AVENUE;

AND EXCEPT A TRACT DESCRIBED AS FOLLOWS: BEGINNING AT THE SOUTHWEST CORNER OF SECTION 33, TOWNSHIP 12 SOUTH, RANGE 25 EAST, JOHNSON COUNTY, KANSAS; THENCE NORTH 0° 00' 00" EAST ALONG THE WEST LINE OF SAID SECTION 33, A DISTANCE OF 700.00 FEET TO A POINT; THENCE SOUTH 83° 50' 00" EAST A DISTANCE OF 1,030.00 FEET TO A POINT; THENCE SOUTH 65° 35' 00" EAST, A DISTANCE OF 375.00 FEET TO A POINT; THENCE SOUTH 0° 00' 00" WEST, A DISTANCE OF 429.24 FEET TO A POINT ON THE SOUTH LINE OF SAID SECTION 33; THENCE SOUTH 89° 47' 09" WEST ALONG THE SOUTH LINE OF SAID SECTION 33 A DISTANCE OF 1,365.51 FEET TO THE PLACE OF BEGINNING;

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**REDEVELOPMENT DISTRICT PLAN
FOR THE
MEADOWBROOK REDEVELOPMENT DISTRICT**

July 20, 2015

DESCRIPTION OF REDEVELOPMENT DISTRICT PLAN

K.S.A. 12-1770 *et seq.*, as amended (the “Act”), authorizes cities to establish redevelopment districts to promote the general and economic welfare of the city. The proposed redevelopment district (the “**Redevelopment District**”) consists of an area located in the City of Prairie Village, Johnson County, Kansas that is described on the attached Exhibit A and depicted on the attached Exhibit B, both of which are attached and made a part hereof, and which is generally described as an area bounded by Roe Avenue on the east, W. 95th Street on the south, Nall Avenue on the west, and W. 91st Street, as if extended, on the north.

This redevelopment district plan (the “**District Plan**”) consists of two (2) redevelopment project areas and the buildings, facilities, and improvements to be constructed or improved within the Redevelopment District may be described in a general manner as consisting of some or all of the following buildings, facilities and improvements to be constructed or improved, without limitation:

- **Park and Village Project Area** - Recreational, residential and mixed-use development consisting of some or all of the following uses: single family, townhomes, multi-family apartments, and senior living residential; an inn or hotel; a public park and any other facilities or improvements associated with or incidental to such uses including commercial services and offices, trails, landscaped areas, water features and detention facilities, parking lots, shelters, recreational structures, off-street parking, traffic improvements, sanitary sewer improvements and any other utility improvements and infrastructure necessary or incidental to the uses and improvements described above and permitted under the Act.
- **Commercial Project Area** - A neighborhood retail and neighborhood office development consisting of some or all of the following uses: retail, office, residential, and any other facilities or improvements associated with or incidental to such uses including green space, landscaped areas, water features and detention facilities, parking lots and facilities, off-street parking, streets and traffic signals, any other public and private infrastructure, and other items permitted under the Act.

[The remainder of this page intentionally left blank. Exhibits follow.]

EXHIBIT A

Legal Description

Park and Village Project Area:

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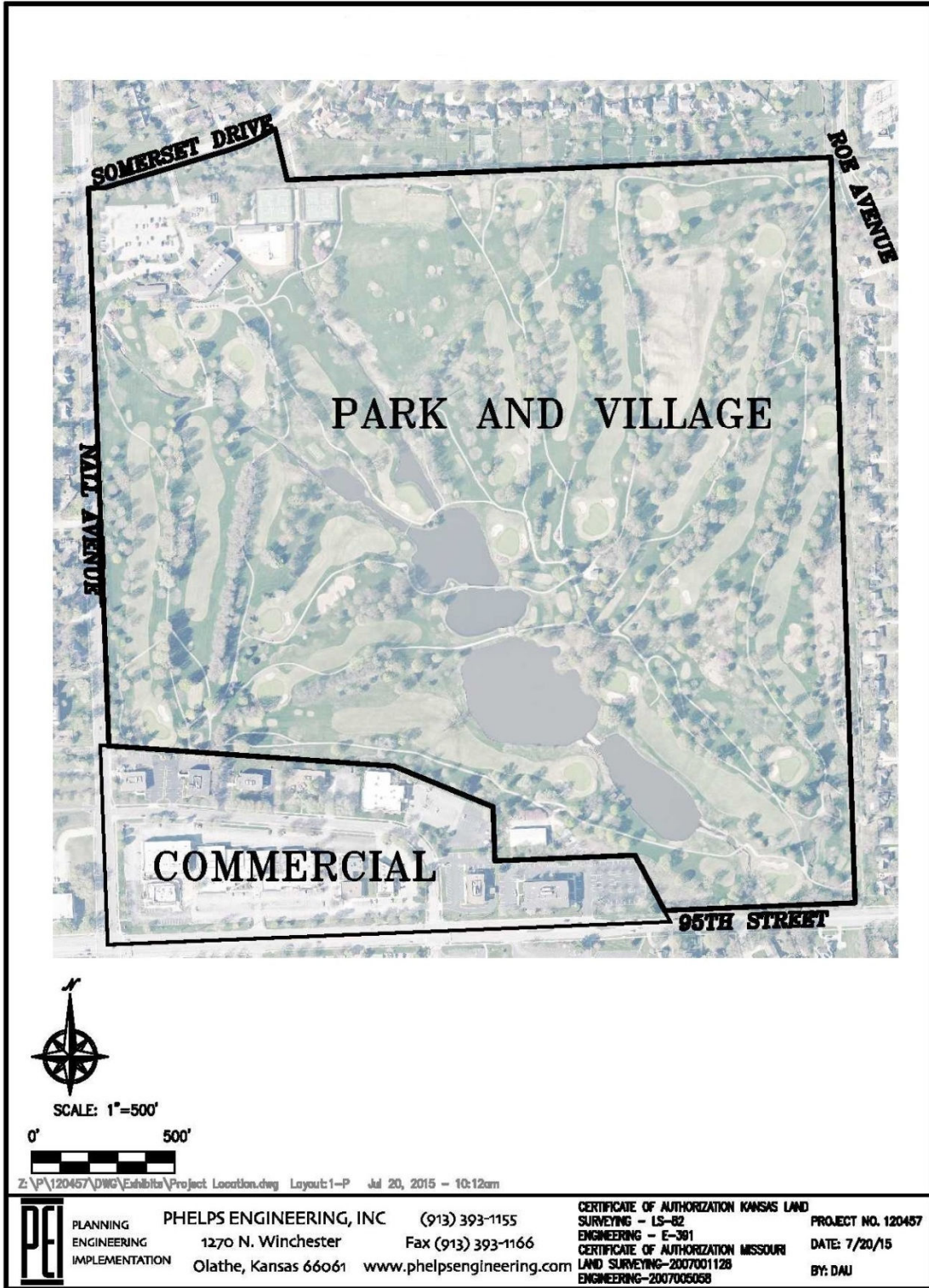
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EXHIBIT B

Depiction



The boundaries of the Park and Village Project Area and the Commercial Project Area are outlined in black.

KSA 12-1770a(d)

(d) "Conservation area" means any improved area comprising 15% or less of the land area within the corporate limits of a city in which 50% or more of the structures in the area have an age of 35 years or more, which area is not yet blighted, but may become a blighted area due to the existence of a combination of two or more of the following factors:

- (1) Dilapidation, obsolescence or deterioration of the structures;
- (2) illegal use of individual structures;
- (3) the presence of structures below minimum code standards;
- (4) building abandonment;
- (5) excessive vacancies;
- (6) overcrowding of structures and community facilities; or
- (7) inadequate utilities and infrastructure.



W. 91ST ST.

NALL AVE.

MEADOWBROOK PROPERTY

ROE AVE.

95TH ST.

MEADOWBROOK PROPOSED TIF DISTRICT ANALYSIS

JULY 30, 2015
PREPARED FOR:



The City Of
Prairie Village, Kansas



REPORT: MEADOWBROOK PROPOSED TIF DISTRICT SITE ANALYSIS

CITY OF PRAIRIE VILLAGE, KANSAS

JULY 30, 2015

PREPARED BY Confluence, Kansas City, Kansas
- Christopher Shires, AICP, Principal
- PJ Novick, ASLA, LEED GA, Principal

PROJECT BACKGROUND

The Village Vision Strategic Investment Plan, adopted by the City of Prairie Village, Kansas, in 2007 as the City's comprehensive plan, identifies the Meadowbrook Country Club and the adjoining Meadowbrook Village Shopping Center as a potential site for redevelopment. The Country Club site is one of the last relatively undeveloped properties in Prairie Village and both properties are strategically located at the southwestern edge of the community at the intersection of two (2) major roadways, Nall Avenue and W. 95th Street. However, the Village Vision notes that the Country Club property does not have adequate sanitary sewer service and the Shopping Center is underutilized and retail space has been converted to office space.

To foster and support the redevelopment of the Country Club property and the rejuvenation of the adjoining Shopping Center, the City desires to establish a Tax Increment Financing (TIF) district as provided for in the State of Kansas Statutes. The proposed TIF district, which includes both the Country Club property and the Shopping Center, is generally bound by W. 95th Street on the south, Nall Avenue of the west, W. 90th Street on the north, and Roe Avenue on the east. (See Exhibit A – Proposed TIF District Location Map.)

In order to establish a TIF district, among other steps, the City must determine if the area meets the eligibility requirements for a TIF district. The most applicable eligibility status is a "Conservation area" as defined in the State of Kansas Statute (K.S.A 12-1770a). The statute states:

"Conservation area" means any improved area comprising 15% or less of the land area within the corporate limits of a city in which 50% or more of the structures in the area have an age of 35 years or more, which area is not yet blighted, but may become a blighted area due to the existence of a combination of two or more of the following factors:

- (1) Dilapidation, obsolescence or deterioration of the structures;*
- (2) illegal use of individual structures;*
- (3) the presence of structures below minimum code standards;*
- (4) building abandonment;*
- (5) excessive vacancies;*
- (6) overcrowding of structures and community facilities; or*
- (7) inadequate utilities and infrastructure.*

The following memorandum summarizes our site analysis as to whether the proposed TIF district meets the three (3) part definition of "Conservation area."

ANALYSIS

Part 1 - The proposed TIF district is 15% or less than the total area of the city:

The proposed TIF district is approximately 172 acres. The total land area contained within the corporate limits of the City is 3,968 acres. The proposed TIF district is therefore 4.34% of the total land area of the City, and under the 15% threshold identified by the State Statute.

Part 2 - 50% or more of the structures in the proposed TIF district have an age of 35 years or more:

There are 15 individual structures within the proposed TIF district. In review of the Johnson County land records, 12 of these structures (80%) were constructed prior to 1981 and are 35 years of age or older, more than the 50% as required by the State Statute.

Part 3 - The existence of a combination of two (2) or more of the seven (7) State definition factors within the proposed TIF district:

In an analysis of the existing site conditions, four (4) of the seven (7) factors of the State Statute have been identified as applying to the proposed TIF district.

As noted in the 2007 Village Vision, the Meadowbrook Country Club property does not have sanitary sewer service and is not included within the Johnson County waste water sewer district (with the exception of the existing clubhouse and maintenance building). The cost of extending sewer to this property is significant and is a barrier to the redevelopment of this site. Based on this, the proposed TIF district identifies with the seventh factor of the State Statute "inadequate utilities and infrastructure" in that the proposed TIF district does not have adequate sanitary sewer service.

It has been identified through communications with the City staff that there are insufficient stormwater drainage facilities to manage the stormwater run-off from the sites on which the identified structures are located. Most of these sites have little to no stormwater detention facilities, adding to the flooding issues known to the general area. Therefore it is reasonable to find that the proposed TIF district again identifies with the seventh factor of the State Statute "inadequate utilities and infrastructure" in that the proposed TIF district does not have adequate stormwater management infrastructure.

Upon onsite observation of each of the 15 structures within the proposed TIF district, we identified that several have dated building architecture that may make them more difficult to retain tenants and lease or sell to new tenants, as their building style and layout/configuration may not fit the needs and desires of today's typical retail and office user. Additionally, due to the age of the structures it can be assumed that most have some nonconformity with current building codes, as code requirements have evolved and changed over the past 35+ years. Depending on the user this can be a significant obstacle to the reuse, renovation, or re-tenanting of an existing structure, adding additional cost and delay that may make the structure significantly less attractive to a current or prospective tenant than would a newer structure. Therefore it is reasonable to state that the proposed TIF district further identifies with the first and third factors of the State Statute "Dilapidation, obsolescence or deterioration of the structures" and "the presence of structures below minimum code standards" in that several structures may be obsolete with regards to meeting the current requirements of retail and office tenants and/or may not meet the current minimum building code standards.

It was also observed that several properties within the subject area do not appear to have room for building and/or parking lot expansion. This site crowding hinders the ability to add additional parking, outdoor pedestrian spaces, patios, building entryways, drive-thrus, etc., further impacting their ability to evolve and remain viable tenant spaces. As a result, the proposed TIF district identifies with the sixth factor of the State Statute "overcrowding of structures and community facilities."

CONCLUSION

A conclusion can be made that the proposed TIF district conforms to the Kansas Statute as a “Conservation area.” The proposed TIF district is less than 15% of the total land area of the City. More than 50% of the structures within the proposed TIF district are 35 years of age or older, and the proposed TIF district identifies with two (2) or more of the seven (7) factors listed in the state statute.

Two tables summarizing our analysis are attached (Exhibit B – Structure Ages Table and Conservation Area Factors Table). Summary sheets of the analysis of each individual structure and site is further attached as Exhibit C.

EXHIBITS

- Exhibit A – Proposed TIF District Location Map
- Exhibit B – Structure Ages Table + Conservation Area Factors Table
- Exhibit C – Site Analysis Sheets

EXHIBIT A | PROPOSED TIF DISTRICT LOCATION MAP



EXHIBIT B | STRUCTURE AGES

| CONSERVATION AREA STRUCTURES | | | | MEETS AGE DEFINITION |
|------------------------------|--------------------------|--|-----|-----------------------|
| # | ADDRESS | | AGE | |
| 1 | 5400 W. 95TH ST. | | 36 | X |
| 2 | 5370 W. 95TH ST. | | 28 | |
| 3 | 5300 W. 95TH ST. | | 39 | X |
| 4 | 9401 NALL AVE. | | 37 | X |
| 5 | 5350 W. 94TH TER. | | 36 | X |
| 6 | 5300 W. 94TH TER. | | 38 | X |
| 7 | 5250 W. 94TH TER. | | 33 | |
| 8 | 5215 W. 94TH. TER. | | 39 | X |
| 9 | 5206 W. 95TH ST. | | 39 | X |
| 10 | 5200 W. 95TH ST. | | 38 | X |
| 11 | 5200 W. 94TH TER. | | 37 | X |
| 12 | 5100 W. 95TH ST. APT 200 | | 39 | X |
| 13 | 5000 W. 95TH ST. APT. A | | 41 | X |
| 14 | 5000 W. 95TH ST. APT. A | | 27 | |
| 15 | 9101 NALL AVE. | | 41 | X |
| | | | | 12 OF 15 = 80% |

CONSERVATION AREA FACTORS:

- Dilapidation, obsolescence or deterioration of the structures
- Illegal use of individual structures
- The presence of structures below minimum code standards
- Building abandonment
- Excessive vacancies
- Overcrowding of the structures and community facilities
- Inadequate utilities and infrastructure

EXHIBIT C | SITE ANALYSIS SHEETS

STRUCTURE ADDRESS: 5400 W. 95th St.

PROPERTY NUMBER: OF251233-2019

AGE OF PROPERTY: 36

YEAR BUILT: 1979

CLASS: C- Commercial

BRIEF DESCRIPTION

Single-story masonry structure that currently houses a restaurant. The building exterior appears to be in good condition and some renovations have taken place. Due to the age of the structure it can be assumed portions may not comply with current building codes. The driveways, parking lot and pedestrian walkways are in fair condition. Little room exists for expansion and the site may be short adequate very close proximity parking typically desired by a restaurant user.



EXHIBIT C | SITE ANALYSIS SHEETS

STRUCTURE ADDRESS: 5370 W. 95th St.

PROPERTY NUMBER: OF251233-2016

AGE OF PROPERTY: 28

YEAR BUILT: 1987

CLASS: C- Commercial

BRIEF DESCRIPTION

Three-story masonry structure with multiple office tenants. The building exterior appears to be in fair condition with no recent exterior improvements. The building architecture is dated and may no longer fit the needs and desires of typical retail and office tenants. Due to the age of the structure it can be assumed portions may not comply with current building codes. The driveways, parking lot and pedestrian walkways are in poor condition.



EXHIBIT C | SITE ANALYSIS SHEETS

STRUCTURE ADDRESS: 5300 W. 95th St.

PROPERTY NUMBER: OF251233-2011

AGE OF PROPERTY: 39

YEAR BUILT: 1976

CLASS: C- Commercial

BRIEF DESCRIPTION

Single-story, multi-tenant office and retail structure (Nall Hills Shopping Center) with no outward appearance of recent improvements. The building exterior appears to be in fair condition but has dated architecture that may no longer fit the needs and desires of typical retail and office tenants. Due to the age of the structure it can be assumed portions may not comply with current building codes. The driveways, parking lot and pedestrian walkways are in poor condition.



EXHIBIT C | SITE ANALYSIS SHEETS

STRUCTURE ADDRESS: 9401 Nall Ave.

PROPERTY NUMBER: OF251233-2017

AGE OF PROPERTY: 37

YEAR BUILT: 1978

CLASS: C- Commercial

BRIEF DESCRIPTION

Two-story brick office structure. The building exterior appears to be in good condition. Due to the age of the structure it can be assumed portions may not comply with current building codes. The driveways, parking lot and pedestrian walkways are in fair condition. The site appears to be maximized so should parking become an issue there does not appear room to construct additional parking.



EXHIBIT C | SITE ANALYSIS SHEETS

STRUCTURE ADDRESS: 5350 W. 94th Ter.

PROPERTY NUMBER: OF251233-2020

AGE OF PROPERTY: 36

YEAR BUILT: 1979

CLASS: C- Commercial

BRIEF DESCRIPTION

Two-story brick office structure. The building exterior appears to be in good condition. Due to the age of the structure it can be assumed portions may not comply with current building codes. The driveways, parking lot and pedestrian walkways are in fair condition. The site appears to be maximized so should parking become an issue there does not appear room to construct additional parking.



EXHIBIT C | SITE ANALYSIS SHEETS

STRUCTURE ADDRESS: 5300 W. 94th Ter.

PROPERTY NUMBER: OF251233-2014

AGE OF PROPERTY: 38

YEAR BUILT: 1977

CLASS: C- Commercial

BRIEF DESCRIPTION

Two-story brick office structure. The building exterior appears to be in good condition. Due to the age of the structure it can be assumed portions may not comply with current building codes. The driveways, parking lot and pedestrian walkways are in fair condition.



EXHIBIT C | SITE ANALYSIS SHEETS

STRUCTURE ADDRESS: 5250 W. 94th Ter.

PROPERTY NUMBER: OP23710000001

AGE OF PROPERTY: 33

YEAR BUILT: 1982

CLASS: C- Commercial

BRIEF DESCRIPTION

Single-story brick office structure. The building exterior appears to be in good condition. Due to the age of the structure it can be assumed portions may not comply with current building codes. The parking lot and driveway are in poor condition. Access to the site is limited to one driveway.



EXHIBIT C | SITE ANALYSIS SHEETS

STRUCTURE ADDRESS: 5215 W. 94th Ter.

PROPERTY NUMBER: OF251233-2012

AGE OF PROPERTY: 39

YEAR BUILT: 1976

CLASS: C- Commercial

BRIEF DESCRIPTION

Single-story masonry retail structure. Some exterior improvements have been made and the building exterior appears to be in good condition. The building architecture is dated that may no longer fit the needs and desires of typical retail and office tenants. The driveways, parking lot and pedestrian walkways are in fair condition.



EXHIBIT C | SITE ANALYSIS SHEETS

STRUCTURE ADDRESS: 5206 W. 95th St.

PROPERTY NUMBER: OF251233-2013

AGE OF PROPERTY: 39

YEAR BUILT: 1976

CLASS: C- Commercial

BRIEF DESCRIPTION

Single-story masonry structure currently housing a bank. The building exterior appears to be in fair condition. Due to the age of the structure it can be assumed portions may not comply with current building codes. The building architecture is dated that may no longer fit the needs and desires of typical retail and office tenants. The ATM is in an awkward location and the bank teller drive-up is limited to one lane. There does not appear adequate room to expand the bank drive-up. The driveways, parking lot and pedestrian walkways are in poor condition.



EXHIBIT C | SITE ANALYSIS SHEETS

STRUCTURE ADDRESS: 5200 W. 95th St.

PROPERTY NUMBER: OF251233-2015

AGE OF PROPERTY: 38

YEAR BUILT: 1977

CLASS: C- Commercial

BRIEF DESCRIPTION

Single-story masonry retail structure that is currently vacant. The building exterior appears to be in fair condition. Due to the age of the structure it can be assumed portions may not comply with current building codes. The driveways, parking lot and pedestrian walkways are in poor condition.



EXHIBIT C | SITE ANALYSIS SHEETS

STRUCTURE ADDRESS: 5200 W. 94th Ter.

PROPERTY NUMBER: OF251233-2018

AGE OF PROPERTY: 37

YEAR BUILT: 1978

CLASS: C- Commercial

BRIEF DESCRIPTION

Two-story brick office structure with recent improvements completed. The building exterior appears to be in good condition. The driveways, parking lot and pedestrian walkways are in fair condition.



MEADOWBROOK | PROPOSED TIF DISTRICT STRUCTURES

JULY 30, 2015

PRAIRIE VILLAGE, KANSAS

CONFLUENCE

EXHIBIT C | SITE ANALYSIS SHEETS

STRUCTURE ADDRESS: 5100 W. 95th St. Apt. 200

PROPERTY NUMBER: OF251233-2009

AGE OF PROPERTY: 39

YEAR BUILT: 1976

CLASS: C- Commercial

BRIEF DESCRIPTION

Two-story brick multi-tenant office structure that currently housing a bank and other office tenants. The building exterior appears to be in good condition. Due to the age of the structure it can be assumed portions may not comply with current building codes. The driveways, parking lot and pedestrian walkways are in fair condition. The ATM is in a very poor location potentially negatively impacting vehicular circulation.



EXHIBIT C | SITE ANALYSIS SHEETS

STRUCTURE ADDRESS: 5000 W. 95th St. Apt. A

PROPERTY NUMBER: OF251233-2023

AGE OF PROPERTY: 41

YEAR BUILT: 1974

CLASS: C- Commercial

BRIEF DESCRIPTION

Single-story metal structure currently serving as a maintenance facility for the adjoining former golf course. The structure has limited vehicular access and has very limited potential for use as anything other than a maintenance shed and cannot be readily repurposed or modified for office or retail use. The driveways and parking lot are in very poor condition.



EXHIBIT C | SITE ANALYSIS SHEETS

STRUCTURE ADDRESS: 5000 W. 95th St.

PROPERTY NUMBER: OP11100000001

AGE OF PROPERTY: 27

YEAR BUILT: 1988

CLASS: C- Commercial

BRIEF DESCRIPTION

Three-story brick multi-tenant office structure. The building exterior appears to be in good condition. The driveways, parking lot and pedestrian walkways are in fair condition. Vehicular access to the site is limited to one driveway at an unsignalized intersection with a major arterial and may be difficult to enter and exit during peak traffic periods.



EXHIBIT C | SITE ANALYSIS SHEETS

STRUCTURE ADDRESS: 9101 Nall Ave.

PROPERTY NUMBER: OF251233-2026

AGE OF PROPERTY: 41

YEAR BUILT: 1974

CLASS: C- Commercial

BRIEF DESCRIPTION

Two-story masonry and wood structure which was formally the clubhouse for the adjoining former golf course. Due to the age of the structure it can be assumed portions may not comply with current building codes. The exterior of the structure, roadway and parking are in fair condition. The structure has limited reuse potential as anything other than a clubhouse or similar recreational facility.



Meadowbrook Development
TENTATIVE Calendar of Events - City of Prairie Village

| | Miscellaneous | Zoning | TIF District Plan | Bonds |
|---|---|--------|---|-------|
| February | | | | |
| Feb 17 Council Meeting | Executive Session | | | |
| February 19 | Joint public announcement regarding project. Announce upcoming Informational Meetings. | | | |
| March | | | | |
| March 10 & 11 | Open House/Informational Meetings, LRK Facilitate. 4-8 pm | | | |
| March 11 PV Parks and Rec Committee Meeting | PV Parks and Rec Committee attend Informational Meeting | | | |
| March 30 City Council Work Session | Topic: Presentation of Plan, LRK attend. | | | |
| April | | | | |
| April 20 Committee meeting | Topic: TIF Mechanics and financing, senior housing | | | |
| May | | | | |
| May 4 Council Meeting | City Council considers Funding Agreement* (Agreement allows city to be reimbursed for consultants time) | | | |
| May - July | JCPRD Park Planning Process | | | |
| June | | | | |
| June 15 Council Meeting | City Council considers Memo of Understanding* (first reading) | | | |
| July | | | | |
| July 6 Council Meeting | City Council considers Memo of Understanding* (second reading) | | | |
| July 20 Regular Council Meeting | | | VT attend Committee of Whole Meeting for discussion of Project | |
| July 28 for next Council packet | | | Completion of Eligibility Study, Completion of District Plan; Resolution to Hold Public Hearing | |
| August | | | | |
| August 3 Regular Council Meeting | | | Governing Body adopts Resolution calling for public hearing September 8, 2015 on creation of TIF District* | |
| By August 13 City Staff | | | Copy of Resolution sent by certified mail, return receipt requested, to County Commission, USD 512 and each owner and occupant of land within proposed district | |
| August 17 Regular Council Meeting | | | Informational meeting regarding TIF District | |
| August 25 (Tuesday) | | | Publication of Resolution calling for public hearing on TIF District to be held by Governing Body on Tuesday, September 8 (because of Labor Day Holiday) | |
| September | | | | |
| September 8 Regular Council Meeting | | | Governing Body holds Public Hearing on creating TIF District and adoption of ordinance to create TIF District* | |
| September 15 (Tuesday) | | | Ordinance creating TIF District published | |

Meadowbrook Development
TENTATIVE Calendar of Events - City of Prairie Village

| | | | | |
|-------------------------------------|---|--|--|--|
| By September 30 | | Application for Rezoning and Preliminary Plat Filed with City | | |
| October | | | | |
| October 6 (Tuesday) | | Publication of Notice of Public Hearing on Rezoning before the PC to be held on November 3 | | |
| By October 13 | | Applicant mails notices to 200 foot property owners | | |
| October 8 | | | BOCC and USD 512 Protest Period Ends | |
| October 9 | | | TIF Project Plan for Project Area 1 filed with City | |
| October 12 Special PC Meeting | | | PC considers comprehensive plan consistency finding | |
| October 13 Special Council Meeting | | | City Council adopts resolution to call public hearing November 16 on TIF Project Plan* | |
| By October 20 | | Applicant files affidavit of mailed notices with City Clerk | | |
| By October 23 City Staff | | | Copy of Resolution and TIF Project Plan certified mail to BOCC and USD 512; Copy of Resolution sent certified mail to each owner and occupant within Project Area 1 [i.e. VanTrust] | |
| November | | | | |
| November 2 Regular Council Meeting | City Council adopts Charter ordinance creating Transient Guest Tax by 2/3rds (9) affirmative votes* | | Committee of Whole Considers Project Plan and Development Agreement | |
| November 3 (Tuesday) | First Publication TGT Charter Ordinance | PC Holds Public Hearing and Considers Rezoning and Preliminary Plat | Publish Resolution calling for public hearing TIF Plan to be held on November 16 | |
| November 10 (Tuesday) | Second Publication TGT Charter Ordinance | | | |
| By November 12 | Preliminary park plan prepared (tentative) | | | |
| November 16 Regular Council Meeting | | | Public Hearing on TIF Plan; Approval of Ordinance Adopting TIF Plan by 2/3rds (9) affirmative votes; adopt Resolution approving Development Agreement* | Council considers bond sale resolutions* |
| November 17 | | Rezoning Protest Petition period expires | | |
| November 24 (Tuesday) | | | Ordinance adopting TIF Plan published; City Clerk deliver copy of Ordinance, map or plat of district to County Clerk, County Assessor, County Treasurer, County Commission and USD 512 | |
| December | | | | |
| December 7 Regular Council Meeting | | Governing Body considers Rezoning* | | |
| December Generally | | | | Finalize bond size and structure |

Meadowbrook Development
TENTATIVE Calendar of Events - City of Prairie Village

| | | | | |
|------------------------------------|---|--|--|--|
| January, 2016 | | | | |
| January 5, 2016 | | PC Considers Final Plat | | |
| January 11, 2016 | Protest Period TGT Charter Ordinance Expires (60 days after second publication) | | | Publish GO TIF Bond preliminary official statement |
| January 15, 2016 | | | | Protest Period GO TIF Bonds Expires (60 days after conclusion of public hearing) |
| January 18 Regular Council Meeting | | Council considers Final Plat for purpose of accepting dedications of right of way* | | Bond pricing and Council Approval* |
| February, 2016 | | | | |
| February 9 | | | | Bond Closing |

Updated September 3, 2015

* = Governing Body action item

CONSENT AGENDA
CITY OF PRAIRIE VILLAGE

September 8, 2015

**CITY COUNCIL
CITY OF PRAIRIE VILLAGE
August 17, 2015**

The City Council of Prairie Village, Kansas, met in regular session on Monday, August 17, 2015 at 7:30 p.m. in the Council Chambers at the Municipal Building, 7700 Mission Road, Prairie Village, Kansas.

ROLL CALL

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

Staff present was: Captain Byron Roberson and Sgt. James Carney; Keith Bredehoeft, Public Works Director; Katie Logan, City Attorney; Quinn Bennion, City Administrator; Wes Jordan, Assistant City Administrator; Nolan Sunderman, Assistant to the City Administrator; Lisa Santa Maria, Finance Director and Joyce Hagen Mundy, City Clerk. Also present was Chris Brewster, City Planning Consultant and Ron Williamson, former City Planning Consultant.

Mayor Laura Wassmer led all present in the Pledge of Allegiance.

PUBLIC PARTICIPATION

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

CONSENT AGENDA

Terrence Gallagher noted a change to the first line on page 7 of the minutes changing the word “sound” to “odor” filters.

Council President Brooke Morehead moved for the approval of the Consent Agenda for August 17, 2015:

1. Approve regular City Council Minutes - August 3, 2015 as amended.
2. Adopt Ordinance 2335 approving the Prairie Village Jazz Festival as a special event and authorizing the sale, consumption and possession of alcoholic liquor and cereal malt beverages within the boundaries of barricaded public area for the event.
3. Adopt Ordinance 2334 approving the KU Kickoff Event at Corinth Square Shopping Center as a special event and authorizing the sale, consumption and possession of alcoholic liquor and cereal malt beverages within the boundaries of barricaded public area for the event.
4. Approve production services agreement with S.E.C.T. Theatre Supplies, Inc. to provide, set-up and take down stage, sound, lighting and roof necessary for the Prairie Village Jazz Festival.

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

COMMITTEE REPORTS

Planning Commission

PC2015-08 Consider request for a Special Use Permit for the operation of an Adult Senior Dwelling Community including an Independent and Assisted Living Facility and Villas at 8500 Mission Road

Mayor Wassmer reminded the City Council that a previous Special Use Permit has been approved for this property by the Governing Body that includes a skilled nursing facility, single family homes, assisted and independent living units. The neighbors and the applicant have come together with the plan that is before you that the

neighbors feel is more suitable for the community that does not include skilled nursing. If this plan is not approved by the Governing Body, the applicant has permission to build the approved plan with construction beginning by October, 2016. If this plan is approved, the previously approved plan will be withdrawn and the lawsuits filed by the neighbors against the city will be dropped. A settlement agreement has been entered into by the neighborhood group and the applicant that would prevent a skilled nursing facility on this site.

City Legal Counsel Comments

Katie Logan, City Attorney, noted the previous application was approved by the City, a lawsuit was filed by the neighbors against the City, a District Court Judge ruled that the approval by the City as appropriate and binding. The neighbors have appealed this decision to the Kansas Supreme Court where it is awaiting scheduling for oral arguments.

The Governing Body in its approval of special use permits is acting in a quasi-judicial manner; the application is to be considered on the official record of the Planning Commission and discussion at this meeting. If any Council member has prejudged or predetermined their position on this application, they were directed to recuse themselves.

Mrs. Logan asked each Governing Body member the following questions:

- “Have you accepted any communications oral or written, related to this application that was not known to the Planning Commission or posted on the city’s website information page on this project?”
- If yes, “Please share that information with the Governing Body at this time.”
- If you have had ex parte communications, have they affected your ability to fairly and impartially consider this matter?”

Council members Weaver, Hopkins, Noll, Wang, Morehead and Morrison replied “No” to the questions. Council members Nelson, Mikkelson, Myers, Runion, Odell, Gallagher and Mayor Wassmer stated they had received a copy of the settlement agreement between the applicant and the neighbors; however, this ex parte communication has not affected their ability to fairly and impartially consider this matter.

Katie Logan stated adoption of zoning ordinances require the approval of the Governing Body which includes the Mayor as a voting member, not only voting in the case of a tie vote.

Staff Presentation

Ron Williamson, Former City Planning Consultant, stated the Planning Commission considered the findings of fact set out in the city’s code for approval of Special Use Permits and the “Golden Factors” and found favorably on the application before you subject to 15 conditions.

Staff contacted the applicant and representative of the neighborhood prior to the July 29th meeting regarding any concerns that they may have with the staff recommendation. Their concerns were related to conditions #2, #3 and #12 and were addressed in the staff report dated July 29, 2015. Since that time the neighborhood has stated that there were 7 conditions of the settlement agreement that should be included in the conditions of approval. Mr. Williamson noted the city had no part in the creation of the settlement agreement and staff felt they should not be included. He also noted that this application consists of three parts: the Special Use Permit now before the City Council, the site plan approved by the Planning Commission and the approval of the plat. Some of the issues being raised are addressed in conditions of approval for the site plan and the plat.

Mr. Williamson addressed the seven conditions requested to be added.

- No Skilled Nursing facility may be constructed on the MVS Property or may skilled nursing services be offered on the MVS Property. (The city has an established process for the approval of skilled nursing facilities through the special use process. No application was filed requesting a skilled nursing facility. Therefore the findings of the factors for this operation were not considered by the Planning Commission and cannot be considered.)
- The MVS Property will not be used for parking for any other purpose other than supporting the independent living facility, the assisted living facility and the villas depicted in the approved site plan dated June 5, 2015 and cross-parking with adjoining tracts shall not be allowed. (This was addressed in the site plan approval, but could also be added as a condition for the SUP.)
- The only two (2) vehicular access points to the MVS Property will be to and from Mission Road as depicted on the approved site plan dated June 5, 2015. (This was addressed in the site plan approval, but could also be added as a condition for the SUP.)
- Each of the twenty-two (22) units to be contained within the eleven (11) villas described on the approved site plan dated June 5, 2015 (two (2) units per villa) shall be constructed to meet or exceed the minimum unit footprint size, not exceed the maximum unit footprint size, and not exceed the height restriction set forth in the approved site plan dated June 5, 2015. As depicted on the approved site plan, none of the eleven (11) villas shall be located closer than fifty (50) feet from the boundary lines of the MVS Property and none of the six (6) villas located on the south and southwest boundary of the MVS Property may be closer than a minimum of fifty (50) feet to one another and shall have a minimum backyard setback of not less than fifty (50) feet. Furthermore, each unit in each of the eleven (11) villas may not contain more than a two (2) car garage. (This was addressed in the site plan approval, but could also be added as a condition for the SUP.)
- The carport structures within the Senior Living Building Area as depicted on the approved site plan dated June 5, 2015 shall contain walls opposite to the applicable parking space entrance to reduce automobile headlight exposure to adjacent property owners. (This was addressed in the site plan approval, but could also be added as a condition for the SUP.)
- Prior to the issuance of a building permit for the assisted living facility and independent living facility building MVS shall provide evidence of financing for the entire project. (This condition is not pertinent to City approval. Financial information has not been required of other developers.)
- Parking for the assisted living facility and the independent living facility building shall be contained within the Senior Living Building Area as depicted on the approved site plan dated June 5, 2015.

Mr. Williamson stated the five conditions could be added to the ordinance for the Special Use Permit by the Governing Body, but noted this would required a two-thirds vote for approval as it changes the recommendation of the Planning Commission.

Katie Logan stated that staff has discussed the addition of the five items with representatives of both parties and have their approval.

Ted Odell noted an incredible amount of time and effort has gone into this agreement and he feels the conditions in the agreement should be referenced in the ordinance. Ron Williamson replied relevant to the first item, the city has a due process it has established and which it would not be following as no consideration was given to a skilled nursing facility to deny or approve it as it was not included in the applicant's request for a Special Use Permit. He noted per the terms of the approval of the plat, the covenants and deed restrictions are required to be filed with the plat.

Mayor Wassmer stated the deed restrictions prohibit the building of any skilled nursing facility.

Katie Logan responded that she is not certain the city can legally restrict this property from ever having a skilled nursing facility nor does she feel it is necessary as this has been addressed elsewhere. Ted Odell stated that he just wanted to be sure everyone was on the same page and the mutually agreed upon project would follow all the conditions.

Ted Odell moved the Governing Body adopt by specific reference the findings as contained in the minutes of the Planning Commission meeting of July 29, 2015, and the recommendations of the Planning Commission and approve the Special Use Permit for 8500 Mission Road as docketed PC2015-08 with the five conditions stated above. The motion was seconded by Terrence Gallagher.

Mayor Wassmer opened the meeting for public comments.

Rick Jones, with NJSP Architects, confirmed that the motion for approval contains the recommendation of the Planning Commission with the additional five items added.

Dan Runion sought clarification that both parties agreed that the provision prohibiting a skilled nursing facility and requiring evidence of financing for the entire project not be referenced in the city's approval.

Mike Flanagan, attorney for MVS, responded that he had spoken with the city attorney prior to this meeting and that the applicant has no objection to the inclusion of the additional five conditions. Mayor Wassmer asked if they were ok with the omission of the two conditions. Sheila Myers asked what conditions were being omitted. Mayor Wassmer responded the reference to no skilled nursing facility built or services provided and the evidencing of financing for the entire project being provided. Mr. Flanagan replied that information will be provided and he is ok with it not being part of the city's approval.

Dan Runion asked if the city was capable of enforcing the settlement agreement and covenants and suggested that in addition to the five conditions added in the motion and specifically regarding the recording of the restrictive covenant.

Mike Flanagan explained that the restrictive covenant has been drafted, executed and escrowed with a title company and once the ordinance granting the special use permit becomes a final and non-appealable judgment, journal entry, order or memorandum decision under applicable Kansas law, which he believe is 35 days after publication of the ordinance, they have been instructed to record the covenant and deed restrictions on that date.

Andrew Spitsnogle, representing the neighbors stated they support the inclusion of the five conditions in the ordinance, but would prefer that all the conditions be included. Eric Mikkelson noted as the plaintiff has stated they would prefer all conditions included, he is struggling as to why they are not being included. He stated that it is not abundantly clear that Assisted Living does not include skilled nursing services. He suggested that language be added clearly identifying what is meant by “Independent Living Units” “Assisted Living Units” and “Skilled Nursing Unit”. Katie Logan responded that “Skilled Nursing Facility” is defined in the city’s zoning code as a separate allowable special use.

Mayor Wassmer asked if language stating “no skilled nursing services be provided” could be added to condition #1 of the ordinance. She felt this would address the concerns stated by Ms. Nelson and Mr. Mikkelson.

Katie Logan responded that stating “No skilled nursing facility shall be constructed on MVS property” is not necessary as it would be against city code since no special use permit has been issued for that use. To say that “No skilled nursing services shall be allowed” seems redundant as skilled nursing services can’t be provided without a skilled nursing facility.

Jori Nelson noted that beds in units are regularly changed from one level of care to another without the construction of a separate facility. Mayor Wassmer noted the room requirements for skilled nursing are larger than assisted living care.

Mike Flanagan responded that the State of Kansas issues providers licenses to provide specific levels of care. Assisted Living License is a specific care level. You are not allowed to provide skilled nursing care without a specific Skilled Nursing Care license. One of the conditions for a license is specific building requirements. They are

not going to construct a facility that meets those requirements. A skilled nursing care is a higher level of care license and cannot be provided under an assisted living care license. They would not provide a service for which they are not licensed. They will be securing an assisted living care license which covers clearly identified care components.

Mayor Wassmer asked how the Council would know whether or not the Tutera Group applied for a skilled nursing care license.

Randy Bloom, President of the Health Care Division, stated that skilled nursing facilities have to be constructed to meet specific criteria for skilled nursing and this building will not meet those criteria making it impossible for them to secure a “skilled nursing care” license.

Ted Odell moved to amend his motion to add condition #21 to read “No skilled nursing services will be offered on the Property.” Terrence Gallagher seconded the amendment.

Eric Mikkelson noted that condition #11 requires that sidewalks be open to the public, but the owner may establish reasonable rules for its use and hours of operation. A sidewalk will be constructed to the southwest corner of the site to eventually connect to the trail on Somerset Drive. He asked if there would be a gap in the proposed fence to allow for public access and what will the access to the sidewalk on Mission Road look like. He understands that the applicant intends to put a fence surrounding the property.

Rick Jones replied the existing fence around the property will be used with the new fence being constructed from wrought iron and there will be a gate allowing for access, probably with a code. He noted that while the sense of security is important to Mission Chateau residents, it is also important for them to feel like part of the community with access to public park. Mr. Jones noted this is a requirement of the city. Mr.

Mikkelson stated he was asking about public access for the public to get to the park through their property. Mr. Jones responded the gates will be open during the day.

Jori Nelson stated she does not like having a fence the entire length of Mission Road, but instead to have key codes on doors to provide security and not gates. She does not feel a gate will be the welcoming community that was portrayed with the initial presentation of this project. Mr. Jones repeated the gates will be open during the day and added the sidewalk is located a minimum of 16 feet back from Mission Road with it being 20 feet in most locations. The proposed fence is located behind the sidewalk constructed with the most transparent fence material available and there is significant landscaping along Mission Road. Ms. Nelson noted that none of the other senior living facilities in Prairie Village were gated.

Eric Mikkelson confirmed the applicant's commitment to keeping the gate on Mission Road open during the day as well as the gate on the back side.

Mayor Wassmer asked if there were any other items to be considered. City Attorney Katie Logan stated there were a couple small items in the proposed language to be addressed. Dan Runion noted the language regarding the termination date is not clear. Ms Logan noted language needed to be added to address the 30 day period as provided by Kansas Statute for appeal.

Ted Odell amended his motion to amend condition #3 (ii) to read as follows:

if a lawsuit is filed challenging the issuance or legality of the Special Use Permit **within the 30 day period as provided by Kansas statute**, the first business day after the date upon which any judgment, journal entry or memorandum decision upholding the issuance and legality of **the ordinance becomes a final and non-appealable judgment, journal entry, order or memorandum decision** under applicable Kansas law,

The amended motion was seconded by Terrence Gallagher.

David Morrison stated there is another side to this issue that is not being addressed. He feels this is the better of two very bad alternatives for Prairie Village. The city does not need any more senior living facilities in Prairie Village. The overarching question has not been addressed. Mr. Morrison stated that the Shawnee Mission School District wants this property back and Mr. Tutera refuses to discuss this. This school will be needed. Current classes are too large, students have to be bused to school. This has been forced on the citizens of Prairie Village. If the other Special Use Permit had not been approved, this would never even be considered.

Mayor Wassmer noted that MVS is the owner of this property and has been approved for a special use permit for an adult senior facility. What is done is done and no longer relevant.

David Morrison stated the Council needs to talk about this property and the future of schools in Prairie Village. Mayor Wassmer stated that discussion is not relevant to the motion on the floor and ruled Mr. Morrison out of order.

The motion as amended was voted on with the following votes cast: "aye" Weaver, Nelson, Hopkins, Noll, Mikkelson, Wang, Wassmer, Myers, Morehead, Odell and Gallagher; voting "nay" Runion and Morrison. The ordinance was declared adopted by a vote of 11 to 2.

JazzFest Committee

Brooke Morehead announced that the Prairie Village Jazz Fest is less than a month away. She encouraged Council members to attend the event on Saturday, September 12th, to show their support with a yard sign and to consider volunteering at the event.

Mayor's Report

Mayor Wassmer reported on her recent activities centered on discussion on the settlement agreement for the Mission Chateau project.

STAFF REPORTS

Public Safety

- Captain Byron Roberson reported that the start of school went well at SME with the assistance of the traffic unit.
- One officer will be graduating from the Johnson County Police Academy on Thursday, August 20, 2015.

Public Works

- Keith Bredehoeft reminded council of the upcoming meeting on Mission Road
- The drain issue with the Franklin Park bathrooms has been resolved.
- The new Field Superintendent for Public Works will begin next Monday.
- The flashing lights have been installed at 83rd Street & Somerset

Administration

- Nolan Sunderman announced the pool will host a dog swim on Tuesday, September 8 between 5 and 7 p.m. at the pool complex. Information is available on the city's website.
- Wes Jordan stated Deffenbaugh has emailed him potential dates for the council tour of their recycling operations. He will e-mail council the information. There is a weekday afternoon and evening option as well as a Saturday time. If there are open slots, members of the Environment/Recycle Committee will be invited to participate.
- John Blessing will be meeting with the Environment/Recycle Committee in September.
- Quinn Bennion announced that Johnson County Parks & Recreation District has narrowed their candidates for the position of consultant for the Meadowbrook Project.

OLD BUSINESS

Terrence Gallagher asked if the city was staying in communication with First Washington regarding potential projects/improvements to the shopping centers. Quinn Bennion replied he and the Mayor have had meetings with First Washington. Jori Nelson stated that she and Ashley Weaver would like to hold a Ward 1 meeting. Mayor

Wassmer asked what funding was available and if other Wards were planning on having meetings. Quinn Bennion stated that about \$2000 was included in the 2015 budget for Ward meetings. Wards 4, 5 and 6 indicated that they wanted to have ward meetings. Mayor Wassmer stated that she and staff would look at available funding and get back to interested Council members.

NEW BUSINESS

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

Committee meetings scheduled for the next two weeks:

| | | |
|--------------------------------|-------------|-----------|
| JazzFest Committee | 08/27/2015 | 5:30 p.m. |
| Planning Commission | 09/01/2015 | 7:00 p.m. |
| Tree Board | 09/02/2015 | 6:00 p.m. |
| Council Committee of the Whole | 09/08//2015 | 6:00 p.m. |
| City Council | 09/08/2015 | 7:30 p.m. |

=====

The Prairie Village Arts Council is pleased to present an exhibit by Wayne Wilkes in the R. G. Endres Gallery during the month of August.

Prairie Village Pool is on reduced weekday hours opening at 4:30 p.m. Weekend hours will remain as set. The pool will close at 6:00 p.m. on Monday, September 7th.

The NEJC Chamber Luncheon on Thursday, August 20th from 11:30 a.m. to 1:00 p.m. will feature Dr. Jim Hinson, SMSD Superintendent. The Lunch will be provided by the Broadmoor Bistro students at 6701 West 83rd Street.

City offices will be closed on Monday, September 7th in observance of the Labor Day holiday. Deffenbaugh also observes this holiday, so trash and recycling services will be delayed one day for the week.

The 6th Annual Prairie Village Jazz Festival will be held on Saturday, September 12th opening at 2:30 p.m. with the Shawnee Mission East Blue Knights and concluding at 10:30 p.m. with the McFadden Brothers with the Kansas City Jazz Orchestra.

The 2015 Citizens Police Academy will begin September 16th. Classes are held on Wednesday evenings from 6:30 to 9:30 p.m. for 11 weeks. Contact Chief Schwartzkopf or Captain Roberson if interested.

ADJOURNMENT

With no further business to come before the City Council the meeting was adjourned at 8:55 p.m.

Joyce Hagen Mundy
City Clerk

CITY TREASURER'S WARRANT REGISTER

DATE WARRANTS ISSUED:

Warrant Register Page No. 1

August 17, 2015

Copy of Ordinance
2932

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 | DATE | AMOUNT | TOTAL |
|-------------------------------------|-----------|------------|---------------------|
| EXPENDITURES: | | | |
| Accounts Payable | | | |
| 10259-10335 | 7/2/2015 | 414,672.55 | |
| 10336-10344 | 7/10/2015 | 15,558.98 | |
| 10345-10353 | 7/13/2015 | 6,834.54 | |
| 10354-10452 | 7/17/2015 | 433,692.46 | |
| 10453-10455 | 7/24/2015 | 2,824.52 | |
| 10456-10555 | 7/31/2015 | 444,451.03 | |
| Payroll Expenditures | | | |
| 7/10/2015 | | 292,656.52 | |
| 7/24/2015 | | 290,904.29 | |
| Electronic Payments | | | |
| Electronic Pmnts | 7/1/2015 | 4,209.66 | |
| Electronic Pmnts | 7/10/2015 | 940.49 | |
| Electronic Pmnts | 7/13/2015 | 107.11 | |
| Electronic Pmnts | 7/14/2015 | 1,387.15 | |
| Electronic Pmnts | 7/15/2015 | 18,702.50 | |
| Electronic Pmnts | 7/16/2015 | 2,896.81 | |
| Electronic Pmnts | 7/20/2015 | 478.88 | |
| Electronic Pmnts | 7/22/2015 | 5,529.37 | |
| Electronic Pmnts | 7/24/2015 | 3,506.86 | |
| Electronic Pmnts | 7/27/2015 | 581.04 | |
| Electronic Pmnts | 7/28/2015 | 18,954.30 | |
| TOTAL EXPENDITURES: | | | 1,958,889.06 |
| Voided Checks | Check # | (Amount) | |
| Foster Bros Wood Products | 10289 | (1,795.50) | |
| Smith & Wesson Corp | 10326 | (1,200.00) | |
| Kansas Dept of Revenue | 10353 | (1,387.15) | |
| TOTAL VOIDED CHECKS: | | | (4,382.65) |
| GRAND TOTAL CLAIMS ORDINANCE | | | 1,954,506.41 |

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

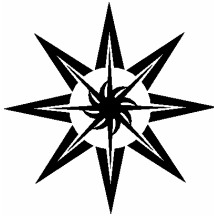
Passed this 17th day of August 2015.

Signed or Approved this 17th day of August 2015.

(SEAL)

ATTEST:  City Treasurer

ATTEST:  8.6.15 Finance Director



PRAIRIE VILLAGE JAZZ FEST COMMITTEE
Meeting Date: September 7, 2015
CONSENT AGENDA

Consider request for Alcoholic Beverage Waiver for Harmon Park for the Prairie Village Jazz Festival

RECOMMENDATION

Recommend the City Council approve a waiver to allow the serving of alcoholic beverages at Harmon Park on Saturday, September 12, 2015 in conjunction with the Prairie Village Jazz Festival.

BACKGROUND

The Prairie Village JazzFest Committee is sponsoring a Jazz Festival on Saturday, September 12, 2015 on the Municipal Campus and Harmon Park. Food and alcohol will be sold during the hours of the event. The area will be secured. Police will be on the grounds during the event. All persons drinking alcohol will be required to wear a wrist bracelet that they will receive after they have shown the necessary documentation showing they are of age to drink. BRGR will once again secure the necessary alcohol permit from the state.

ATTACHMENTS

Waiver Application

PREPARED BY

Joyce Hagen Mundy
City Clerk

Date: August 5, 2015



**APPLICATION FOR ALCOHOLIC BEVERAGE
WAIVER FOR HARMON PARK
City of Prairie Village, Kansas**

1. Date/Time Application Filed August 19, 2015

2. Name/Date/Time of the Event Prairie Village Jazz Festival

Ordinance 2011 provides for an exemption to allow the sale and consumption of alcoholic liquor and cereal malt beverage at Harmon Park in conjunction with an approved City function upon approval of the Governing Body.

3. Applicant's Name Texas Restaurants of KS, LLC

Address 3319 W. 79th Street, Prairie Village KS 66208

Daytime Phone 913-488-6250 Evening Phone _____

4. Name of Sponsoring Org Prairie Village Jazz Fest Committee

Address 7700 Mission Road, Prairie Village KS 66208

Phone 913-381-6464

Does the applicant have a License from the State of Kansas to Yes No
serve alcoholic beverage?

If so, what is the License Number 10-019-1800-03

Registered to do business in the State of Kansas? Yes No

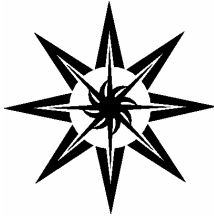
What measures will be taken to provide security to insure health & safety during the event?

The grounds will be secured. All persons drinking alcohol will have identification checked and will be given a wristband to be worn. Police Department staff will be on site throughout the event.

5. Event Coordinator* This individual must JD Kinney
be on site throughout the entire event

6. Service Location 7700 Mission Road, Prairie Village KS 66208

7. Total Number of persons Estimated 5,000



MAYOR

**Council Meeting Date: September 7, 2015
CONSENT AGENDA**

Consider Appointment to Planning Commission

RECOMMENDATION

Mayor Wassmer requests Council ratification of the appointment of Melissa Brown to the Prairie Village Planning Commission replacing Randy Kronblad with a term expiring in April, 2016.

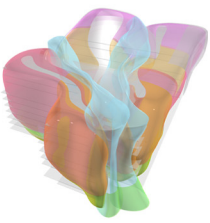
BACKGROUND

A committee consisting of Mayor Wassmer, Terrence Gallagher, Brooke Morehead, Wes Jordan, Nancy Wallerstein and Chris Brewster interviewed candidates after the review of several volunteer applications from individuals interested in serving on the Planning Commission. The committee has recommended the appointment of Melissa Brown to the Planning Commission. Mr. Valentino has a B.S. degree in Architecture from KU and is an architect with Gastinger & Walker. She will bring a strong and unique perspective to the Commission.

PREPARED BY

Joyce Hagen Mundy
City Clerk

Date: August 26, 2015



melissa brown, aia, leed ap

skills/qualifications

NCARB Certified
Registered Architect, Massachusetts
LEED Accredited Professional
Proficient knowledge of Revit, AutoCAD, Sketchup, In Design, Photoshop

work experience

GastingerWalker&

Kansas City, MO, Architect, August 2011 - current
Roles include all aspects of projects: conceptual design, space planning, project management, construction documents, construction administration, code reviews, specification writing, City / AHJ / Planning Commission approvals, material and furniture selection, construction administration.

Woodside Village Apartments, Westwood, KS - Four story apartment building with ground floor retail
Global Montessori Academy, Prairie Village, KS - Renovation of Cherokee Christian Church to a private school
Cottey College Fine Arts Instructional Building, Nevada, MO - New construction and renovation of 25,000 SF for music, dance, art, and general classroom instruction spaces
Bell Street Residence, Kansas City, MO - New construction of an 1800 SF single-family residence in Westwood Park neighborhood
Urban Coeur-Bridger Properties - Three single-family infill residences in Beacon Hill neighborhood
Country Club Plaza Hotel - Conceptual design of an extended stay hotel and parking garage
Kansas City Fraternal Order of Police, Kansas City, MO - Existing building renovation for office and event space

ADD Inc

Cambridge, MA, Designer Coordinator, July 2004 - April 2008 and November 2010 - August 2011

Simpson Housing, Boston, MA - New construction of an apartment building with amenities, retail, and parking garage. Participated in restaurant and amenities planning.

700 Harrison, Boston, MA - New construction of market and affordable rate condominiums, community garden, and underground parking garage. Roles included unit, corridor, and lobby design, millwork detailing, and project manager/primary project contact during construction administration.

360 Newbury, Boston, MA - Renovation of existing office building to high-end condominiums

Goldman Reindorf Architects

Newton, MA, November 2009 - November 2010
Roles included planning, conceptual design, documentation, and consultant coordination for a laboratory, office, and lobby renovation for the University of Massachusetts Amherst.

Audrey O'Hagan Architects

Newton, MA, August 2008 - October 2009

Collaborative Learning Space in the Lamont Library, Harvard University, Cambridge, MA - Interior renovation of an existing space to an energetic place where students can meet, collaborate, and work on group computer projects.

UBC Facade Renovation, Newton, MA - Renovation of an existing commercial building facade. Roles included project designer and manager.

East Somerville Community School, Somerville, MA - Conceptual design of a renovation and addition to an existing K-8 School.

independent projects

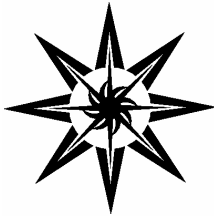
Brown Family Cabin, Single family residence - Weston, MO, currently under construction
Flanigan Residence, Renovation and second story addition - Westwood, KS, currently under construction

outside of the office

AIA KC Education Outreach Chair, January 2015 - current
Prairie Village Arts Council member, May 2015 - current

education

University of Kansas
Bachelor of Architecture, May 2004
Ibos & Vitart Architects, Paris, France internship / study abroad program, Summer 2003



CITY CLERK DEPARTMENT

Council Meeting Date: September 7, 2015
CONSENT AGENDA

Consider approval of issuance of Cereal Malt Beverage License for Minit Mart at 9440 Mission Road

RECOMMENDATION

RECOMMEND THE CITY COUNCIL APPROVE THE ISSUANCE OF A CEREAL MALT BEVERAGE LICENSE TO TAO, LLC d/b/a MINIT MART AT 9440 MISSION ROAD

BACKGROUND

The State of Kansas requires a Cereal Malt Beverage license for each business selling cereal malt beverages. TAO operating LLC d/b/s Minit Mart has purchased the facility at 9440 Mission Road which is currently licensed to sell packaged cereal malt beverages for consumption off the premises. The new ownership has submitted an application for a cereal malt beverage license in accordance with Prairie Village Municipal Code 3-202.

FINANCIAL IMPACT

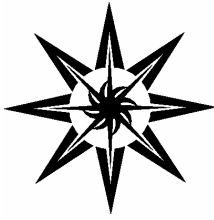
None

ATTACHMENTS

PREPARED BY

Joyce Hagen Mundy
City Clerk

Date: August 25, 2015



MAYOR

**Council Meeting Date: July 6, 2015
CONSENT AGENDA**

Consent Agenda: Consider Proclamation

RECOMMENDATION

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

Peanut Butter Week - October 5-9, 2015

BACKGROUND

For the 31st year, Prairie Village has a unique opportunity to lend its support to Harvesters in their efforts to lessen some of the hunger of the people in the Greater Kansas City area by supporting them in their goal of distributing the high protein food, peanut butter, to social and charitable agencies.

ATTACHMENT

Proclamation

PREPARED BY

Meghan Buum, Deputy City Clerk
Date: September 1, 2015



C

CITY OF PRAIRIE VILLAGE

PROCLAMATION

WHEREAS, the citizens of Prairie Village take great civic pride in their community and the good deeds performed therein; and

WHEREAS, the citizens of Prairie Village strive to maintain the high quality of life now enjoyed by most citizens and also recognize there are less fortunate in the Greater Kansas City area; and

WHEREAS, Prairie Village has a unique opportunity to lend its support to Harvesters in their efforts to lessen some of the hunger of the people in the Greater Kansas City area (including Johnson and Wyandotte Counties) by supporting them in their goal of distributing the high protein food, peanut butter, to social and charitable agencies, serving over 22,000 households; and

NOW, THEREFORE, BE IT RESOLVED, that I, Laura Wasmer, Mayor of the City of Prairie Village, do hereby designate October 5–9, 2015 as

PEANUT BUTTER WEEK

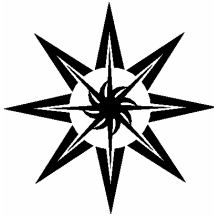
in the City of Prairie Village, Kansas, and call upon all citizens to support this worthwhile cause by donating jars of peanut butter or by providing a cash donation for the purchase of peanut butter.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Seal of the City to be affixed this 8th day of September, 2015.

Mayor Laura Wassmer

City Clerk

Date



PUBLIC WORKS DEPARTMENT

Council Committee Meeting Date: August 17, 2015

Council Meeting Date: September 8, 2015

CONSIDER APPROVAL OF REQUEST TO HAVE KCP&L INSTALL A NEW STREET LIGHT ON 63RD STREET

RECOMMENDATION

Staff recommends that City Council approve a request to have KCPL install a new street light on the south side of W. 63rd Street near 4618 W. 63rd Street.

BACKGROUND

Residents on 63rd Street east of Roe Avenue have requested a street light be added to the existing KCPL Pole #20801 on the south side of the street. Council Policy CP250 allows residents to request street lights. The policy requires 50 percent of the properties within 500 feet of the proposed street light to be in favor of adding the street light. Public Works does find the location of the new street light to be acceptable.

On 63rd Street 8 of 16 residents in Prairie Village within 500 feet of the proposed street light signed the petition in favor of the street light. It is not known if any residents are against the installation. A letter has been sent to all residents notifying them of the street light request and the opportunity to attend this meeting.

KCP&L will install the street light within two month after the request is made to them. The current cost to the city of adding this street light is approximately \$250 per year and would be paid with our lease payments for streetlights.

CP250 states that the Council Committee of the Whole will hold a public information meeting related to the addition of a new street light. If any residents want to discuss the addition of the street light they will be able to at this meeting.

FUNDING SOURCE

Funds are available in the Operating Budget for streetlights.

RELATED TO VILLAGE VISION

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

ATTACHMENTS

1. Location Map showing proposed street light

PREPARED BY

Keith Bredehoeft, Public Works Director

August 13, 2015

4618 W. 63rd Street – Proposed Street Light



Addresses within 500 feet of proposed light.

| | | | | | | | |
|------------------------------|------------------------------|------------------------------|------------------------------|------------------------------|------------------------------|------------------------------|------------------------------|
| 4446 W. 63 rd St. | 4506 W. 63 rd St. | 4512 W. 63 rd St. | 4600 W. 63 rd St. | 4608 W. 63 rd St. | 4618 W. 63 rd St. | 4624 W. 63 rd St. | 4630 W. 63 rd St. |
| 4700 W. 63 rd St. | 4708 W. 63 rd St. | 4714 W. 63 rd St. | 4720 W. 63 rd St. | 6306 Roe Ave. | 6305 Roe Ave. | 4607 W. 63 rd St. | 6300 Granada |
| 6301 Granada | 4505 W. 63 rd St. | 4501 W. 63 rd St. | | | | | |

COUNCIL COMMITTEE OF THE WHOLE
August 17, 2015

The Council Committee of the Whole met on Monday, August 17, 2015 at 6:00 p.m. in the Council Chambers. The meeting was called to order by Council President Brooke Morehead with the following members present: Mayor Laura Wassmer, Ashley Weaver, Jori Nelson, Ruth Hopkins, Steve Noll, Eric Mikkelson, Andrew Wang, Sheila Myers, Brooke Morehead, Dan Runion, David Morrison, Ted Odell and Terrence Gallagher.

Staff Members present: Captain Byron Roberson and Sgt. James Carney; Keith Bredehoeft, Public Works Director; Katie Logan, City Attorney; Quinn Bennion, City Administrator; Wes Jordan, Assistant City Administrator; Nolan Sunderman, Assistant to the City Administrator, Lisa Santa Maria, Finance Director and Joyce Hagen Mundy, City Clerk. Also present were Gary Andersen with City Bond Counsel with Gilmore & Bell and Jeff White, City Financial Consultant with Columbia Capital.

COU2015-31 Consider approval of a street light petition at 63rd Street and Roe Avenue

Keith Bredehoeft reported that residents on 63rd Street east of Roe Avenue have requested a street light to be added to the existing KCPL Pole #20801 on the south side of the street. There is currently a street light on the corner of 63rd and Roe and 63rd and Granada. Council Policy CP250 allows residents to request street lights. The policy requires 50 percent of the properties within 500 feet of the proposed street light to be in favor of adding the street light. Public works finds the location of the new street light to be acceptable.

Eight of the sixteen residents in Prairie Village within 500 feet of the proposed street light signed the petition in support of the light. It is not known if any residents are opposed to the installation. A letter has been sent to all residents notifying them of the request and the opportunity to attend this meeting.

KCP&L will install the street light within two months after the request is made to them. The current cost to the City for adding this street light is approximately \$250 per year and would be paid with the lease payments for streetlights. Funding is available in the current operating budget.

Steve Noll asked if the light would be LED. Mr. Bredehoeft responded that they would be staying with the type of light already installed in that area to have a consistent light flow. He noted there are currently 400 LED lights in Prairie Village as part of a pilot program.

Council President Brooke Morehead asked if there was anyone present to address the Committee. A resident spoke in support of the installation but questioned why both the new and old poles remained at that location and which pole the light to be attached to. Mr. Bredehoeft responded the light would go on the new pole.

Jori Nelson made the following motion, which was seconded by Sheila Myers and passed unanimously.

**MOVE THE CITY COUNCIL APPROVE A REQUEST TO HAVE
KCP&L INSTALL A NEW STREET LIGHT ON THE SOUTH
SIDE OF WEST 63RD STREET NEAR 4618 W. 63RD STREET
COUNCIL ACTION REQUIRED
CONSENT AGENDA**

Discussion about the Creation of the Meadowbrook TIF District

Quinn Bennion noted that since the approval by the City Council of the resolution to hold a public hearing on September 8 on the possible establishment of a redevelopment district staff have worked with legal and bond counsel to prepare the required mail notices and legal publication. All property owners and tenants located within the proposed TIF District were mailed notices of proposed meeting, the adopted resolution and the proposed redevelopment district plan for the Meadowbrook project.

Mr. Bennion noted the property management company was very cooperative in providing a listing of current tenants. However, to ensure as complete transparency as possible the information was also hand delivered by staff to tenants.

A certified return receipt letter and information was also sent to the Shawnee Mission School District Board and to Johnson County. The informational meeting for property owners and tenants within the proposed TIF District will be held on Thursday, August 27th at 5 p.m. at the Meadowbrook Country Club prior to the public hearing schedule before the Governing Body on Tuesday, September 8, 2015.

Gary Anderson, City's Bond Counsel with Gilmore & Bell, noted the first step has been taken in the establishment of TIF District with the adoption of Resolution 2015-02. Staff has followed up with the required mailing of notices and the Resolution will be duly published in the official city newspaper.

Gary Anderson stressed that creating the TIF district alone does not bind the City to approve the project, provide any funding, issue any bonds or approve any TIF project plans within the TIF district. The proposed TIF District includes two project areas. The first area is the Park and Village Project Area which encompasses the park land and the proposed redevelopment project. The second area is the Commercial Project Area covering the retail area to the south of the Project and north of 95th Street.

Sheila Myers asked if the second project could be removed from the TIF District. Mr. Anderson responded that the proposed area of the TIF District could be reduced, but cannot be enlarged. He added it is expected that the addition of the park and addition of the proposed redevelopment by Van Trust would create an opportunity for one or more of the property owners to redevelop their properties. With the area included in the established TIF District the face value of that property will be set based on the adoption date of the TIF allowing them to capture future benefits from anticipated increased property value. He also added that the school district and the county have the ability to

veto a proposed TIF District within 30 days of its approval. By including both project areas that veto ability would not be available if in three to five years a developer proposed a project for this area.

Sheila Myers noted if the value was frozen the city would lose tax revenue from increased appraisals. Mr. Anderson replied the city would only lose the incremental increase in value. Mrs. Myers asked what the current value of this project area was.

Jeff White, Financial Consultant with Columbia Management, replied that value has not been calculated as it does not have anything to do with Project 1 which is currently proposed.

Gary Anderson added the money would be kept as TIF funds; however, the city would not have any authority to use those funds without an approved project. He stated that Project 2 could be removed from the TIF District at any time by the City.

Mayor Wassmer noted the property included in Project 2 has multiple owners which has been part of the challenge of redeveloping this area. The TIF designation and possible benefits could help individual owners or a multi-project redevelopment of this area that has been identified in Village Vision as an area needing redevelopment.

Terrence Gallagher asked when the TIF money is collected can the entire pool be used by one owner or is the amount available designated based on the amount of land owned. Mr. Anderson stated it would depend on what is included in the area and noted that it could be setup however the Council desired. He reviewed the allowable uses for TIF funds. Mr. Gallagher asked what would happen if the funds were never used. Mr. Anderson replied they would go back to the city's general fund.

Quinn Bennion noted there has been concern expressed by residents over the possibility of being forced to sell their property and asked Mr. Anderson to address that concern.

Gary Anderson stated the state legislature recently adopted new regulations that prohibit cities from using eminent domain for the acquisition of property. The only way eminent domain can be used is through special legislative approval.

Eric Mikkelson noted the next step is the public hearing in September and asked what followed that. Mr. Anderson replied that if the TIF District was approved by the Governing Body an ordinance would be adopted establishing the TIF District by a majority vote. The school district and/or the county would have 30 days from the conclusion of the Public Hearing to veto the establishment of the district.

After that time a redevelopment plan will be prepared and presented to the Planning Commission for review to determine that it is consistent with the city's comprehensive plan. A public hearing would be held on the redevelopment plan. The redevelopment plan must be approved by a 2/3 vote of the Governing Body and is adopted by ordinance.

Mr. Anderson noted that typically concurrent with the consideration of the redevelopment plan is consideration of the redevelopment agreement. The redevelopment plan should not be approved until the redevelopment agreement has been approved.

Executive Session

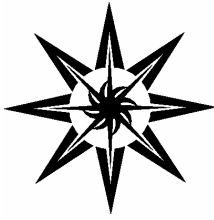
Ashley Weaver moved pursuant to KSA 75-4319 (b) (6) and KSA 75-4319 (b) (1) that the Governing Body recess into Executive Session in the Multi-Purpose Room until 7:25 p.m. for the purpose of discussing possible acquisition of property and consulting with the City Attorney on matters which are privileged in the attorney-client relationship. Present will be the Mayor, City Council, City Administrator, Assistant City Administrator, Bond & Financial Counsel. The motion was seconded by Ted Odell and passed unanimously.

Council President Brooke Morehead reconvened the Council Committee of the Whole meeting at 7:26 p.m.

ADJOURNMENT

With no further business to come before the Council Committee of the Whole, Council President Brooke Morehead adjourned the meeting at 7:27 p.m.

Brooke Morehead
Council President



PUBLIC WORKS DEPARTMENT

Council Committee Meeting Date: September 8, 2015
Council Meeting Date: September 8, 2015

CONSIDER CONSTRUCTION CONTRACT FOR THE DRAIN15X - 2015 DRAINAGE REPAIR PROGRAM

RECOMMENDATION

Move to authorize the Mayor to sign the construction contract with Linaweaver Construction, Inc. for the DRAIN15X-2015 DRAINAGE REPAIR PROGRAM for \$110,000.

BACKGROUND

This project includes replacement or repair on various drainage inlet locations throughout the city and a pipe replacement.

On August 7, 2015, the City Clerk opened bids for the project. Three acceptable bids were received:

| | |
|-------------------------------|--------------|
| Linaweaver Construction, Inc. | \$ 94,450.00 |
| Pyramid Excavation | \$127,127.00 |
| Kansas Heavy Construction | \$125,000.00 |
| Engineer's Estimate | \$ 95,890.00 |

The Engineer has reviewed all bids and has recommended award of the low bid.

The contract will be awarded for \$110,000. Given the bids we should be able to include a few more inlet locations than originally anticipated.

FUNDING SOURCES

Funding is available under the CIP project DRAIN15x.

RELATION TO VILLAGE VISION

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. Construction Agreement with Linaweaver Construction, Inc.

PREPARED BY

Melissa Prenger, Senior Project Manager

September 1, 2015



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
8/28/2015

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

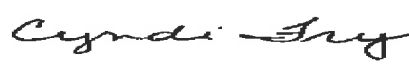
| PRODUCER The Reilly Company LLC 608 Delaware St. P.O. Box 9 Leavenworth KS 66048-0009 | CONTACT NAME: Cyndi Fry PHONE (A/C, No, Ext): (913) 682-1234 FAX (A/C, No): (913) 682-8136 E-MAIL ADDRESS: cyndi.fry@reillyinsurance.com | | | | | | | | | | | | | |
|--|---|-------------------------------|--------|------------------------------------|-------|-------------|--|-------------|--|-------------|--|-------------|--|-------------|
| | <table border="1"> <tr> <th>INSURER(S) AFFORDING COVERAGE</th> <th>NAIC #</th> </tr> <tr> <td>INSURER A Allied/Nationwide Mutual</td> <td>42579</td> </tr> <tr> <td>INSURER B :</td> <td></td> </tr> <tr> <td>INSURER C :</td> <td></td> </tr> <tr> <td>INSURER D :</td> <td></td> </tr> <tr> <td>INSURER E :</td> <td></td> </tr> <tr> <td>INSURER F :</td> <td></td> </tr> </table> | INSURER(S) AFFORDING COVERAGE | NAIC # | INSURER A Allied/Nationwide Mutual | 42579 | INSURER B : | | INSURER C : | | INSURER D : | | INSURER E : | | INSURER F : |
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| INSURER E : | | | | | | | | | | | | | | |
| INSURER F : | | | | | | | | | | | | | | |
| INSURED Linaweaver Construction, Inc. 719 E. Gilman Rd. Lansing KS 66043 | | | | | | | | | | | | | | |

COVERAGES **CERTIFICATE NUMBER** Master 15 **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

| INSR LTR | TYPE OF INSURANCE | ADDL INSR | SUBR WVD | POLICY NUMBER | POLICY EFF (MM/DD/YYYY) | POLICY EXP (MM/DD/YYYY) | LIMITS |
|----------|--|-----------|----------|----------------------------------|-------------------------|-------------------------|--|
| A | GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> Blanket Additional Insd <input checked="" type="checkbox"/> Contractual GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC | | | ACP 7221325678 | 6/30/2015 | 6/30/2016 | EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 |
| | AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO ALL OWNED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input type="checkbox"/> SCHEDULED AUTOS NON-OWNED AUTOS | | | ACP 7221325678 | 6/30/2015 | 6/30/2016 | COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ PIP-Basic \$ 4,500 |
| A | <input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB CLAIMS-MADE DED <input checked="" type="checkbox"/> RETENTION \$ 0 | | | ACP 7221325678 | 6/30/2015 | 6/30/2016 | EACH OCCURRENCE \$ 5,000,000 AGGREGATE \$ 5,000,000 |
| A | WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below Y/N <input checked="" type="checkbox"/> N/A | | | ACP 7221325678 | 6/30/2015 | 6/30/2016 | <input checked="" type="checkbox"/> WC STATUTORY LIMITS OTH-ER E.L. EACH ACCIDENT \$ 500,000 E.L. DISEASE - EA EMPLOYEE \$ 500,000 E.L. DISEASE - POLICY LIMIT \$ 500,000 |
| A | Leased/Rented Equipment Installation Floater | | | ACP 7221325678 ACP 7221325678 | 6/30/2015 6/30/2015 | 6/30/2016 6/30/2016 | Limit \$327,000 Limit \$200,000 |

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)
 Project: Drain 15 X, 2015 Drainage Program. City of Prairie Village, Kansas is named as additional insured including Waiver of Subrogation where required by written contract. 30 day Notice of Cancellation applies.

| | |
|--|---|
| CERTIFICATE HOLDER City of Prairie Village, Kansas Dept of Public Works 3535 Somerset Drive Prairie Village, KS 64114 | CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE Cyndi Fry/CYNDI  |
|--|---|

CONSTRUCTION AGREEMENT

For

**DRAIN15X:
2015 DRAINAGE PROGRAM**

BETWEEN

CITY OF PRAIRIE VILLAGE, KS

AND

LINAWEAVER CONSTRUCTION, INC.

**CONSTRUCTION CONTRACT
FOR
PROJECT
DRAIN15X
BETWEEN
THE CITY OF PRAIRIE VILLAGE, KANSAS
AND
LINAWEAVER CONSTRUCTION, INC.**

THIS AGREEMENT, is made and entered into this ____ day of _____, 20__, by and between the City of Prairie Village, Kansas, hereinafter termed the "**City**", and, LINAWEAVER CONSTRUCTION INC. hereinafter termed in this agreement, "**Contractor**", for the construction and completion of Project DRAIN15X, the "**Project**" designated, described and required by the Project Manual and Bid Proposal, to wit:

WITNESSETH:

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

WHEREAS, the Contractor, in response to the advertisement, has submitted to the City in the manner and at the time specified, a sealed Bid Proposal in accordance with the Bid Documents;

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

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

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

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

1. **DEFINITIONS:** Capitalized terms not defined herein shall have the meanings set forth in the General Conditions.

1.1 Following words are given these definitions:

ADVERSE WEATHER shall have the meaning set forth in Section 9.3 hereof.

APPLICATION FOR PAYMENT shall mean a written request for compensation for Work performed on forms approved by the City.

BID shall mean a complete and properly signed proposal to do the Work or designated portion thereof, for the price stipulated therein, submitted in accordance with the Bid Documents.

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

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

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

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

CERTIFICATE FOR PAYMENT shall mean written certification from the Project Manager stating that to the best of the project manager's knowledge, information and belief, and on the basis of the Project Manager's on-site visits and inspections, the Work described in an Application for Payment has been completed in accordance with the terms and conditions of the Contract Documents and that the amount requested in the Application for Payment is due and payable.

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

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

CONTRACT or **CONTRACT DOCUMENTS** shall consist of (but not necessarily be limited to) the Plans, the Specifications, all addenda issued prior to and all modifications issued after execution of this Agreement, (modifications consisting of written amendments to the Agreement signed by both parties, Change Orders, written orders for minor changes in the Work issued by the Project Manager) this Construction Contract between the City and Contractor (sometimes referred to herein as the "**Agreement**"), the accepted Bid Proposal, Contractor's Performance Bond, Contractor's Maintenance Bond, Statutory Bond, the Project Manual, the General Conditions, the Special Conditions and any other documents that have bearing the Work prescribed in the Project. It is understood that the Work shall be

carried out and the Project shall be constructed fully in accordance with the Contract Documents.

CONTRACT PRICE shall be the amount identified in the Construction Agreement between the City and the Contractor as the total amount due the Contractor for Total Completion of the Work as per the Contract Documents.

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

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

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

FIELD ORDER shall mean a written order issued by the Project Manager that orders minor changes in the Work, but which does not involve a change in the Contract Price or Contract Time.

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

GENERAL CONDITIONS shall mean the provisions in the document titled "General Conditions - General Construction Provisions" attached hereto and incorporation herein by reference.

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

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

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

PLANS shall mean and include all Shop Drawings which may have been prepared by or for the City as included in the Project Manual or submitted by the Contractor to the City during the progress of the Work, all of which show the character and scope of the work to be performed.

PROJECT shall mean the Project identified in the first paragraph hereof.

PROJECT MANAGER shall mean the person appointed by the Public Works Director for this Contract.

PROJECT MANUAL shall contain the General Conditions, Special Conditions, Specifications, Shop Drawings and Plans for accomplishing the work.

PROJECT SEGMENTS shall have the meaning set forth in Section 7.1 hereof.

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

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

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

SPECIAL CONDITIONS shall mean the provisions in the document titled "Special Conditions" attached hereto and incorporation herein by reference.

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

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

TOTAL COMPLETION shall mean all elements of a Project Segment or the Total Project Work is complete including all subsidiary items and "punch-list" items.

TOTAL PROJECT WORK shall have the meaning set forth in Section 7.1 hereof.

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

UNUSUALLY SEVERE WEATHER shall have the meaning set forth in Section 9.4 hereof.

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

WORK SCHEDULE shall have the meaning set forth in Section 7.2 hereof.

- 1.2 Whenever any word or expression defined herein, or pronoun used instead, occurs in these Contract Documents; it shall have and is mutually understood to have the meaning commonly given. Work described in words, which so applied have a well-known technical or trade meaning shall be held to refer to such, recognized standards.
- 1.3 Whenever in these Contract Documents the words "as ordered," "as directed", "as required", "as permitted", "as allowed", or words or phrases of like import are used, it is understood that the order, direction, requirement, permission or allowance of the Project Manager is intended.
- 1.4 Whenever any statement is made in the Contract Documents containing the expression "it is understood and agreed", or an expression of like import, such expression means the mutual understanding and agreement of the parties hereto.
- 1.5 The words "approved", "reasonable", "suitable", "acceptable", "properly", "satisfactorily", or words of like effect in import, unless otherwise particularly specified herein, shall mean approved, reasonable, suitable, acceptable, proper or satisfactory in the judgment of the Project Manager.
- 1.6 When a word, term or phrase is used in the Contract, it shall be interpreted or construed, first, as defined herein; second, if not defined, according to its generally accepted meaning in the construction industry; and, third, if there is no generally accepted meaning in the construction industry, according to its common and customary usage.
- 1.7 All terms used herein shall have the meanings ascribed to them herein unless otherwise specified.

2. ENTIRE AGREEMENT:

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

3. INTENT AND INTERPRETATION

- 3.1 The intent of the Contract is to require complete, correct and timely execution of the Work. Any Work that may be required, including construction, labor, materials, tools, equipment and transportation, implied or inferred by the Contract Documents, or any one or more of them, as necessary to produce the intended result, shall be provided by the Contractor for the Contract Price.

- 3.2 All time limits stated in the Contract Documents are of the essence of the Contract.
- 3.3 The Contract is intended to be an integral whole and shall be interpreted as internally consistent. What is required by any one Contract Document shall be considered as required by the Contract.
- 3.4 The specification herein of any act, failure, refusal, omission, event, occurrence or condition as constituting a material breach of this Contract shall not imply that any other, non-specified act, failure, refusal, omission, event, occurrence or condition shall be deemed not to constitute a material breach of this Contract.
- 3.5 The Contractor shall have a continuing duty to read, carefully study and compare each of the Contract Documents and shall give written notice to the Project Manager of any inconsistency, ambiguity, error or omission, which the Contractor may discover, or should have discovered, with respect to these documents before proceeding with the affected Work. The review, issuance, or the express or implied approval by the City or the Project Manager of the Contract Documents shall not relieve the Contractor of the continuing duties imposed hereby, nor shall any such review be evidence of the Contractor's compliance with this Contract.
- 3.6 The City has prepared or caused to have prepared the Project Manual. **HOWEVER, THE CITY MAKES NO REPRESENTATION OR WARRANTY AS TO ACCURACY OR FITNESS FOR PARTICULAR PURPOSE INTENDED OR ANY OTHER WARRANTY OF ANY NATURE WHATSOEVER TO THE CONTRACTOR CONCERNING SUCH DOCUMENTS.** By the execution hereof, the Contractor acknowledges and represents that it has received, reviewed and carefully examined such documents, has found them to be complete, accurate, adequate, consistent, coordinated and sufficient for construction, and that the Contractor has not, does not, and will not rely upon any representation or warranties by the City concerning such documents as no such representation or warranties have been made or are hereby made.
- 3.7 As between numbers and scaled measurements in the Project Manual, the numbers shall govern; as between larger scale and smaller scale drawings, (e.g. 10:1 is larger than 100:1) the larger scale shall govern.
- 3.8 The organization of the Project Manual into divisions, sections, paragraphs, articles (or other categories), shall not control the Contractor in dividing the Work or in establishing the extent or scope of the Work to be performed by Subcontractors.
- 3.9 The Contract Documents supersedes all previous agreements and understandings between the parties, and renders all previous agreements and understandings void relative to these Contract Documents.
- 3.10 Should anything be omitted from the Project Manual, which is necessary to a clear understanding of the Work, or should it appear various instructions are in conflict, the Contractor shall secure written instructions from the Project Manager before proceeding with the construction affected by such omissions or discrepancies.
- 3.11 It is understood and agreed that the Work shall be performed and completed according to the true spirit, meaning, and intent of the Contract Documents.

- 3.12 The Contractor's responsibility for construction covered by conflicting requirements, not provided for by addendum prior to the time of opening Bids for the Work represented thereby, shall not extend beyond the construction in conformity with the less expensive of the said conflicting requirements. Any increase in cost of Work required to be done in excess of the less expensive work of the conflicting requirements will be paid for as extra work as provided for herein.
- 3.13 The apparent silence of the Project Manual as to any detail, or the apparent omission from them of a detailed description concerning any point, shall be regarded as meaning that only the best general practice is to be used. All interpretations of the Project Manual shall be made on the basis above stated.
- 3.14 The conditions set forth herein are general in scope and are intended to contain requirements and conditions generally required in the Work, but may contain conditions or requirements which will not be required in the performance of the Work under contract and which therefore are not applicable thereto. Where any stipulation or requirement set forth herein applies to any such non-existing condition, and is not applicable to the Work under contract, such stipulation or requirement will have no meaning relative to the performance of said Work.
- 3.15 KSA 16-113 requires that non-resident contractors appoint an agent for the service of process in Kansas. The executed appointment must then be filed with the Secretary of State, Topeka, Kansas. Failure to comply with this requirement shall disqualify the Contractor for the awarding of this Contract.

4. CONTRACT COST

The City shall pay the Contractor for the performance of the Work embraced in this Contract, and the Contractor will accept in full compensation therefore the sum (subject to adjustment as provided by the Contract) of ONE HUNDRED TEN THOUSAND DOLLARS AND ZERO CENTS (~~\$110,000.00~~) for all Work covered by and included in the Contract; payment thereof to be made in cash or its equivalent and in a manner provided in the Contract Documents.

5. WORK SUPERINTENDENT

- 5.1 The Contractor shall provide and maintain, continually on the site of Work during its progress, an adequate and competent superintendent of all operations for and in connection with the Work being performed under this Contract, either personally or by a duly authorized superintendent or other representative. This representative shall be designated in writing at the preconstruction meeting.
- 5.2 The superintendent, or other representative of the Contractor on the Work, who has charge thereof, shall be fully authorized to act for the Contractor, and to receive whatever orders as may be given for the proper prosecution of the Work, or notices in connection therewith. Use of Subcontractors on portions of the Work shall not relieve the Contractor of the obligation to have a competent superintendent on the Work at all times.
- 5.3 The City shall have the right to approve the person who will be the Superintendent based on skill, knowledge, experience and work performance. The City shall also have the right to request replacement of any superintendent.

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

6. PROJECT MANAGER

- 6.1 It is mutually agreed by and between the parties to this Agreement that the Project Manager shall act as the representative of the City and shall observe and inspect, as required, the Work included herein.
- 6.2 In order to prevent delays and disputes and to discourage litigation, it is further agreed by and between the parties to this Agreement that the Project Manager shall, in good faith and to the best of its ability, determine the amount and quantities of the several kinds of work which are to be paid for under this Contract; that the Project Manager shall determine, where applicable, questions in relation to said Work and the construction thereof; that Project Manager shall, where applicable decide questions which may arise relative to the execution of this Contract on the part of said Contractor; that the Project Manager's decisions and findings shall be the conditions precedent to the rights of the parties hereto, to any action on the Contract, and to any rights of the Contractor to receive any money under this Contract provided, however, that should the Project Manager render any decision or give any direction which, in the opinion of either party hereto, is not in accordance with the meaning and intent of this Contract, either party may file with the Project Manager and with the other party, within thirty (30) days a written objection to the decision or direction so rendered and, by such action, may reserve the right to submit the question to determination in the future.
- 6.3 The Project Manager, unless otherwise directed or agreed to by the City in writing, will perform those duties and discharge those responsibilities allocated to the Project Manager as set forth in this Contract. The Project Manager shall be the City's representative from the effective date of this Contract until final payment has been made. The Project Manager shall be authorized to act on behalf of the City only to the extent provided in this Contract. The City and Project Manager may, from time to time, designate Inspectors to perform such functions.
- 6.4 The City and the Contractor shall communicate with each other in the first instance through the Project Manager.
- 6.5 The Project Manager shall be the initial interpreter of the requirements of the Project Manual and the judge of the performance by the Contractor. The Project Manager shall render written graphic interpretations necessary for the proper execution or progress of the Work with reasonable promptness on request of the Contractor.
- 6.6 The Project Manager will review the Contractor's Applications for Payment and will certify to the City for payment to the Contractor those amounts then due the Contractor as provided

in this Contract. The Project Manager's recommendation of any payment requested in an Application for Payment will constitute a representation by Project Manager to City, based on Project Manager's on-site observations of the Work in progress as an experienced and qualified design professional and on Project Manager's review of the Application for Payment and the accompanying data and schedules that the Work has progressed to the point indicated; that, to the best of the Project Manager's knowledge, information and belief, the quality of the Work is in accordance with the Project Manual (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Project Manual, to a final determination of quantities and classifications for Unit Price Work if such is called for herein, and to any other qualifications stated in the recommendation); and that Contractor is entitled to payment of the amount recommended. However, by recommending any such payment Project Manager will not thereby be deemed to have represented that exhaustive or continuous on-site inspections have been made to check the quality or the quantity of the Work beyond the responsibilities specifically assigned to Project Manager in the Project Manual or that there may not be other matters or issues between the parties that might entitle Contractor to be paid additionally by the City or the City to withhold payment to Contractor.

- 6.7 The Project Manager may refuse to recommend the whole or any part of any payment if, in Project Manager's opinion, it would be incorrect to make such representations to City. Project Manager may also refuse to recommend any such payment, or, because of subsequently discovered evidence or the results of subsequent inspections or tests, nullify any such payment previously recommended, to such extent as may be necessary in the Project Manager's opinion to protect the City from loss because:
- The Work is defective, or completed Work has been damaged requiring correction or replacement,
 - The Contract Price has been reduced by Written Amendment or Change Order,
 - The City has been required to correct Defective Work or complete Work in accordance with the Project Manual.
- 6.8 The City may refuse to make payment of the full amount recommended by the Project Manager because claims have been made against City on account of Contractor's performance or furnishing of the Work or liens have been filed in connection with the Work or there are other items entitling City to a set-off against the amount recommended, but City must give Contractor written notice (with a copy to Project Manager) stating the reasons for such action.
- 6.9 The Project Manager will have the authority to reject Work which is defective or does not conform to the requirements of this Contract. If the Project Manager deems it necessary or advisable, the Project Manager shall have authority to require additional inspection or testing of the Work for compliance with Contract requirements.
- 6.10 The Project Manager will review, or take other appropriate action as necessary, concerning the Contractor's submittals, including Shop Drawings, Product Data and Samples. Such review, or other action, shall be for the sole purpose of determining general conformance with the design concept and information given through the Project Manual.
- 6.11 The Project Manager shall have authority to order minor changes in the Work not involving a change in the Contract Price or in Contract Time and consistent with the intent of the

Contract. Such changes shall be effected by verbal direction and then recorded on a Field Order and shall be binding upon the Contractor. The Contractor shall carry out such Field Orders promptly.

- 6.12 The Project Manager, upon written request from the Contractor shall conduct observations to determine the dates of Substantial Completion, Total Completion and the date of Final Acceptance. The Project Manager will receive and forward to the City for the City's review and records, written warranties and related documents from the Contractor required by this Contract and will issue a final Certificate for Payment to the City upon compliance with the requirements of this Contract.
- 6.13 The Project Manager's decisions in matters relating to aesthetic effect shall be final if consistent with the intent of this Contract.
- 6.14 The Project Manager will **NOT** be responsible for Contractor's means, methods, techniques, sequences, or procedures or construction, or the safety precautions and programs incident thereto and will not be responsible for Contractor's failure to perform the Work in accordance with the Project Manual. The Project Manager will not be responsible for the acts or omissions of the Contractor or any Subcontractor or any of its or their agents or employees, or any other person at the site or otherwise performing any of the Work except as may otherwise be provided.
- 6.15 Any plan or method of work suggested by the Project Manager, or other representatives of the City, to the Contractor, but not specified or required, if adopted or followed by the Contractor in whole or in part, shall be used at the risk and responsibility of the Contractor, and the Project Manager and the City will assume no responsibility therefore.
- 6.16 It is agreed by the Contractor that the City shall be and is hereby authorized to appoint or employ, either directly or through the Project Manager, such City representatives or observers as the City may deem proper, to observe the materials furnished and the work performed under the Project Manual, and to see that the said materials are furnished, and the said work performed, in accordance with the Project Manual therefore. The Contractor shall furnish all reasonable aid and assistance required by the Project Manager, or by the resident representatives for proper observation and examination of the Work and all parts thereof.
- 6.17 The Contractor shall comply with any interpretation of the Project Manual by the Project Manager, or any resident representative or observer so appointed, when the same are consistent with the obligations of the Project Manual. However, should the Contractor object to any interpretation given by any subordinate Project Manager, resident representative or observer, the Contractor may appeal in writing to the City Director of Public Works for a decision.
- 6.18 Resident representatives, observers, and other properly authorized representatives of the City or Project Manager shall be free at all times to perform their duties, and intimidation or attempted intimidation of any one of them by the Contractor or by any of its employees, shall be sufficient reason, if the City so decides, to annul the Contract.
- 6.19 Such observation shall not relieve the Contractor from any obligation to perform said Work strictly in accordance with the Project Manual.

7. WORK SCHEDULE:

- 7.1 The Work is comprised of one large project (sometimes referred to as “**Total Project Work**”) and, in some cases, is partitioned into smaller subprojects referred to in this Agreement as “**Project Segments**.” A Contract Time shall be stated in the Contract Documents for both the Total Project Work and, when applicable, the Project Segments.
- 7.2 At the time of execution of this Contract, the Contractor shall furnish the Project Manager with a schedule (“**Work Schedule**”) setting forth in detail (in the critical path method) the sequences proposed to be followed, and giving the dates on which it is expected that Project Segments will be started and completed within the Contract Time. The Work Schedule is subject to approval by the City.
- 7.3 Monthly Work Schedule reports shall accompany the Contractor's pay request for Work completed. Where the Contractor is shown to be behind schedule, it shall provide an accompanying written summary, cause, and explanation of planned remedial action. Payments or portions of payments may be withheld by the City upon failure to maintain scheduled progress of the Work as shown on the approved Work Schedule.
- 7.4 At a minimum the Contractor shall update and submit the Work Schedule for review weekly, unless otherwise agreed upon by the City.
- 7.5 The Contractor, within ten (10) calendar days after being instructed to do so in a written notice from the City, shall commence the Work to be done under this Contract.
- 7.6 If at any time, in the opinion of the Project Manager or City, proper progress is not being maintained; changes shall be proposed in the Work Schedule and resubmitted for consideration and approval.
- 7.7 If the Contractor has not completed Project Segments and is within a non-performance penalty period, it shall not be allowed to undertake a new Project Segment until the Project Segment in dispute is completed, unless expressly permitted by the City.
- 7.8 The operation of any tool, equipment, vehicle, instrument, or other noise-producing device is prohibited to start before or continue after the hours of 7 AM and 10 PM, Monday through Friday (except Fridays which shall be until Midnight) and 8 AM and midnight on Weekends (except Sunday which shall be 10 PM). Violation of this requirement is Prima Facie Violation of City Municipal Code 11-202.
- 7.9 No work shall be undertaken on Saturdays, Sundays and Holidays (Christmas, New Years, Martin Luther King's Birthday, President's Day, Memorial Day, Independence Day, Labor Day and Thanksgiving) without the express written approval of the City Project Manager. If it is necessary to perform proper care, maintenance, or protection of work already completed or of equipment used, or in the case of an emergency verbal permission may be obtained through the Project Manager.
- 7.10 Night work may be established by the Contractor, as a regular procedure, with the written permission of the City; such permission, however, may be revoked at any time by the City if the Contractor fails to maintain adequate equipment for the proper prosecution and control of all operations performed as part of the Work.

7.11 The Contractor shall provide 24 hours notice prior to commencing any work to the City Project Manager. The Contractor shall communicate immediately any changes in the Work Schedule to the Project Manager for approval by the City.

8. DELAYS AND EXTENSIONS OF TIME

8.1 In executing the Contract, the Contractor expressly covenants and agrees that, in undertaking the completion of the Work within the Contract Time, it has taken into consideration and made allowances for all of the ordinary delays and hindrances incident to such Work, whether growing out of delays in securing materials, workers, weather conditions or otherwise. No charge shall be made by the Contractor for hindrances or delays from any cause during the progress of the Work, or any portion thereof, included in this Contract.

8.2 Should the Contractor, however, be delayed in the prosecution and completion of the Work by reason of delayed shipment orders, or by any changes, additions, or omissions therein ordered in writing by the City, or by strikes or the abandonment of the Work by the persons engaged thereon through no fault of the Contractor, or by any act taken by the U.S. Government such as the commandeering of labor or materials, embargoes, etc., which would affect the fabrication or delivery of materials and/or equipment to the Work; or by neglect, delay or default of any other contractor of the City, or delays caused by court proceedings; the Contractor shall have no claims for damages or additional compensation or costs for any such cause or delay; but it shall in such cases be entitled to such extension of the time specified for the completion of the Work as the City and the Project Manager shall award in writing on account of such delays, provided, however, that claim for such extension of time is made by the Contractor to the City and the Project Manager in writing within one (1) week from the time when any such alleged cause for delay shall occur.

9. ADVERSE WEATHER:

9.1 Extensions of time for Adverse Weather shall be granted only under the conditions as hereinafter provided.

9.2 For conditions of weather or conditions at the site, so unusual as not to be reasonably anticipated, as determined by the Project Manager, an average or usual number of inclement days when work cannot proceed are to be anticipated during the construction period and are not to be considered as warranting extension of time.

9.3 "**Adverse Weather**" is defined as atmospheric conditions or the impact thereof at a definite time and place, which are unfavorable to construction activities such that they prevent work on critical activities for 50 percent or more of the Contractor's scheduled workday.

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

9.5 Time Extensions for Unusually Severe Weather: In order for any request for time extension due to Unusually Severe Weather to be valid, the Contractor must document all of the following conditions:

- The weather experienced at the Work site during the Contract period is more severe than the Adverse Weather anticipated for the Work location during any given month.

- The Unusually Severe Weather actually caused a delay to the completion of the Work.
- The delay must be beyond the control and without fault or negligence by the Contractor.

9.6 The following schedule of monthly-anticipated Adverse Weather delays will constitute the baseline for monthly weather time evaluations. The Contractor's Work Schedule must reflect these anticipated adverse weather delays in all weather affected activities:

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

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

- 9.7 Upon receipt of the Notice to Proceed, and continuing throughout the Contract, the Contractor shall record on its daily construction report, the occurrence of Adverse Weather and resultant impact to the Work Schedule.
- 9.8 The number of actual Adverse Weather delay days shall include days affected by actual Adverse Weather (even if Adverse Weather occurred in the previous month), and shall be calculated chronologically from the first to the last day of each month, and be recorded as full workdays.
- 9.9 If the number of actual Adverse Weather delay days in a given month exceeds the number of days anticipated above, the difference shall be multiplied by 7/5 to convert any qualifying workday delays to calendar days. The resulting number of qualifying lost days shall be added to the Contract Time.
- 9.10 The determination that Unusually Severe Weather occurred does not automatically mean an extension of time will be granted. The Contractor must substantiate the Unusually Severe Weather delayed work activities on the critical path of the Work Schedule.
- 9.11 Full consideration for equivalent fair weather workdays shall be given. If the number of actual Adverse Weather delays in a given month is less than the number of days anticipated as indicated above, the difference shall be multiplied by 7/5 to convert any workday increases to calendar days. The resulting number of qualifying extra days will be accumulated and subtracted from any future month's days lost due to unusually severe weather.
- 9.12 The net cumulative total of extra days/lost days shall not result in a reduction of Contract Time and the date of Substantial Completion shall not be changed because of unusually favorable weather.
- 9.13 In converting workdays to calendar days, fractions 0.5 and greater shall be rounded up to the next whole number. Fractions less than 0.5 shall be dropped.
- 9.14 The Contractor shall summarize and report all actual Adverse Weather delay days for each month to the Project Manager by the tenth (10th) day of the following month. A narrative indicating the impact of Adverse Weather conditions on the Work Schedule shall be included.

- 9.15 Any claim for extension of time due to Unusually Severe Weather shall be submitted to the Project Manager within 7 days of the last day of the commencement of the event giving rise to the delay occurred. Resolution of any claim shall follow the procedures described above.
- 9.16 The Contractor shall include and indicate the monthly-anticipated Adverse Weather days, listed above, in the Work Schedule. (Reference Section 7.1 for Work Schedule requirements)
- 9.17 The Contractor shall indicate the approved Adverse Weather days (whether less or more than the anticipated days) in its Work Schedule updates.

10. LIQUIDATED DAMAGES

- 10.1 Contractor agrees that time is of the essence and any term pertaining to Contractor timely performing so as to achieve Total Completion within the Contract Time is a material provision of this Contract. Further, the parties acknowledge that City's damages in the event of delay are difficult to ascertain and consequently agree that, in the event and to the extent that actual date of Total Completion is delayed beyond the Contract Time for the Total Project Work or Project Segments attributable solely or concurrently to (i) an act or omission of Contractor or any of its subcontractors or suppliers, or (ii) in whole or in part, to any other event or condition within the Contractor's reasonable control (and not for reasons solely attributable to City), the Contractor shall be assessed a liquidated damage, and not as a penalty, in the amount set forth in the Special Conditions for each calendar day beyond the applicable Contract Time. Such amount shall be deducted from any amounts due Contractor under this Agreement.
- 10.2 Further, the Contractor agrees that, in the event Contractor does not carry out such Work at such rates of progress as required by the Work Schedule approved by the City, the City may, at its option and without Contractor receiving any additional compensation therefore, require Contractor to increase the number of qualified supervisory personnel and/or workers and the amount of equipment employed in the performance of the Work to such extent as City may deem necessary or desirable. In addition, City, at its option, may supplement Contractor's manpower by entering into contracts with other contractors to perform the Work. All costs that are incurred by City, in this regard, including reasonable attorney's fees, shall be deducted from any sums due Contractor or City may make demand on Contractor for reimbursement of such costs.

11. PAYMENT PROCEDURE

- 11.1 Based upon Applications for Payment submitted to the Project Manager by the Contractor and Certificates for Payment issued by the Project Manager, the City shall make progress payments on account of the contract sum to the Contractor as provided below and elsewhere in the Contract Documents.
- 11.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month or on a mutually agreed date by City and Contractor.
- 11.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the City no later than the time of payment. The Contractor further warrants that upon submittal on the first day of each month of an Application for Payment, all Work for which payments have been received from the City shall be free and clear of liens, claims,

security interest or other encumbrances in favor of the Contractor or any other person or entity whatsoever.

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

- Evidence that the Work will not be completed in the time required for substantial or final completion;
- Persistent failure to carry out the Work in accordance with the Contract;
- Damage to the City or a third party to whom the City is, or may be, liable;
- Evidence that the Work is not progressing according to agreed upon schedule by both parties.

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

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

12. COMPLETION AND FINAL PAYMENT

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

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

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

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

13. CLAIMS BY THE CONTRACTOR

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

- 13.8 In connection with any claim by the Contractor against the City for compensation in excess of the Contract Price, any liability of the City for the Contractor's costs shall be strictly limited to direct costs incurred by the Contractor and shall not include standby costs, indirect costs or consequential damages of the Contractor. The City shall not be liable to the Contractor for claims of third parties.
- 13.9 If the Contractor is delayed in progressing any task which at the time of the delay is then critical or which during the delay becomes critical, as the sole result of any act or neglect to act by the City or someone acting in the City's behalf, or by changes ordered in the Work, unusual delay in transportation, unusually adverse weather conditions not reasonably anticipated, fire or any causes beyond the Contractor's control, then the date for achieving Final Acceptance of the Work shall be extended upon the written notice and claim of the Contractor to the City, for such reasonable time as the City may determine. Any notice and claim for an extension of time by the Contractor shall be made not more than seven calendar days after the occurrence of the event or the first appearance of the condition-giving rise to the claim and shall set forth in detail the Contractor's basis for requiring additional time in which to complete the Work. In the event the delay to the Contractor is a continuing one, only one notice and claim for additional time shall be necessary. If the Contractor fails to make such claim as required in this subparagraph, any claim for an extension of time shall be waived.
- 13.10 The Contractor shall delay or suspend the progress of the work or any part thereof, whenever so required by written order of the City, and for such periods of time as required; provided, that in the event of such delay or delays or of such suspension or suspensions of the progress of the work, or any part thereof, the time for completion of work so suspended or of work so delayed by such suspension or suspensions shall be extended for a period equivalent to the time lost by reason of such suspension or suspensions; but such order of the City or Project Manager shall not otherwise modify or invalidate in any way, any of the provisions of this Contract. In the event that the work shall be stopped by written order of the City, any expense, which, in the sole opinion and judgment of the City, is caused by the City, shall be paid by the City to the Contractor.
- 13.11 In executing the Contract Documents, the Contractor expressly covenants and agrees that, in undertaking to complete the Work within the time herein fixed, it has taken into consideration and made allowances for all hindrances and delays incident to such work, whether growing out of delays in securing materials or workers or otherwise. No charge shall be made by the Contractor for hindrances or delays from any cause during the progress of the work, or any portion thereof, included in this Contract, except as provided herein.
- 13.12 In addition to the Project Manual particular to Mobilization found elsewhere in this document, additional mobilization shall not be compensable for work outside of the designated areas for work deemed essential by the City. A quantity of work equal to as much as 10% of the total Contract may be required to be performed beyond the boundaries of the designated work areas
- 14. CHANGES IN THE WORK**
- 14.1 Changes in the Work within the general scope of this Contract, consisting of additions, deletions, revisions, or any combination thereof, may be ordered without invalidating this Contract, by Change Order or by Field Order.

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

written notice from the insurer or the Contractor at least thirty (30) days prior to material modification or cancellation of any policy listed on the Certificate.

15.2 The Contractor, upon receipt of notice of any claim in connection with this Agreement, shall promptly notify the City, providing full details thereof, including an estimate of the amount of loss or liability. The Contractor shall monitor and promptly notify the City of any reduction in limits of protection afforded under any policy listed in the Certificate (or otherwise required by the Contract Documents) if the Contractor's limits of protection shall have been impaired or reduced to such extent that the limits fall below the minimum amounts required herein. The Contractor shall promptly reinstate the original limits of liability required hereunder and shall furnish evidence thereof to the City.

15.3 Minimum Requirements Commercial General Liability Policy Limits -

| | |
|--|-------------|
| General Aggregate: | \$2,000,000 |
| Products / Completed Operations Aggregate: | \$2,000,000 |
| Personal & Advertising Injury: | \$1,000,000 |
| Each Occurrence: | \$1,000,000 |

Policy MUST include the following conditions:

- A. Pollution Liability (Applicable only to contracts involving pollutants such as asbestos & lead abatement, sludge or other waste abatement, etc.)
- B. NAME CITY OF PRAIRIE VILLAGE AS "ADDITIONAL INSURED"

15.4 Automobile Liability Policy shall protect the Contractor against claims for bodily injury and/or property damage arising from the ownership or use of any owned, hired and/or non-owned vehicle.

Limits (Same as Commercial General Liability) -
 Combined Single Limits, Bodily Injury and Property Damage - Each Accident:

Policy MUST include the following condition:
 NAME CITY OF PRAIRIE VILLAGE AS "ADDITIONAL INSURED"

15.5 Umbrella Liability. The Umbrella / Excess Liability must be at least as broad as the underlying general liability and automobile liability policies.

Limits -

| | |
|-------------------|-------------|
| Each Occurrence | \$1,000,000 |
| General Aggregate | \$1,000,000 |

15.6 Workers' Compensation. This insurance shall protect the Contractor against all claims under applicable state workers' compensation laws. The Contractor shall also be protected against claims for injury, disease or death of employees which, for any reason, may not fall within the provisions of workers' compensation law. The policy limits shall not be less than the following:

| | |
|------------------------|-----------|
| Workers' Compensation: | Statutory |
| Employer's Liability: | |

| | |
|---------------------------|-------------------------|
| Bodily Injury by Accident | \$100,000 each accident |
| Bodily Injury by Disease | \$500,000 policy limit |
| Bodily Injury by Disease | \$100,000 each employee |

- 15.7 The City will only accept coverage from an insurance carrier who offers proof that it:
- Is authorized to do business in the State of Kansas;
 - Carries a Best's policy holder rating of A- or better; and
 - Carries at least a Class VIII financial rating, **or**
 - Is a company mutually agreed upon by the City and Contractor.
- 15.8 Subcontractor's Insurance. If a part of the Agreement is to be sublet, the Contractor shall either:
- A. Cover all subcontractor's in its insurance policies, or
 - B. Require each subcontractor not so covered to secure insurance which will protect subcontractor against all applicable hazards or risks of loss as and in the minimum amounts designated.
- Whichever option is chosen, Contractor shall indemnify and hold harmless the City as to any and all damages, claims or losses, including attorney's fees, arising out of the acts or omissions of its Subcontractors.
- 15.9 Prior to commencing any work, Contractor shall provide City with certificates evidencing that (1) all Contractor's insurance obligations required by the contract documents are in full force and in effect and will remain in effect until Contractor has completed all of the work and has received final payment from City and (2) no insurance coverage will be canceled, renewal refused, or materially changed unless at least thirty (30) days prior written notice is given to City. Contractor's property insurance shall not lapse or be canceled if City occupies a portion of the work. Contractor shall provide City with the necessary endorsements from the insurance company prior to occupying a portion of the work.
- 15.10 Waiver of Subrogation. All insurance coverage required herein shall contain a waiver of subrogation in favor of the City. Contractor's insurance policies shall be endorsed to indicate that Contractor's insurance coverage is primary and any other insurance maintained by City is non-contributing as respects the work of Contractor.
- 15.11 Additional Insurance. Excess Liability coverage or additional insurance covering special hazards may be required on certain projects. Such additional insurance requirements shall be as specified in Special Conditions.
- 15.12 Bonds and Other Performance Security. Contractor shall provide a Performance Bond, Maintenance Bond and a Statutory Bond in the amount of one hundred percent (100%) of the Contract Price to cover the entire scope of Work and any other specific performance security that may be indicated in this Contract. With each bond there shall be filed with the City one copy of "Power of Attorney" certified to include the date of the bonds.

16. INDEMNITY

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

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

- 16.2 For purposes of this Contract, and without in any way limiting indemnification obligations that may be set forth elsewhere in the Contract, the Contractor hereby agrees to indemnify, defend and hold harmless the City from any and all Loss where Loss is caused or incurred or alleged to be caused or incurred in whole or in part as a result of the negligence or other actionable fault of the Contractor, his/her employees, agents, Subcontractors and suppliers.
- 16.3 It is agreed as a specific element of consideration of this Contract that this indemnity shall apply notwithstanding the joint, concurring or contributory or comparative fault or negligence of the City or any third party and, further, notwithstanding any theory of law including, but not limited to, a characterization of the City's or any third party's joint, concurring or contributory or comparative fault or negligence as either passive or active in nature.
- 16.4 Nothing in this section shall be deemed to impose liability on the Contractor to indemnify the City for Loss when the negligence or other actionable fault the City is the sole cause of Loss.
- 16.5 With respect to the City's rights as set forth herein, the Contractor expressly waives all statutory defenses, including, but not limited to, those under workers compensation, contribution, comparative fault or similar statutes to the extent said defenses are inconsistent with or would defeat the purpose of this section.

17. SUCCESSORS AND ASSIGNS

- 17.1 The City and Contractor bind themselves, their successors, assigns and legal representatives to the other party hereto and to successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in this Contract.
- 17.2 The Contractor shall not assign or sublet the work, or any part thereof, without the previous written consent of the City, nor shall it assign, by power of attorney or otherwise, any of the money payable under this Contract unless by and with the like written consent of the City. In case the Contractor assigns all, or any part of any moneys due or to become due under this Contract, the instrument of assignment shall contain a clause substantially to the effect that it is agreed that the right of the assignee in and to any moneys due or to become due to the Contractor shall be subject to all prior liens of all persons, firms and corporations for services rendered or materials supplied for the performance of the Work called for in this Contract.
- 17.3 Should any Subcontractor fail to perform in a satisfactory manner, the work undertaken, its subcontract shall be immediately terminated by the Contractor upon notice from the City.

Performing in an unsatisfactory manner is defined as consistently having more than 10% of work unacceptable. The Contractor shall be as fully responsible to the City for the acts and omissions of the subcontractors, and of persons either directly or indirectly employed by them, as Contractor is for the acts and omissions of persons directly employed. Nothing contained in this Contract shall create any contractual relations between any Subcontractor and the City, nor shall anything contained in the Contract Documents create any obligation on the part of the City to pay or to see to the payment of any sums due any Subcontractor.

- 17.4 The Contractor shall not award subcontracts which total more than forty-five (45%) of the Contract Price and shall perform within its own organization work amounting to not less than fifty-five percent (55%) of the total Contract Price. Approval by the City of any Subcontractor shall not constitute a waiver of any right of the City to reject Defective Work, material or equipment not in compliance with the requirements of the Contract Documents. The Contractor shall not make any substitution for any Subcontractor accepted by the City unless the City so agrees in writing.
- 17.5 The Contractor shall not subcontract, sell, transfer, assign or otherwise dispose of the Contract or any portion thereof without previous written consent from the City. In case such consent is given, the Contractor, shall be permitted to subcontract a portion thereof, but shall perform with his/her own organization work amounting to not less than fifty five (55%) of the total Contract Price. No subcontracts, or other transfer of Contract, shall release the Contractor of its liability under the Contract and bonds applicable thereto.
- 17.6 The Contractor shall cause appropriate provisions to be inserted in all subcontracts relative to the Work to bind Subcontractors to the Contractor by the terms of the Contract Documents insofar as applicable to the work of the Subcontractor and to give the Contractor the same power to terminate any Subcontract as the City has to terminate the Contractor under any provisions of the Contract Documents.
- 17.7 Prior to the City's approval of the Contract bid, the successful bidder shall submit to the City for acceptance, a list of names of all Subcontractors proposed for portions of the work and shall designate which work each is to perform.
- 17.8 The City shall, prior to the City's approval of the Contract bid, notify the successful bidder, in writing, if the City, after due investigation, has reasonable objection to any Subcontractor on such list, and the Contractor shall substitute a Subcontractor acceptable to the City at no additional cost to the City or shall be allowed to withdraw his/her Bid, and the City shall either re-bid the Work or accept the next best lowest and responsible bidder. The failure of the City to make objection to a Subcontractor shall constitute an acceptance of such Subcontractor but shall not constitute a waiver of any right of the City to reject Defective Work, material or equipment not in conformance with the requirements of the Project Manual.

18. NON-DISCRIMINATION LAWS

- 18.1 The Contractor agrees that:
- A. The Contractor shall observe the provisions of the Kansas Act Against Discrimination (K.S.A. 44-1001 et seq.) and shall not discriminate against any person in the performance of Work under the present contract because of race, religion, color, sex, disability, national origin, ancestry or age;

- B. In all solicitations or advertisements for employees, the Contractor shall include the phrase, "equal opportunity employer," or a similar phrase to be approved by the Kansas Human Rights Commission (Commission);
 - C. If the Contractor fails to comply with the manner in which the Contractor reports to the commission in accordance with the provisions of K.S.A. 44-1031 and amendments thereto, the Contractor shall be deemed to have breached the present contract and it may be cancelled, terminated or suspended, in whole or in part, by the contracting agency;
 - D. If the Contractor is found guilty of a violation of the Kansas Act Against Discrimination under a decision or order of the Commission which has become final, the Contractor shall be deemed to have breached the present contract and it may be cancelled, terminated or suspended, in whole or in part, by the contracting agency; and
 - E. The Contractor shall include the provisions of Subsections A through D in every subcontract or purchase order so that such provisions will be binding upon such Subcontractor or vendor.
 - F. The provisions of this Section shall not apply to a contract entered into by a Contractor: (1) Who employs fewer than four employees during the term of such contract; or (2) Whose contracts with the City cumulatively total \$5,000 or less during the fiscal year of the City.
- 18.2 The Contractor further agrees that it shall abide by the Kansas Age Discrimination In Employment Act (K.S.A. 44-1111 et seq.) and the applicable provision of the Americans With Disabilities Act (42 U.S.C. 12101 et seq.) as well as all other federal, state and local laws.
- 19. FEDERAL LOBBYING ACTIVITIES [THIS PROVISION ONLY APPLIES IF THE CITY IS RECEIVING FEDERAL FUNDS]**
- 19.1 31 USCS Section 1352 requires all subgrantees, Contractors, Subcontractors, and consultants/Architects who receive federal funds via the City to certify that they will not use federal funds to pay any person for influencing or attempting to influence a federal agency or Congress in connection with the award of any federal contract, grant, loan, or cooperative agreements.
- 19.2 In addition, contract applicants, recipients, and subrecipients must file a form disclosing any expenditure they make for lobbying out of non-federal funds during the contract period.
- 19.3 Necessary forms are available from the City and must be returned to the City with other Contract Documents. It is the responsibility of the general contractor to obtain executed forms from any Subcontractors who fall within the provisions of the Code and to provide the City with the same.
- 20. RELATIONS WITH OTHER CONTRACTORS:**
- 20.1 The Contractor shall cooperate with all other contractors who may be performing work on behalf of the City, and workers who may be employed by the City, or any other entity on any work in the vicinity of the Work to be done under this Contract, and the Contractor shall so conduct his/her operations as to interfere to the least possible extent with the work of such

contractors or workers. The Contractor shall be responsible for any injury or damage, that may be sustained by other contractors, workers, their work or employees of the City, because of any fault or negligence on the Contractor's part, and shall, at his/her own expense, repair or pay for such injury or damage. If the work of the Contractor is delayed because of any acts or omissions of any other Contractor or Contractors, the Contractor shall have no claim against the City on that account other than for an extension of time.

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

21. RIGHT OF CITY TO TERMINATE

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

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

22. MISCELLANEOUS:

22.1 The Contractor warrants to the City that all labor furnished to progress the Work under the Contract will be competent to perform the tasks undertaken, that the product of such labor will yield only first-class results, that materials and equipment furnished will be of good quality and new unless otherwise permitted by this Contract, and that the Work will be of good quality, free from faults and defects and in strict conformance with the Project Manual. All Work not conforming to these requirements may be considered defective.

22.2 The Contractor shall obtain and pay for all permits, fees and licenses necessary or ordinary for the Work. The Contractor shall comply with all lawful requirements, including federal and state laws, City and County laws and ordinances and building codes, applicable to the Work and shall give and maintain copies of all notices required by applicable law pertaining to the Work.

22.3 Provision for Emergencies. Whenever, in the opinion of the City, the Contractor has not taken sufficient precaution for the safety of the public or the protection of the Work to be constructed under this Contract, or of adjacent structures or property which may be injured by process of construction, and whenever, in the opinion of the City, an emergency shall arise and immediate action shall be considered necessary in order to protect property interests and to avoid personal injury and/or death, then the City, with or without notice to the Contractor, shall provide suitable protection to the said interests by causing such Work to be done and materials to be furnished at places as the City may consider necessary and adequate. The cost and expense of such Work and material so furnished shall be borne by the Contractor and, if the same shall not be paid on presentation of the bills therefore, such costs shall be deducted from any amounts due or to become due the Contractor. The performance of such emergency Work shall in no way relieve the Contractor of responsibility for damages which may occur during or after such precaution has been duly taken.

22.4 Both the business address of the Contractor given in the Bid or proposal upon which this Contract is founded, and the Contractor's Office near the Work, is hereby designated as the places to which all notices, letters, and other communications to the Contractor may be mailed or delivered. The delivering at either of the above named addresses, or depositing in any mailbox regularly maintained by the Post Office, of any notice, letter or other communication so addressed to the Contractor, and the date of said service shall be the date of such delivery or mailing. Such addresses may be changed at any time by an instrument in writing, executed by the Contractor, presented, and delivered to the Project Manager and to the City. Nothing herein contained shall be deemed to preclude or render inoperative the service of any notice, letter, or communication upon the Contractor personally.

22.5 It is mutually agreed by and between the parties to this Contract that all royalties and fees for and in connection with patents, or patent infringement, claims for materials, articles, apparatus, devices or equipment (as distinguished from processes) used in or furnished for

the work shall be included in the Contract Price and the Contractor shall satisfy all demands that may be made at any time for such, and the Contractor shall at its cost and expense, defend any and all suits or proceedings that may be instituted at any time against the City for infringement or alleged infringement of any such patents involved in the work, and Contractor shall pay any award of damages.

- 22.6 The right of general administration of the City shall not make the Contractor an agent of the City, and the liability of the Contractor for all damages to persons, firms, and corporations, arising from the Contractor's execution of the Work, shall not be lessened because of such general administration, but as to all such persons, firms, and corporations, and the damages, if any, to them or their property. The Contractor herein is an independent Contractor in respect to the work.
- 22.7 For a period of time, from the inception of the Contract to three (3) years from the date of final payment under the Contract, the Contractor and subcontractors shall maintain books, accounts, ledgers, invoices, drafts, pages and other records pertaining to the performance of this Contract. At all reasonable times during this period these records shall be available within the State of Kansas at a field or permanent business office for inspection by authorized representatives of the City or of any other agency, which has contributed funds in connection with the Contract or to which the City is obligated to make such inspections available. In addition, this requirement shall be included in all subcontracts entered into in connection with this Contract.
- 22.8 Titles, subheadings used herein, and other Contract Documents are provided only as a matter of convenience and shall have no legal bearing on the interpretation of any provision of the Contract Documents.
- 22.9 No waiver of any breach of this Contract shall be construed to be a waiver of any other subsequent breach.
- 22.10 Should any provision of this Agreement or other Contract Documents be determined to be void, invalid, unenforceable or illegal for whatever reason, such provision(s) shall be null and void; provided, however, that the remaining provisions of this Agreement and/or the other Contract Documents shall be unaffected thereby and shall continue to be valid and enforceable.
- 22.11 Without in any manner limiting Contractor's responsibilities as provided elsewhere in the Contract Documents, the Contractor shall assume full responsibility for the protection of all public and private property, structures, sewers, and utilities, for both above ground and underground facilities, along, beneath, above, across or near the site or sites of the Work being performed under this Agreement, or which are in any manner affected by the prosecution of the Work or the transportation of men/women or materials in connection therewith. Barriers shall be kept in place at all times to protect persons other than those engaged on or about the Work from accident, and the Contractor will be held responsible for all accidents to persons or property resulting from the acts of Contractor or its employees.
- 22.12 The Contractor shall keep fully informed of all existing and current regulations of the City, county, state, and federal laws, which in any way limit or control the actions or operations of those engaged upon the work, or affecting materials supplied, to or by them. The Contractor shall at all times observe and comply with all ordinances, laws, and regulations,

and shall protect and indemnify the City and the City's officers and agents against any claims or liability arising from or based on any violation of the same.

- 22.13 Nothing contained in the Contract Documents shall create, or be interpreted to create, privity or any other contractual agreement between the City and any person or entity other than the Contractor.
- 22.14 Duties and obligations imposed by the Contract Documents, rights, and remedies available hereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.
- 22.15 No action or failure to act by the City, Project Manager or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval or acquiescence in a breach hereunder, except as may be specifically agreed in writing.
- 22.16 Contractor specifically acknowledges and confirms that: (i) it has visited the site, made all inspections it deems appropriate and has read and fully understands the Contract Documents, including all obligations and responsibilities undertaken by it as specified herein and in other Contract Documents and knowingly accepts the same; (ii) it has furnished copies of all Contract Documents to its insurance carrier(s) and its surety(ies); and (iii) its insurance carrier(s) and surety(ies) agree to be bound as specified herein, in the Contract Documents and in the insurance policy(ies) and bonds as to liability and surety coverage.
- 22.17 It is specifically agreed between the parties executing this Agreement that the Contract Documents are not intended to create any third party beneficiary relationship nor authorize anyone not a party to this Agreement to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of this Agreement. The duties, obligations and responsibilities of the parties to this Agreement with respect to third parties shall remain as imposed by law.
- 22.18 This Agreement is entered into, under and pursuant to, and is to be construed and enforceable in accordance with the laws of the State of Kansas. Venue of any litigation arising in connection with this Agreement shall be the State courts of Johnson County, Kansas.

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

CITY OF PRAIRIE VILLAGE

LINAWEAVER CONSTRUCTION, INC.

By: _____
(signed)

By: Mark Linaweaver
(signed)

Laura Wassmer

Mark Linaweaver
(typed name)

Mayor

Vice President
(typed title)

City of Prairie Village

Linaweaver Construction, Inc.
(typed company name)

7700 Mission Road

719 Gilman RD.
(typed address)

Prairie Village, Kansas 66208

Lansing, KS 66043
(typed city, state, zip)

913.351.3474
(typed telephone number)

913.351.2749
(date of execution)

SEAL

ATTEST:

APPROVED BY:

City Clerk, Joyce Hagen-Mundy

City Attorney, Catherine Logan

(If the Contract is not executed by the President of the Corporation, general partner of the Partnership, or manager of a limited liability company, please provide documentation, which authorizes the signatory to bind the corporation, partnership or limited liability company. If a corporation, the Contractor shall furnish the City a current certificate of good standing, dated within ten (10) days of the date of this Contract.)

PERFORMANCE BOND

Bond Number KSC67190

KNOW ALL MEN BY THESE PRESENTS that we, the undersigned Linaweaver Construction, Inc., hereinafter referred to as the "Contractor", and Merchants Bonding Company (Mutual), a Corporation organized under the laws of the State of Iowa, and authorized to transact business in the State of Kansas as Surety, are held firmly bound unto the City of Prairie Village, Kansas, hereinafter referred to as "City", in the penal sum of One Hundred Ten Thousand and 00/100 DOLLARS (\$ 110,000.00), lawful money of the United States of America, for the payment of which sum, well and truly to be made, we bind ourselves and our heirs, executors, administrators, successors, and assigns, jointly and severally, by these presents:

THE CONDITION OF THE FOREGOING OBLIGATION IS SUCH THAT:

WHEREAS, the above bonded Contractor has, on the ____ day of _____, 20____, entered into a written Contract with the aforesaid City for furnishing all materials, equipment, tools, superintendence, labor and other facilities and accessories for the construction of certain improvements as designated, defined and described in the said Contract and the Conditions thereof, and in accordance with the Specifications and Plans therefore; a copy of said Contract being attached hereto and made a part hereof.

NOW, THEREFORE, if the said Contractor shall and will, in all particulars, well, duly and faithfully observe, perform and abide by each and every covenant, condition and part of the said Contract, and the Conditions, Specifications, Plans and other Contract Documents thereto attached or, by reference, made a part thereof, according to the true intent and meaning in each case, and if said Contractor shall replace all defective parts, material and workmanship for a period of two years after acceptance by the City, then this obligation shall be and become null and void; otherwise it shall remain in full force and effect;

PROVIDED FURTHER, if said Contractor fails in any particular to duly and faithfully observe, perform and abide by each and every covenant, condition, and part of the said Contract and the Conditions, Specifications, Plans and other Contract Documents, thereto attached, or, by reference made a part thereof, according to the true intent and meaning in each case, or if said Contractor shall fail to replace all defective parts, material and workmanship for a period of two years after acceptance by the City then the surety will pay the costs to complete the project and/or the costs to repair any defective parts for the period of two years after acceptance, and any other damages incurred by the owner in procuring completion and/or repair, such amount not exceeding the amount of this obligation, together with interest as provided by law.

PROVIDED FURTHER, that if the said Contractor fails to duly pay for any labor, materials, sustenance's, provisions, provender, gasoline, lubricating oils, fuel oils, greases, coal, equipment and tools consumed or used in said work, groceries and foodstuffs, and all insurance premiums, compensation ;liability and otherwise, or any other supplies or materials used or consumed by such Contractor or his, their, or its subcontractors in performance of the Work contracted to be done, the Surety will pay the same in any amount not exceeding the amount of this obligation, together with interest as provided by law;

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

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

CONTRACTOR

BY: Mark [Signature]
(SEAL)

VICE PRESIDENT
(Official Title)

SURETY COMPANY

BY _____
(SEAL)

[Signature]
Attorney-in-Fact David S. Salavitch

BY: Not Required
(State Representative)

(Accompany this bond with Attorney-in-Fact's authority form
the Surety Company certified to include the date of the bond)

MERCHANTS
BONDING COMPANY,™
POWER OF ATTORNEY

Know All Persons By These Presents, that MERCHANTS BONDING COMPANY (MUTUAL) and MERCHANTS NATIONAL BONDING, INC., both being corporations of the State of Iowa (herein collectively called the "Companies") do hereby make, constitute and appoint, individually,

David S Salavitch; Luke P Sealer; Robert L Cox II

their true and lawful Attorney(s)-in-Fact, to make, execute, seal and deliver on behalf of the Companies, as Surety, bonds, undertakings and other written obligations in the nature thereof, subject to the limitation that any such instrument shall not exceed the amount of:

FIVE MILLION (\$5,000,000.00) DOLLARS

This Power-of-Attorney is granted and is signed and sealed by facsimile under and by authority of the following By-Laws adopted by the Board of Directors of Merchants Bonding Company (Mutual) on April 23, 2011 and adopted by the Board of Directors of Merchants National Bonding, Inc., on October 24, 2011.

"The President, Secretary, Treasurer, or any Assistant Treasurer or any Assistant Secretary or any Vice President shall have power and authority to appoint Attorneys-in-Fact, and to authorize them to execute on behalf of the Company, and attach the seal of the Company thereto, bonds and undertakings, recognizances, contracts of indemnity and other writings obligatory in the nature thereof."

"The signature of any authorized officer and the seal of the Company may be affixed by facsimile or electronic transmission to any Power of Attorney or Certification thereof authorizing the execution and delivery of any bond, undertaking, recognizance, or other suretyship obligations of the Company, and such signature and seal when so used shall have the same force and effect as though manually fixed."

In connection with obligations in favor of the Florida Department of Transportation only, it is agreed that the power and authority hereby given to the Attorney-in-Fact includes any and all consents for the release of retained percentages and/or final estimates on engineering and construction contracts required by the State of Florida Department of Transportation. It is fully understood that consenting to the State of Florida Department of Transportation making payment of the final estimate to the Contractor and/or its assignee, shall not relieve this surety company of any of its obligations under its bond.

In connection with obligations in favor of the Kentucky Department of Highways only, it is agreed that the power and authority hereby given to the Attorney-in-Fact cannot be modified or revoked unless prior written personal notice of such intent has been given to the Commissioner-Department of Highways of the Commonwealth of Kentucky at least thirty (30) days prior to the modification or revocation.

In Witness Whereof, the Companies have caused this instrument to be signed and sealed this 15th day of August, 2015.



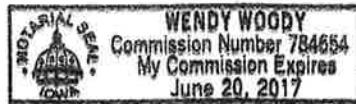
MERCHANTS BONDING COMPANY (MUTUAL)
MERCHANTS NATIONAL BONDING, INC.

By *Larry Taylor*

President

STATE OF IOWA
COUNTY OF Dallas ss.

On this 15th day of August, 2015, before me appeared Larry Taylor, to me personally known, who being by me sworn did say that he is President of the MERCHANTS BONDING COMPANY (MUTUAL) and MERCHANTS NATIONAL BONDING, INC.; and that the seals affixed to the foregoing instrument are the Corporate seals of the Companies; and that the said instrument was signed and sealed in behalf of the Companies by authority of their respective Boards of Directors.



Wendy Woody
Notary Public, Polk County, Iowa

(Expiration of notary's commission does not invalidate this instrument)

I, William Warner, Jr., Secretary of the MERCHANTS BONDING COMPANY (MUTUAL) and MERCHANTS NATIONAL BONDING, INC., do hereby certify that the above and foregoing is a true and correct copy of the POWER-OF-ATTORNEY executed by said Companies, which is still in full force and effect and has not been amended or revoked.

In Witness Whereof, I have hereunto set my hand and affixed the seal of the Companies on this _____ day of _____



William Warner Jr.
Secretary

MAINTENANCE BOND

Bond Number KSC67190

Bond _____

KNOW ALL MEN BY THESE PRESENTS:

That we, Linaweaver Construction, Inc., as Principal and Merchants Bonding Company (Mutual) as Surety, are held and firmly bound unto the City of Prairie Village, Kansas, in the full and just sum of One Hundred Ten Thousand Dollars and 00/100 (\$110,000.00) for the payment of which, well and truly to be made, we, and each of us, bind ourselves, our heirs, executors and assigns, themselves, and its successors and assigns, jointly and severally, firmly by these presents.

Dated this _____ day of _____, 20__.

The Conditions of this obligation are such that Principal Linaweaver Construction, Inc. upon completion of the Contract for street improvements, dated _____ which is incorporated herein by reference, and upon acceptance by the City of Prairie Village, Kansas, in accordance with the approved Contract Documents, Plans and Specifications, with no unacceptable deviations thereof, has agreed to guarantee the construction and installation, including all materials and workmanship, for the period of two years beginning on the date the City so accepts said work, said date being the formal acceptance date.

The said Surety, for value received, hereby stipulates and agrees that no changes, extension of time, alteration or addition to the terms of the Contract to the work to be performed thereunder, or the specifications accompanying the same, shall in any way affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract or to the specifications. Surety further agrees that any person to whom there is due any sum for labor or material furnished, as herein before stated, or said person's assigns, may bring action on this bond for the recovery of said indebtedness; PROVIDED, that no action shall be brought on said bond after twenty-four months from the completion of said public improvements.

NOW, THEREFORE, if said Principal shall guarantee and maintain the work referred to above in accordance with the Contract for a period of two (2) years from date of formal acceptance, then this obligation shall be null and void, otherwise to remain in full force and effect.


PROVIDED FURTHER, that if said Principal fails to duly and faithfully guarantee and maintain said work, the Surety will pay for the same in any amount not exceeding the amount of this obligation, together with interest as provided by law.

Signed, sealed and delivered the day and year first above written

By: 

Countersigned: _____

By: Not Required
Kansas Resident Agent

By: 
Attorney-in-Fact David S. Salavitch

Power of Attorney attached.

MERCHANTS
BONDING COMPANY,™
POWER OF ATTORNEY

Know All Persons By These Presents, that MERCHANTS BONDING COMPANY (MUTUAL) and MERCHANTS NATIONAL BONDING, INC., both being corporations of the State of Iowa (herein collectively called the "Companies") do hereby make, constitute and appoint, individually,

David S Salavitch; Luke P Sealer; Robert L Cox II

their true and lawful Attorney(s)-in-Fact, to make, execute, seal and deliver on behalf of the Companies, as Surety, bonds, undertakings and other written obligations in the nature thereof, subject to the limitation that any such instrument shall not exceed the amount of:

FIVE MILLION (\$5,000,000.00) DOLLARS

This Power-of-Attorney is granted and is signed and sealed by facsimile under and by authority of the following By-Laws adopted by the Board of Directors of Merchants Bonding Company (Mutual) on April 23, 2011 and adopted by the Board of Directors of Merchants National Bonding, Inc., on October 24, 2011.

"The President, Secretary, Treasurer, or any Assistant Treasurer or any Assistant Secretary or any Vice President shall have power and authority to appoint Attorneys-in-Fact, and to authorize them to execute on behalf of the Company, and attach the seal of the Company thereto, bonds and undertakings, recognizances, contracts of indemnity and other writings obligatory in the nature thereof."

"The signature of any authorized officer and the seal of the Company may be affixed by facsimile or electronic transmission to any Power of Attorney or Certification thereof authorizing the execution and delivery of any bond, undertaking, recognizance, or other suretyship obligations of the Company, and such signature and seal when so used shall have the same force and effect as though manually fixed."

In connection with obligations in favor of the Florida Department of Transportation only, it is agreed that the power and authority hereby given to the Attorney-in-Fact includes any and all consents for the release of retained percentages and/or final estimates on engineering and construction contracts required by the State of Florida Department of Transportation. It is fully understood that consenting to the State of Florida Department of Transportation making payment of the final estimate to the Contractor and/or its assignee, shall not relieve this surety company of any of its obligations under its bond.

In connection with obligations in favor of the Kentucky Department of Highways only, it is agreed that the power and authority hereby given to the Attorney-in-Fact cannot be modified or revoked unless prior written personal notice of such intent has been given to the Commissioner-Department of Highways of the Commonwealth of Kentucky at least thirty (30) days prior to the modification or revocation.

In Witness Whereof, the Companies have caused this Instrument to be signed and sealed this 15th day of August, 2015.



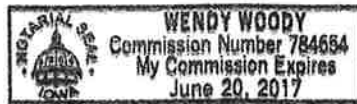
MERCHANTS BONDING COMPANY (MUTUAL)
MERCHANTS NATIONAL BONDING, INC.

By *Larry Taylor*

President

STATE OF IOWA
COUNTY OF Dallas ss.

On this 15th day of August, 2015, before me appeared Larry Taylor, to me personally known, who being by me sworn did say that he is President of the MERCHANTS BONDING COMPANY (MUTUAL) and MERCHANTS NATIONAL BONDING, INC.; and that the seals affixed to the foregoing instrument are the Corporate seals of the Companies; and that the said instrument was signed and sealed in behalf of the Companies by authority of their respective Boards of Directors.



Wendy Woody
Notary Public, Polk County, Iowa

(Expiration of notary's commission does not invalidate this instrument)

I, William Warner, Jr., Secretary of the MERCHANTS BONDING COMPANY (MUTUAL) and MERCHANTS NATIONAL BONDING, INC., do hereby certify that the above and foregoing is a true and correct copy of the POWER-OF-ATTORNEY executed by said Companies, which is still in full force and effect and has not been amended or revoked.

In Witness Whereof, I have hereunto set my hand and affixed the seal of the Companies on this _____ day of _____, 2015.



William Warner Jr.
Secretary

STATUTORY BOND

Bond Number KSC67190

KNOW ALL MEN BY THESE PRESENTS: That we Linaweaver Construction, Inc. as Contractor, and Merchants Bonding Company (Mutual) with General Offices in the City of West Des Moines, Iowa and authorized to transact business in the State of Kansas, as surety, are held and firmly bound unto the CITY OF PRAIRIE VILLAGE, KANSAS, and the STATE OF KANSAS, in the penal sum of

One Hundred Ten Thousand and 00/100 DOLLARS (\$ 110,000.00) lawful money of the United States of America, plus any change orders in excess thereof as approved by the City, for the payment of which sum well and truly to be made, we bind ourselves and our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents:

THE CONDITION OF THE FOREGOING OBLIGATION IS SUCH THAT:

WHEREAS, the said Contractor has on the ____ day of _____, 20__, entered into a Contract with the City of Prairie Village, Kansas for furnishing all tools, equipment, materials and supplies, performing all labor and constructing public improvements described in the said Contract, all in accordance with specifications and other contract documents on file in the office of City Clerk, City Hall, 7700 Mission Road, Prairie Village, Kansas.

NOW, THEREFORE, if the said Contractor or the Subcontractors of the Contractor shall pay all indebtedness incurred for supplies, materials or labor furnished, or equipment used or consumed in connection with, or in or about the construction or making of, the improvements described in the above-mentioned Contract Documents, including gasoline, lubricating oils, fuel oils, greases, coal and similar items used or consumed directly in furtherance of such public improvement, this obligation shall be void; otherwise, it shall remain in full force and effect.

The said Surety, for value received, hereby stipulates and agrees that no changes, extension of time, alteration or additions to the terms of the Contract to the work to be performed there under, or the specifications accompanying the same, shall in any way affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract or to the Specifications.

The said Surety further agrees that any person to whom there is due any sum for labor or material furnished, as hereinbefore stated, or said person's assigns, may bring action on this bond for the recovery of said indebtedness; PROVIDED that no action shall be brought on said bond after six months from the completion of said public improvements.

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

Linaweaver Construction, Inc.
CONTRACTOR
BY: Mark Z (SEAL)
BY: _____
Attorney-in-Fact

Merchants Bonding Company (Mutual)
SURETY COMPANY
BY: David S. Salavitch (SEAL)
David S. Salavitch, Attorney in fact
BY: Not Required
Kansas Agent

MERCHANTS
BONDING COMPANY,™
POWER OF ATTORNEY

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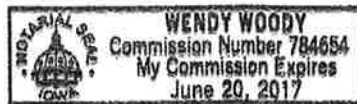
MERCHANTS BONDING COMPANY (MUTUAL)
MERCHANTS NATIONAL BONDING, INC.

By *Larry Taylor*

President

STATE OF IOWA
COUNTY OF Dallas ss.

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Wendy Woody
Notary Public, Polk County, Iowa

(Expiration of notary's commission does not invalidate this instrument)

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In Witness Whereof, I have hereunto set my hand and affixed the seal of the Companies on this _____ day of _____



William Warner Jr.
Secretary

MAYOR'S ANNOUNCEMENTS

Tuesday, September 8, 2015

Committee meetings scheduled for the next two weeks include:

| | | |
|--------------------------------|------------|-----------|
| Prairie Village Arts Council | 09/09/2015 | 5:30 p.m. |
| Park & Recreation Committee | 09/09/2015 | 6:30 p.m. |
| Jazz Fest Committee | 09/10/2015 | 5:30 p.m. |
| Council Committee of the Whole | 09/21/2015 | 6:00 p.m. |
| City Council | 09/21/2015 | 7:30 p.m. |

=====

The Prairie Village Arts Council is pleased to present a photo exhibit by the Dolyna Photo Club in the R. G. Endres Gallery during the month of September. The artist reception will be Friday, September 11th, from 6:30 - 7:30 p.m.

The 6th Annual Prairie Village Jazz Festival will be held on Saturday, September 12th opening at 2:30 p.m. with the Shawnee Mission East Blue Knights and concluding at 10:30 p.m. with the McFadden Brothers with the Kansas City Jazz Orchestra.

The 2015 Citizens Police Academy will begin September 16th. Classes are held on Wednesday evenings from 6:30 to 9:30 p.m. for 11 weeks. Contact Chief Schwartzkopf or Captain Roberson if interested.

INFORMATIONAL ITEMS
September 8, 2015

1. Planning Commission Minutes - August 4, 2015
2. Tree Board Minutes - July 1, 2015
3. JazzFest Committee Minutes - August 12, 2015
4. Mark Your Calendar

PLANNING COMMISSION MINUTES
August 4, 2015

ROLL CALL

The Planning Commission of the City of Prairie Village met in regular session on Tuesday, August 4, 2015, in the Municipal Building Council Chambers at 7700 Mission Road. Chairman Nancy Wallerstein called the meeting to order at 7:00 with the following members present: Gregory Wolf, James Breneman, Nancy Wallerstein, Patrick Lenahan and Jonathan Birkel.

The following persons were present in their advisory capacity to the Planning Commission: Chris Brewster, City Planning Consultant; Wes Jordan, Assistant City Administrator and Joyce Hagen Mundy, Commission Secretary.

APPROVAL OF MINUTES

Jim Breneman moved for the approval of the minutes of the Planning Commission for July 7, 2015 as submitted. The motion was seconded by Gregory Wolf and passed by a vote of 5-0.

Nancy Wallerstein noted on page 20 of the July 29th minutes the motion by Mr. Wolf references the Commission finding favorably on the Golden Factors. She noted that these were not specifically discussed and asked that the reference to the discussion be removed. Similarly on page 10 it states that Chairman Nancy Wallerstein led the Commission in the review of the factors. She asked that that reference be removed.

Gregory Wolf moved for the approval of the minutes of the July 29th minutes of the Planning Commission as amended noting the Commission accepted the analysis of the Golden Factors as presented in the staff report. The motion was seconded by Jim Breneman and passed by a vote of 5 - 0.

PUBLIC HEARINGS

There were no Public Hearings scheduled before the Commission.

NON PUBLIC HEARINGS

**PC2015-107 Request for Building Line Modification
6842 Granada Lane**

Earlier in the evening the Board of Zoning Appeals granted a variance subject to two conditions from Section 19.08.020 to extend the garage 10 feet, which will encroach into the front yard setback, for his home for approximate 50 square foot addition that extends the southeast corner of his garage closest to the intersection of Granada Lane and 69th Street into the platted setback line of 35 feet adjacent to Granada Lane and 20 feet

adjacent to 69th Street. The house sets at an angle on the lot. The lot has an unusual configuration and was enlarged by a vacation of a portion of 69th Street.

The house is a split-level and he would like to finish the lower level for an office and children's playroom. Access to the lower level is through the garage. He would like to build a wall so the access to the lower level is an enclosed portion of the house. In doing that the garage becomes unusable, unless extended approximately 9.5 feet.

The lot is an odd shape because of the curving of Granada Lane at the intersection. Because of the curving, a platted setback line was put on the lot at 35 feet from Granada Lane and 20 feet from 69th Street. The platted line on Granada is set at 35 feet on the south side and gets as close to approximately 12' near the Granada/ 69th frontage (this would roughly correspond to a 30 feet front setback by zoning). The platted line on 69th is set at 20 feet from the original right of way on the west side and as close to 12 feet near the Granada / 69th frontage (this would roughly correspond to a 15 feet street side setback by zoning). [Note: because the house sits at an angle within this platted buildable area, the closest part of the current house is approximately 23 feet on the northeast corner currently, and is proposed for approximately 18 feet.

Chris Brewster noted that the house was built based on the platted setbacks and actually a small corner of the garage encroaches on the 30-foot front setback that would otherwise be required by zoning (on 69th). It is obvious that the platted setback lines were established in order to provide a buildable lot. Typically the platted setback line would run parallel to the property line. In this case they do not, possibly due to the curve of the property line along the north and east. The platted setback lines supersede zoning setbacks and the original building permit was granted based on the platted setback. Based on the survey, the southeast corner of the existing garage sets back from Granada Lane approximately 23 feet, but within the platted setback. He noted the proposed southeast corner of the garage would setback approximately 18 feet from Granada Lane.

Under the procedure for Building Line Modifications, the applicant is required to send notices to all owners within 200' and meet with neighborhood residents prior to the Planning Commission meeting. The applicant met with the adjacent homeowners on May 18, 2015.

Per code the Planning Commission is to consider the following factors in the granting of a Building Line Modification. The following analysis was provided in the staff report:

- 1. That there are special circumstances or conditions affecting the property;**
The lot has an unusual configuration, particularly, the curved property line at the intersection with 69th Street. The buildable area of the lot is reduced and the buildable area of the lot is compromised.
- 2. The building line modification is necessary for reasonable and acceptable development of the property in question;**

In order to make the lower level an integrated space in the house, the applicant proposed to enclose the access so that it will not be necessary to go into the garage to enter the lower level. The proposed extension will provide a more reasonable use of the property.

3. That the granting of the building line modification will not be detrimental to the public welfare or injurious to or adversely affect adjacent property or other property in the vicinity in which the particular property is situated;

The proposed garage extension will not adversely affect the site distance at the intersection and will have little if any effect on the adjacent property.

Gregory Wolf moved the Planning Commission accept the analysis of the findings of fact provided by staff and grant a Front Building Line Modification for just that portion of the garage necessary to permit the proposed 10-foot expansion of the garage and the applicant meeting the conditions of the earlier granted variance. The motion was seconded by Patrick Lenahan and passed unanimously.

**PC2015-112 Request for Site Plan Approval for Wireless Antenna
5000 West 95th Street**

Emily Roseberry, with Selective Site Consultants, representing Verizon appeared before the Commission to request site plan approval for the addition of a new LTE Antenna on the existing rooftop wireless telecommunications facility at 5000 West 95th Street. Currently there are six antenna and two whip antenna on this existing cell tower location on top of a three story office building. The existing antenna is grouped in 2 arrays of 3 antennas on the west and east ends of the building. The proposed new antenna would be the same size as the existing antenna, but only have a single antenna proposed to be located on the north side of the building between the other two existing arrays.

Chris Brewster noted the lot is located on the north side of 95th Street, between Nall and Roe. The property is zoned C-O and the installation has a valid special use permit that was renewed in 2009, (PC 2009-11; Ordinance 2209) and continues through 2019.

The property fronts on 95th street and has similar scale office and commercial uses to the west and current Meadowbrook Golf Course (adjacent to the future redevelopment site) to the north and east. The property is across the street from an elementary school and residences. At this stage of planning, the development is showing the area closest to this site becoming the park portion of the redevelopment. Currently this site abuts the golf course and maintenance building to the north, and the future plans for this to remain the park portion will not alter any relationships of this site or the cell tower facility to existing land uses.

The initial Special Use Permit (August, 1999) included seven conditions amended through the renewal in 2004. The most recent Special Use Permit renewal in September, 2009 occurred through the City's revised Wireless Communications Facilities ordinance and found that the application met all factors (A - M) of the

ordinance and extended the permit for 10 years. This renewal included the seven original conditions, plus seven additional conditions based on the new ordinance. The conditions relevant to this amended site plan application include:

- 3) All equipment cabinets and wiring shall be contained within the building.
 - 4) The antennas and the frames for mounting them shall be painted a color that blends with the sky so that their visibility is minimized.
- 14) Future renewals and additional carriers may locate on the building subject to the approval of a site plan by the Planning Commission and an amended Special Use Permit will not be required.

It is the opinion of Staff that the request does not substantially change the installation and should be approved. The proposed antenna rooftop location is consistent with the existing antenna on the building and is located on the north side away from the street and will not have any adverse impact on the proposed future development to the north due to the current plans and proximity to open space. The application must comply with all 14 conditions of the existing Special Use Permit.

Staff provided the following analysis of the Site Plan criteria:

A. The Site is capable of accommodating the building, parking areas and drives with appropriate open space and landscape.

The capacity of the site to accommodate all equipment was addressed in the renewal of the Special Use Permit. The proposed antenna will not increase any impacts that would require a change to that permit or conditions.

B. Utilities are available with adequate capacity to serve the proposed development.
This is an existing installation and adequate utilities are available to serve the location.

C. The plan provides for adequate management of stormwater runoff.
No additional impervious area will be created and therefore a stormwater management plan is not required.

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

The site is an existing installation on a roof and utilizes the driveway and parking for the building. The ability of the site to accommodate ingress and egress was addressed in the renewal of the Special Use Permit. The proposed antenna will not increase any impacts for ingress and egress to the site.

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

This is a rooftop installation, which are generally favored in planning and in the City's wireless communication policies and regulations, since they minimize the visual and structural impact of facilities on the abutting property and surrounding community. Additionally, this building has relatively few antennas, and the addition of one antenna is comparable to similar rooftop installations.

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

This is a rooftop installation. The proposed antenna will be the same as the existing antenna and located away from the streetscape. Additionally the location is compatible with future development plans to the north that will preserve immediately surrounding areas as open space.

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

This is an existing building and site. While Wireless communication facilities are not specifically addressed in Village Vision, this is an existing building and the cities wireless communication policies and regulations promote co-location and location of equipment on buildings and existing facilities.

Patrick Lenahan questioned if the antenna would be placed on the existing rack. Nancy Wallerstein confirmed the only carrier on this application was Verizon. Jim Breneman noted with the placement of the antenna on the far north side it would not be visible to properties on the south. Wes Jordan confirmed that the antenna also would not be visible from the property to the north.

Gregory Wolf moved that the Planning Commission find favorably on the site plan criteria as presented in the staff report and approve the proposed site plan application PC2015-112 for the installation of one new LTE Antenna on the existing rooftop wireless telecommunication facility at 5000 West 95th Street subject to the following conditions:

1. That the additional antenna be installed as shown on the proposed site plan.
2. That all conditions of the most recent renewal of the Special Use Permit continue to be met.

The motion was seconded by Jim Breneman and passed unanimously.

**PC2015-113 Request for Site Plan Approval for Building Height Elevation
7201 Springfield**

Sam Lappeman, with Architectural Concepts, Inc., 14700 Mastin Overland Park, presented the request for a building height elevation increase of 3.56 feet for the new home to be built at 7201 Springfield. The lot is sloped to the rear property line, and the current home sits at the very back of the lot. The proposal is to bring the new structure more in line with the orientation of current homes along the block, placing the home close to the front setback line. The current first floor elevation is approximately 1,017.94 feet and the proposed elevation at the new location would be 1,021.5 feet.

Jim Breneman noted that the proposed building is not in line with the adjacent homes. The plot plan shows the house to the right 11' back from the proposed house and the house on the left back 40' from the curb.

Mr. Lappeman clarified that the proposed house would not have the same setback as adjacent homes but would be more in line with them than the previous house which set back significantly on the lot and that the proposed first floor elevation is similar to that of the adjacent homes. Chris Brewster confirmed the proposed front setback is within the city code.

Nancy Wallerstein confirmed that the overall height of the house was within code and that the applicant had reviewed the staff comments. She questioned why plans showing elevations were not submitted. Mr. Lappeman stated they were submitted to the Building Official for review. Martin Rutiaga, the property owner, stated that he had a set of plans and gave them to Mrs. Wallerstein for the Commission to review.

Jonathan Birkel noted he thought that 14' were required between structures and noted the presented plans do not reflect 14'. It was noted that 14' is required in R-1a zoning, the requirement is less in R-1b zoning and the proposed distance between structures meets city code.

Nancy Wallerstein asked why the proposed house does not align with the adjacent houses. Mr. Lappeman stated the house needed to be set farther up in the lot to retain the existing garage in the rear of the property which will remain. Mrs. Wallerstein confirmed the unattached garage meets city code.

Chris Brewster stated the intent of this section is to address the scale and height of new structures as old homes are torn down and new homes are built.

Section 44 of the Zoning ordinance addresses height and area exceptions in the zoning ordinance generally. Section 19.44.030 addresses the elevation of residential structures and reads:

- A. New residential structures or additions set at the same first floor elevation or lower than the original structure shall be exempt from review by the Planning Commission.
- B. New residential structures or additions may raise the first floor elevations six inches for every additional five feet over the minimum side yard setback that the building sets back from both side property lines. The maximum elevation can be raised is three feet without requiring review and approval of the Planning Commission.
- C. New residential structures or additions not meeting paragraphs a or b above shall be submitted to the Planning Commission for review and approval. (Ord. 2019, Sec. III, 2001)

The proposed application will bring the lot and proposed structure more in conformance with the orientation of existing homes on the block and in the area. The proposed elevation is similar to that of existing adjacent homes and would not compromise the intent of the ordinance language limiting changes in elevation from existing structures. Much of this elevation change is a result of the new location for the home and the grade of the property.

Gregory Wolf moved the Planning Commission approve PC2015-113 granting a first floor building elevation increase to 3.56 feet as proposed for the new structure at 7201 Springfield. The motion was seconded by Jim Breneman and passed unanimously.

OTHER BUSINESS

Staff Report

West Jordan reported that the City Council considered the rezoning of 7930 State Line Road at its August 3rd meeting. Their primary concern was with the drive-thru with discussion also on sound abatement and the length of the drive-thru. David Wooldridge was the only resident present to address the Council. He voiced many of the same complaints from Panda Express and opposition to the project as presented to the Planning Commission. The motion for rezoning failed by a vote of 5 to 6. A motion was made to approve the rezoning with the deletion of condition #8 which granted the drive-thru. This failed to get the required two thirds vote to override the recommendation of the Planning Commission. The Council then moved to return the item to the Planning Commission for reconsideration particularly focusing on the drive-thru and sound abatement. The applicant when questioned about the need for the drive-thru responded that "It seems to be a critical component of these types of businesses anymore." He did not know if it would be built without one, but felt it would be very questionable. The application will be placed on the September 1st Planning Commission agenda.

Wes Jordan also reported that the Prairie Village Homes Association has been working on creating an overlay district. Several drafts have been submitted for review and meetings held with residents. Staff expressed concern with its ability to enforce the proposed conditions of the overlay district. Last week a meeting was held with Mayor Wassmer, Council Representatives of Ward 1, the City Administrator, City Attorney, Chris Brewster and Graham Evans with Gould Evans and PJ Novick with Confluence to discuss possible ways other than through overlay districts to address density while maintaining growth and preserving the character of neighborhoods.

Chris Brewster stated that he had written a code for the City of Fairway that addressed density based on standards of scale and mass of buildings on lots. These are basic standards related to building size and streetscape. This is an incredibly complex issue to address. Perceptions of what is desired and/or appropriate are varied. He noted that everyone is not pleased with the Fairway code.

Mr. Jordan noted that Mr. Brewster was directed to draft something that could be used by Prairie Village that would cover most of the area when development is occurring. An overlay district can be created by a neighborhood, by the Planning Commission or by the City Council.

Planning Commission members shared some of their experiences and thoughts on the proposed Prairie Village overlay district, the Fairway code and addressing the consistency of architectural styles.

Mr. Jordan provided an update on the tower at 63rd and Mission. The current installation does not meet the intent of the Planning Commission in its approval as all of the antenna and wiring are not covered. He has spoken with Selective Sites Consultant and a new shroud will be installed that will cover all of the materials. It will not be returning to Planning Commission but handled through the Building Official.

Nancy Wallerstein asked for an update on the Homestead and Chadwick Court Projects. Mr. Jordan replied that both projects were working with the public works department on drainage plans.

Next Meeting

The next meeting will be September 1st and in addition to the return of the application for 7930 State Line Road, the Commission will consider the site plan for antenna changes by Verizon on the 7700 Mission Road facility and for 7501 Mission Road. Mr. Jordan added the by-laws of the Commission will be reviewed at a future meeting.

ADJOURNMENT

With no further business to come before the Commission, Chairman Nancy Wallerstein adjourned the meeting at 7:57 p.m.

Nancy Wallerstein
Chairman

TREE BOARD

City of Prairie Village, Kansas

MINUTES (draft)

Wednesday July 1, 2015

Public Works Conference Room
3535 Somerset Drive

Board Members: Deborah Nixon, Luci Mitchell, Rick Howell, Linda Marcusen, Jonathan Pruitt, Tucker Poling
Other Attendees: David Morrison, Suzanne Lownes

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

- 1) **Review and Approve Minutes of June 3, 2015** - Motion by Linda Marcusen to accept the minutes, seconded by David Morrison. **Approved unanimously.**
- 2) **Prairie Village Approved Tree List** - Deborah Nixon continued the discussion on finalizing the approved tree list. The 5 questionable trees were discussed with the following conclusions:
 - Golden Rain Tree - It can be invasive and is not a good right-of-way tree it was decided to not include.
 - Turkish Filbert - Decided to include
 - Dawn Redwood - Concluded that it is not a good right-of-way tree, decided to not include.
 - Shingle Oak - It is an oak that is a bit hard to trim and has low hanging branches, decided to not include.
 - Prospector Elm - Decided to includeDeborah Nixon informed the board that she had contacted Overland Park about using their format and brochure layout for our tree list and they said that was fine.
- 3) **Old Business** - David Morrison updated the group that the Meadowbrook memorandum of understanding would be reviewed at July 6th Council Meeting.
- 4) **New Business** - Suzanne Lownes and the Board welcomed new member Tucker Poling for his first meeting.

The group discussed potential topics for the Fall Seminar. Jonathan Pruitt had previously talked about the idea of the value of trees. There had been one once before but if it could be updated for today's values. There was discussion of a Tree Board Summit to bring in metro area Tree Boards to meet and discuss current topics and issues that Tree Boards are facing. Speakers for varying topics were talked about as well, like Tory Schope from Kat Nursery or Family Tree. Also, someone from soil services. The Board decided to work on options and finalize at the next meeting.

- 5) **Next Meeting** - September 2, 2015 at 6:00pm

The meeting adjourned at 7:00 p.m.
Minutes prepared by Suzanne Lownes.

JazzFest Committee Meeting August 12, 2015

Present: J.D. Kinney, Dave Hassett, Amanda Hassett, Dan Andersen, Donelea Hespe, Mike Polich, Larry Kopitnik, Joyce Hagen Mundy, John Wilinski, Jane Andrews, and Brooke Morehead.

The minutes of the July 15, 2015 meeting were distributed and approved.

Volunteers

Jane Andrews distributed a master list of past volunteers for review by committee members to get updated information including who should be dropped, added, changed e-mails, phone numbers etc. The committee suggested that the city send out an e-blast to its general list and committee lists announcing the event and that the committee is seeking volunteers. Volunteers should be encouraged to bring a friend.

Area coordinators will work with Jane in advising her of their needs and individuals that they have already secured to work. JD announced that John Wilinski will be coordinating with the talent. He will work with Larry and Dan on scheduling sound checks. Larry will fill him in on other responsibilities. Donelea Hespe has agreed to oversee the merchandise area and Amanda Hassett will oversee the VIP tents. Jane will be filling spots for admissions, parking, setup and take-down.

Talent

Larry stated he has been working with Dan on scheduling sound checks. Joyce noted the informational letters are ready to go out to the talent including directions on the sale of merchandise, the meet & greet tent and credentials. JD stated he was meeting with Mr. McKay at SME and would get the names of the members of the Blue Knights and discuss the use of their chairs and stands as was done for last year's festival. Joyce will contact Steve Irwin for names of the KC Jazz Orchestra. Larry noted that several of the members of Matt Kane's group have made solo cd's. Joyce will include additional merchandise information for them.

Merchandise

JD noted that postcards were available for committee members to pick up and distribute to area businesses. He also said yard signs were available. It was decided to pick them up at the next meeting.

A draft T-shirt design was distributed and discussed for the event and volunteer t-shirts. The volunteer t-shirt will be white with the names of the sponsors on the back. Brooke Morehead asked that the \$5000 sponsor names be larger and/or separated from the others. The proposed "cornsilk" event T-shirt color was discussed. Past year's T-shirts were shown. Although several years had blue base t-shirt, committee members liked the blue color or possibly a grey. JD stated he would investigate and send out sketches on both colors for review by the committee.

JD also presented the proposed “fan design” that will be given out at the admission gate and include the line-up. These were very popular last year. They are being paid for by Claridge Court. 1200 will be ordered.

Copies of JAM were distributed with the full-page JazzFest ad prominently displayed on page 1. JD noted the insert for the Village Voice is 98% complete. The site map was reviewed. Larry confirmed that he would be taking pictures at the event.

Possible Recording Opportunity

Dan Andersen noted that Matt Kane had spoken with him regarding audio and video taping the festival. The cost would be \$500 which Matt would pay. Dan suggested getting a three camera setup with the committee also getting a copy of the recording. He stated this could be used on the website. The cost for three cameras would be \$1500. JD stated that at this time, he is not comfortable with committing to another \$1000. Larry suggested that he could ask Steve Irwin if the Jazz Orchestra was interested in participating which would bring the cost down to \$500 for each of the three parties. The committee agreed to participate at a cost of \$500.

Food/Drink Sales

Dave Hassett reported that all of the vendor contracts are in. Although the contract calls for service between 3 and 10, he has spoken with all the vendors regarding staying through the event and setting up at 1 o'clock. Discussion was held on their power needs. Dan indicated that a problem in the past has been the various size and shape of electrical plugs. He would appreciate it if each vendor could send him a picture of their plug-in.

The committee will be selling water and soft drinks from an area next to, but separated from, the beer tent. JD & Dave's kids will man the tent. Last year drinks were sold through the crowd for a \$1 donation. This will address the request from people only wanting to purchase a drink to be able to do so without standing in food lines. Dave stated he has already talked with the manager of Hy-Vee to provide the drinks and also food for the “green room”.

Dave announced that Johnny's will not be providing the liquor license for the festival. Without having anyone on site, they felt their risk was too great. JD sent Jack a text advising him of the urgent need to contact BRGR regarding possible use of their license again. It was noted that a temporary license must be in place 14 days prior to the event. Dave indicated that he is meeting with Crawford's to coordinate beer for the event. The leftover wine from Jazz in the Woods has been purchase for sangria. Dave stated he will let Jane know of his volunteer needs and anyone wanting to volunteer for the beer tent should contact him.

Event Operations

Joyce stated that parking authorizations have been sent and confirmed. Three wireless credit card machines have been secured for the event. Deffenbaugh has been contacted regarding the trash bins and portable toilets. The scouts have been contacted regarding trash pickup. The stage contract and authorization for the sale of alcohol will go before the City Council on August 17th.

Cash on hand was discussed. JD stated he will be asking Brian Peters to oversee that to ensure that there is no co-mingling of funds. The need for more available change was discussed. If funding is available, Joyce will request \$2000 in change. Collections will be kept in separate marked bags. JD stated that Jack has indicated that an ATM will be on site, but noted its late arrival last year and that the availability of an ATM is not being publicized.

VIP Tent

The VIP persons would receive drink tickets as in the past. Prairie Fire Oven would be providing their food as well as food for the volunteers. Currently there is the equivalent of five VIP tables. Joyce stated that she has sent letters to persons who had purchased a table in the past, but not yet purchased one for 2015.

Merchandise Tables/tents

The following will have merchandise table space: YMCA, Renewal By Andersen, Beechworth Windows, Tuteria, Methany Foundation, JAM, and Scouts.”

Budget Update

JD Kinney noted there has been very little change in budget. He distributed the financial to date. Expenditures for the remaining month will be watched carefully based on committed funds that are payable before or on the date of the festival.

Next Meeting

Thursday, August 27th at 5:30 p.m. in the Multi-purpose room at City Hall. Yard signs will be distributed.

**Council Members
Mark Your Calendars
September 8, 2015**

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| September 2015 | Sister City Art exhibit in the R.G. Endres Gallery |
| September 11 | Artist reception in the R. G. Endres Gallery 6:30 - 8:00 p.m. |
| September 12 | Prairie Village Jazz Festival |
| September 21 | City Council Meeting |
| October 2015 | State of the Arts exhibit in the R.G. Endres Gallery |
| October 5 | City Council Meeting |
| October 9 | State of the Arts Reception in the R. G. Endres Gallery 6:30-8:00 p.m. |
| October 19 | City Council Meeting |
| November 2015 | Chun Wang exhibit in the R.G. Endres Gallery |
| November 2 | City Council Meeting |
| November 13 | Artist reception in the R. G. Endres Gallery 6:30 - 8:00 p.m. |
| November 16 | City Council Meeting |
| November 26/27 | City Offices Closed for Thanksgiving Holiday |
| December 2015 | Peter Smokorowski exhibit in the R.G. Endres Gallery |
| December 4 | Volunteer Appreciation Holiday Party |
| December 7 | City Council Meeting |
| December 11 | Artist reception in the R. G. Endres Gallery 6:30 - 8:00 p.m. |
| December 21 | City Council Meeting |
| December 25 | City Offices Closed for Christmas Holiday |