

CITY OF PRAIRIE VILLAGE

March 21, 2016

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
Monday, March 21, 2016
6:00 PM

AGENDA

BROOKE MOREHEAD, COUNCIL PRESIDENT

AGENDA ITEMS FOR DISCUSSION

Discuss Project DELN0001 - Delmar/Fontana South of 83rd Street
Drainage Project
Keith Bredehoeft

COU2016-11 Consider adopting a Council policy on Access Control for City Buildings
Captain Myron Ward

*COU2016-12 Consider approval of the Construction Contract for the 2016 Paving and
CARS Program.
Keith Bredehoeft

*COU2016-13 Consider approval of Public Infrastructure Improvement Agreement with
MB18 for Meadowbrook project
Katie Logan

*COU2016-14 Consider approval of Project Easements, scope of Pond Work, and Initial
Trail Work related to the Meadowbrook project
Katie Logan

Update from JCPRD - Meadowbrook Plan
Jill Geller

Discussion about proposed SMSD TIF policy
Quinn Bennion

2017 Exterior Grant discussion
Councilmember Jori Nelson

***Council Action Requested the same night**



PUBLIC WORKS DEPARTMENT

Council Committee Meeting Date: March 21, 2016

DISCUSS PROJECT DELN0001- DELMAR/FONTANA SOUTH OF 83RD STREET DRAINAGE PROJECT

OPTIONS

Option 1- Direct Public Works to continue the development of Project DELN0001.

Option 2- Direct Public Works to eliminate Project DELN0001 from the current CIP and to move forward with the installation of the low water crossing signs in 2016.

BACKGROUND

This project has a long history and drainage improvements were designed back in 2007, however, due to the project costs for the City increasing by more than a million dollars, the project was cancelled. The project is related to the drainage channel between Roe Avenue and Somerset Drive just south of 83rd Street. There are currently two low water crossings at Delmar Lane and Fontana Street. Just east of Delmar the open channel drains into an underground drainage system. During significant rainfalls the backup of water at this culvert causes significant roadway flooding as well as flooding of two residential properties around the channel at Delmar. In June of 2010, a storm caused flooding of a home in this area.

The previous project that was cancelled in 2007 was developed by past employees at Public Works and by the consultant. After the 2010 storm, Public Works felt that the flooding at the low water crossings and the residence was something that needed to be addressed. Below is what has taken place since that time.

December 2012- A resident meeting was held and the general consensus was to build the project that was cancelled in 2007.

Summer 2013- Larkin Lamp Rynearson & Associates was hired to analyze the past project to make sure it was still the best project and a good use of funds.

2013 Study-

Public Works and Larkin studied the design of the past project and became concerned that the past project did not solve the roadway flooding problems. The project did plan to install a system at the low water crossings to warn of the roadway flooding but Public Works felt that given the cost of this project the roadway flooding should be adequately addressed. When Larkin began to study the past project their analysis showed that the water flows used to develop the past project were underestimated. Larkin worked with Johnson County to discuss the watershed study that was completed about the same time as the past project (2007) was developed. Results of those discussions determined that

the flows used for the design of the Delmar/Fontana drainage project were indeed underestimated. Given the change in water flows, the past project does not remove the homes from the 100 year flood plain and therefore no Johnson County Storm Water funds are available for the project.

If the City along with SMAC would fund a \$3 Million to \$5 Million dollar project in this area, Public Works thinks that it should not only remove residential properties from the 100 year flood plan but should also eliminate the low water crossings.

Two options exist at this time-

1. Move forward now with developing a project to solve residential flooding and remove the low water crossings. Given that this is essentially starting over we suggest we begin with a new request for proposals from consultants and start with a new analysis and new ideas for the project. If SMAC funds were available, the first \$250,000 is not reimbursable by SMAC since that is what they funded for design of the original project. Staff would also recommend installing warning signs now as it will take a few years to develop a new project.
2. Cancel the existing CIP project and install warning signs now. The drainage project would be considered in the future when the downstream metal pipes needed to be replaced due to condition. This would be at least 15 years into the future. When these pipes need to be replaced the residential and street flooding would need to be addressed at that time.

A resident meeting was held on March 3, 2016 for residents directly adjacent to the channel between Roe Ave and Somerset Drive. The neighborhood was sent a letter notifying them of the discussion at City Council on March 21, 2016. Residents will be in attendance to make comments on the project.

FUNDING SOURCE

If the project DELN0001 is continued at this time funding will remain in the project. If project is canceled funds will go to the Drainage Repair Program as all the funds are from the Storm Water Utility Fund and have to be used for drainage related items.

RELATED TO VILLAGE VISION

TR3a. *Ensure that infrastructure improvements meet the needs of all transportation users.*

ATTACHMENTS

None

PREPARED BY

Keith Bredehoeft, Public Works Director

March 17, 2016



POLICE DEPARTMENT

Council Meeting Date: March 21, 2016

COU2016-11: Consider adopting a Council policy on Access Control for City Buildings

RECOMMENDATION

Staff recommends the City Council approve the following Access Control policy.

COUNCIL ACTION REQUESTED ON APRIL 4TH, 2016.

BACKGROUND

In 2014, the City installed a new and much improved access control system. This system provided improved accountability and management of personnel who have access to secure and non secure areas of City buildings.

This policy was developed by City Staff in an effort to ensure those with access codes, cards, or fobs are adhering to rules and policies established by the City.

PREPARED BY

Tim M. Schwartzkopf
Chief of Police
Date: March 9, 2016



Council Policy #620 : ACCESS CONTROL

Effective Date: April 4, 2016

Amends:

Approved By:

I. SCOPE

- A. It is the policy of the City to limit, control, and monitor access to sensitive, restricted, and controlled areas of City-owned buildings or departments to authorized persons only.
- B. To manage and control access to City buildings.
- C. To facilitate, with the Access Control Badge, the identification of those persons who have legitimate access to and use of City buildings.
- D. To establish a standard process for staff, governing body, contractors, guests, and vendors to obtain access to secured facilities or areas.
- E. To encourage the participation of all in the self-policing of secure areas and/or controlled doors.

II. PURPOSE

The purpose of this directive is to enhance the personal safety of City employees and visitors; secure City-owned buildings, and protect buildings from unauthorized access.

III. EXCEPTIONS

The only areas exempt from the provisions of this order are facility lobbies and public restrooms. The Police Department's sally ports (garages) and detention areas are also exempt when officers from other agencies process or convey prisoners.

IV. GENERAL SECURITY OF CITY OWNED BUILDINGS

- A. During normal business hours, the main entry doors to City-owned buildings will remain unlocked. Other exterior doors should remain locked at all times. All exterior doors that allow access to secure portions of the building shall be kept closed and locked at all times, unless City employees are physically present to monitor building access.
- B. Those visitors arriving for scheduled meetings or court may be granted access into public unsecured areas of the building without an escort. This access will be granted for the meeting or court time frame. Unescorted access into secured areas of the building will not be allowed. Escorted entry into secure areas will be limited to official business only.
- C. Police communications personnel with security monitors should watch the interior and exterior security cameras on a regular basis.
- D. All employees are responsible to report any suspicious activity viewed to the police and their immediate supervisor.
- E. For the Police Department, the doors to the garage shall remain closed except authorized access or other special circumstances that dictate they be left open.

V. ACCESS BY NON-DEPARTMENT PERSONNEL

- A. General Guidelines.
 - 1. No visitor shall have free and unrestricted access to secure areas. The employee who is being visited or allows the visitor access shall be responsible for the accountability of the visitor.
 - 2. Any person who is not a City employee, who desires or requires access to secure areas, will check in with the Police Records, Unit, Police Communications, or the front desk.
- B. Police Department.
 - 1. City employees should wear official badge, identification card, or official City uniform while in the Police Department or other secure City buildings.
 - 2. The Police Records Unit will maintain a log book of visitors and issue visitor badges. The badges will be displayed so as to be visible when challenged by any employee.
 - 3. Non-uniformed officers/agents from other law enforcement agencies are required to show their badge/identification of their agency. These officers, who are the responsibility of the visiting department member, will keep their badge and/or identification visible while in the Police Department facility at all times.

4. Department employees should identify or confirm any unknown visitor not wearing an identification badge.
- C. Requirements for Access.
1. City personnel who require access for official business, and are visibly identified, do not need to log in. Their access to certain areas of the building will be controlled electronically.
 2. Individuals desiring access to see a Police Department employee during normal business hours will inform the Police Records Unit who they desire to see. The Records Unit will contact the employee who will then meet the visitor in the lobby. The Police Records Unit personnel shall ensure the visitor is logged in, issued a visitor's badge, and is escorted at all times. The badge must be turned in prior to departure. The employee being visited will assume responsibility for the visitor once they are admitted into the building.
 3. Individuals who require access to service machinery, equipment, or those who are sales representatives, etc. and are not employees of the City, shall inform the Police Records Unit of the nature of their business and be issued a visitors badge. They will be escorted to the area in which service is to be performed and will be monitored.
 4. A visitor, service provider, or Police Department retiree shall not be allowed unescorted access to the armory, dispatch, report writing room, records unit, property room or any other area of the Police Department where access is limited.
 5. Individuals who are known as frequent service visitors to the City, such as those who regularly service vending machines, may be given limited and short-term access to perform the service duty. These service providers to the Police Department may gain access to the building during normal business hours via the Police Records Unit.
 6. Prairie Village Police Department retirees may be granted limited and unescorted access to the Police Department. Their access to the Police Department is limited to common areas of the Department.
 7. Persons making deliveries, who do not require access to a secure area of the building, do not need to log in.
 8. A member of an employee's family, not in the company of an employee, should enter through the front door of the station. Once in the secure portion of the building, family members should be escorted at all times.
 9. Visitors attending training at the station will be treated no differently than any other visitor. It will be the responsibility of the employee who is coordinating the training to ensure visitors are accounted for after entering the secure area beyond the public lobby. The employee/coordinator will ensure that trainees are escorted at all times, except as indicated below:
 - If the training is being held in the lower level training room the employee/coordinator has the option of escorting trainees at all times, or ensuring that all trainees are thoroughly briefed on the secure areas of the building.

VI. SECURING SYSTEM AND KEY CONTROL

- A. The Access Control system administrator will be the Police Department Staff Services Supervisor or designee. He/she will manage Police Department employees in the system.
- B. Human Resources will manage City Hall employees and the Governing Body.
- C. All Access Control fobs, cards, or codes will be issued by either Staff Services Supervisor or Human Resources.
- D. Employees must report the loss/theft of fobs or cards immediately to Staff Services Supervisor or Human Resources.

VII. BASE LEVEL ACCESS

Personnel, by virtue of their type of association with the City, will receive a certain base level access as appropriate for their function or role.

Police Department

- Command Staff - all access, except Property Room and Armory
- Supervisory Personnel - Police Department administrative level and City Hall administrative level
- Officers - Police Department sworn staff level and City Hall staff level
- Civilian Staff - Police Department staff level and City Hall staff level
- Property Room - Property Clerk and back up officers as designated
- Armory - Range Instructors and Department Armorers

City Hall/Public Works Personnel

City Administrator/Assistant City Administrator/Public Works Director - City Hall administrative level

Other Department Heads - City Hall administrative level

City Hall Staff - City Hall staff

Public Works Staff - City Hall staff

Governing Body

City Hall entry doors / Council door / Access to Fitness Center

VIII. REQUEST FOR ACCESS

To gain access to a controlled area or building, the applicant must complete the process noted below:

- A. City Hall: If access is requested beyond the base access, the Human Resources Manager will consult with the City Administrator or Assistant City Administrator for approval.
- C. Police Department: If additional access is requested for the Police Department, the Staff Services Supervisor will consult with the Chief of Police for approval.
- D. This policy forbids the use of an access code, fob, or card assigned to another person and may result in the confiscation and access denial to both parties.
- E. Personnel will return all means of access control when they are separated from employment/service with the City. Fobs or cards shall be returned to the Staff Services supervisor or Human Resources.

IX. MONITORING BY COMMUNICATIONS

- A. The on-duty police communications personnel should monitor the Security System to include video cameras. Police Communications personnel will use the system to lock and unlock doors and allow access for official business in the Police Department and City Hall.
- B. Police Communications personnel will monitor alarms reported by the security system. If they can determine the origin of the alarm, and have contact or visual confirmation of a false alarm, they may choose not to dispatch an officer to the alarm location. However, if the alarm's origin is unknown, a police officer will be dispatched and the alarm recorded as in any other alarm situation.



PUBLIC WORKS DEPARTMENT

Council Committee Meeting Date: March 21, 2016

Council Meeting Date: March 21, 2016

COU2016-12 CONSIDER APPROVAL OF THE CONSTRUCTION CONTRACT FOR THE 2016 PAVING AND CARS PROGRAMS

RECOMMENDATION

Move to authorize the Mayor to sign the construction contract with O'Donnell and Sons Construction Company for the 2016 Paving and CARS Programs for \$2,900,000 and transferring \$55,400 from PAVP2016 to MIRD0004.

BACKGROUND

This project includes work on many streets throughout the City. It is funded by the 2016 Paving Program and the 2016 CARS Program. These streets will be rehabilitated and will include repair or replacement of the concrete curb/gutter and asphalt pavement.

Street Projects

- 64th Terrace (Hodges to Nall)
- 69th Terrace (Tomahawk to Roe)
- 69th Street (Roe to Fonticello)
- 70th Terrace (Nall to Reeds)
- 72nd Street (State Line to High) with sidewalk
- Howe Drive CDS (77th to End) with sidewalk
- Booth Drive (75th to 78th)
- Belinder Avenue (75th to Somerset)
- Dearborn Drive (79st to 81st)
- Dearborn Drive Circle (off of Dearborn)
- Dearborn Drive CDS (Dearborn to End)
- 82nd Terrace (Somerset to Roe)

On March 4, 2016, the City Clerk opened bids for the project. Four acceptable bids were received:

| | |
|-------------------------------|----------------|
| Amino Brothers | \$3,994,426.45 |
| McAnany Construction | \$3,221,854.11 |
| JM Fahey Construction Co | \$2,872,038.40 |
| O'Donnell & Sons Construction | \$2,867,325.65 |
| Engineer's Estimate | \$3,514,000.00 |

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

The contract will be awarded for \$2,900,000.

The 2016 CARS project has approximately \$114,524 in aesthetics which were bid as an alternate. Partial funding is available for the aesthetics in the 2016 CARS Program, the remaining \$55,400 in funding is proposed to be funded from the 2016 Paving Program.

FUNDING SOURCES

Funding is available as follows:

2016 Paving Project (PAVP2016) \$1,900,000

2016 CARS Project (MIRD0004) \$1,000,000

Recommend transfer \$55,400 from PAVP2016 to MIRD004 as follows:

2016 Paving Project (PAVP2016) \$1,844,600

2016 CARS Project (MIRD0004) \$1,055,400

RELATION TO VILLAGE VISION

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

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

TR1a. Provide sidewalks in new and existing areas to allow for continuous pedestrian movement around Prairie Village.

TR1b. Ensure that infrastructure improvements meet the needs of all transportation users.

ATTACHMENTS

1. Construction Agreement with O'Donnell and Sons Construction

PREPARED BY

Melissa Prenger, Senior Project Manager

March 16, 2016

CONSTRUCTION AGREEMENT

For

PROJECT:

**PAVP2016 - 2016 PAVING PROGRAM
MIRD0005 - 2016 CARS PROJECT**

BETWEEN

CITY OF PRAIRIE VILLAGE, KS

AND

**CONSTRUCTION CONTRACT
FOR
PROJECT**

**PROJECT PAVP2016- 2016 PAVING PROGRAM
PROJECT MIRD0005- 2016 CARS PROJECT**

**BETWEEN
THE CITY OF PRAIRIE VILLAGE, KANSAS
AND**

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 _____, hereinafter termed in this agreement, “**Contractor**”, for the construction and completion of Project 2016 PAVING AND CARS PROGRAM, (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 _____ DOLLARS (\$ _____) 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 Facia 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 affect that it is agreed that the right of the assignee in and to any moneys due or to become due to the Contractor shall be subject to all prior liens of all persons, firms and corporations for services rendered or materials supplied for the performance of the Work called for in this Contract.
- 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

(typed company name)

By: _____
(signed)

By: _____
(signed)

Laura Wassmer _____

(typed name)

Mayor _____

(typed title)

City of Prairie Village _____

(typed company name)

7700 Mission Road _____

(typed address)

Prairie Village, Kansas 66208 _____

(typed city, state, zip)

(typed telephone number)

(date of execution)

(date of execution)

SEAL

ATTEST:

APPROVED BY:

City Clerk, Joyce Hagen-Mundy

City Attorney, Catherine Logan

(If the Contract is not executed by the President of the Corporation, 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.)

PUBLIC INFRASTRUCTURE IMPROVEMENT AGREEMENT

THIS PUBLIC INFRASTRUCTURE IMPROVEMENT AGREEMENT (“**Agreement**”) is made and entered into this day of , 2016 (the “**Effective Date**”), by and between the **CITY OF PRAIRIE VILLAGE, KANSAS**, a municipal corporation duly organized under the laws of the State of Kansas (the “**City**”) and **VANTRUST REAL ESTATE, LLC**, a Delaware limited liability company (the “**Developer**”). Each of the City and Developer is herein called a “**Party**” and the City and Developer are collectively called the “**Parties**.”

RECITALS

A. The City and MB-18, LLC, a Kansas limited liability company (“**MB-18**”) entered into a Development Agreement dated December 21, 2015 (the “**Development Agreement**”) providing for the implementation of a redevelopment project plan for certain property owned by MB-18 which is the location of the former Meadowbrook Country Club, which includes, but is not limited to, the conveyance by MB-18 to the Johnson County Parks and Recreation District (“**JCPRD**”) of approximately 82 acres of the property for use as a public park, and certain public improvements related to the public park, all in conjunction with development of a senior living facility, a luxury apartment facility, a hotel facility, townhomes and single family residences by MB-18 and its permitted assigns within property to be retained by MB-18.

B. MB-18 and Developer are parties to a Development Agreement dated March 4, 2015, pursuant to which MB-18 engaged Developer to provide, among other services, development and construction management services to MB-18 in connection with the real property owned by MB-18.

C. Terms not otherwise defined herein shall have the meaning ascribed to such terms in the Development Agreement.

D. The Project includes the Street Improvements (as defined in Section 1(a) hereof) and the Stormwater Improvements (as defined in Section 1(b) hereof), including a public street, to be constructed on the Park Site, and stormwater improvements, including dredging and improvements to existing ponds on the Park Site, described in the Preliminary Park Project Budget attached as “Exhibit C” to the Development Agreement.

E. The Project also includes the Private Development Site Improvement Work to be completed by Developer on the Private Development Site.

F. The Parties desire to enter into this Agreement to consider engaging a single contractor to ensure that the Street Improvements, Stormwater Improvements, and the related aspects of the Private Development Site Improvement Work are completed as efficiently, timely and cost effectively as possible, and in accordance with completion dates (“**Milestone Deadlines**”) approved by the Public Works Director and the Developer for the activities (the “**Milestone Activities**”) set forth on Exhibit A and in order to prevent delays in the completion by Developer of the target units, square feet or sites for the Planned Neighborhood Units by the dates specified in the Development Agreement.

G. The Developer has proposed, and the Public Works Director of the City (“**Public Works Director**”) has approved Phelps Engineering, Inc. (“**Phelps**”) as a potential engineer for the City in connection with the Street Improvements and Stormwater Improvements, and the following entities as a potential single contractor for the Street Improvements, Stormwater Improvements and the Private Development Site Improvement Work: Emery Sapp & Sons, Inc., Kissick Construction Company, and Superior Bowen Asphalt Company (each an “**Infrastructure Contractor**”).

H. As of the Effective Date, the Parties anticipate the following calendar in connection with the matters relating to bidding by the Infrastructure Contractors:

- By April 13, 2016 - final bid packet approved by Public Works Director, including Milestone Deadlines, delivered to Infrastructure Contractors (prior this date 75% bid packets will have been delivered).
- April 18, 2016 - GO TIF Bonds offered for sale (the “**Bond Pricing**”) and sale approved by Governing Body of City (the “**Bond Pricing Date**”).
- April 21, 2016 - bid due date.
- April 29, 2016 - Public Works Director report and bid recommendation final .
- May 2, 2016 - City Council considers Public Works Director report and recommendation and may award bid to a single Infrastructure Contractor, subject to Closing.
- May 3, 2016 – Closing (the “**Closing Date**”).

AGREEMENT

NOW THEREFORE, in consideration of the foregoing facts and circumstances, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, City and Developer hereby agree as follows:

1. Street Improvements, Stormwater Improvements and Private Development Site Improvement Work. The following improvements are the subject of this Agreement:

- (a) all improvements for a public street on the Park Site, including, but not limited to, grading work, asphalt pavement, curb and gutter, sidewalk, street lights, drainage improvements, conduits, and landscaping (the “**Street Improvements**”);
- (b) stormwater management improvements on the Park Site, including, but not limited to, work on existing ponds located on the Park Site, in accordance with plans submitted by the City to the Johnson County Stormwater Management Advisory Council (“SMAC”) (the “**Stormwater Improvements**”) which the Parties anticipate will be funded in part with a matching grant from SMAC; and
- (c) the Private Development Site Improvement Work.

The preliminary design for the Street Improvements and the Private Development Site Improvement Work is shown on the Preliminary Development Plan for the Project approved by the City Planning Commission of the City on November 12, 2015.

2. Engineering. Prior to the Effective Date, Developer engaged Phelps to perform all duties of the engineer for the Private Development Site Improvement Work. In connection with such services

Phelps has also initiated and substantially advanced design of the Street Improvements and the Stormwater Improvements, including, but not limited to, the planning, analysis, final design and finalizing the construction documents for the Street Improvements and Stormwater Improvements, with input from the Public Works Director. Upon approval by the Governing Body of the City, and contingent upon Closing, the City may, by separate agreement, engage Phelps as engineer for the Street Improvements and Stormwater Improvements, accept the completed engineering services performed by Phelps, and accept Phelps' obligations as professional engineer for the Street Improvements and Stormwater Improvements. The City shall have no obligation to reimburse Phelps or the Developer for engineering services performed by Phelps in connection with the Street Improvements and Stormwater Improvements unless the City has engaged Phelps and the Closing occurs. If the Closing occurs by May 3, 2016, or such date thereafter as mutually agreed by the Parties, City agrees that the engineering services performed by Phelps in connection with the Street Improvements and Stormwater Improvements, as reasonably approved by the Public Works Director, are reimbursable from the TIF Bonds Proceeds. Developer will not be required to enter into any agreements for any work related to the Street Improvements and Stormwater Improvements. In the event that Phelps fails to provide the required services in a satisfactory or timely manner as required by such agreement, the City may select and engage an alternate engineer to complete the engineering services required for the Street Improvements and Stormwater Improvements.

3. Final Design and Milestone Deadlines. The Public Works Director and staff of the Public Works Department of the City have been, and will continue to, collaborate and consult with JCPRD, Phelps, and SMAC so that the final design and construction design documents for the Street Improvements and Stormwater Improvements, as approved by the Public Works Director (the “**Final Design**”), and Milestone Deadlines as approved by the Public Works Director and the Developer upon completion of Final Design, will be ready for final bid packages currently anticipated to be delivered to the Infrastructure Contractors April 13, 2016, so that bids can be received by the Developer and City by April 21, 2016. On or prior to April 13, 2016, the Public Works Director and the Developer may agree in writing to Milestone Deadlines different from those stated in Exhibit A, and such writing will be incorporated into this Agreement. This Agreement shall terminate if, on or before April 13, 2016, either the Public Works Director or the Developer delivers written notice to the other that it no longer agrees to the Milestone Deadlines set forth in Exhibit A.

4. Cooperation by Parties.

4.1. Prior to Closing, the Parties will coordinate, cooperate, and mutually consult with each other, JCPRD and SMAC, as to the following matters:

A. The preparation of a budget for the Street Improvements and Stormwater Improvements, and separately that portion of the Stormwater Improvements to be paid with SMAC funds;

B. The selection of contractors and other consultants as may be necessary for the planning, design, development, and construction of the Street Improvements and Stormwater Improvements;

C. The preparation by Phelps of all plans, specifications and drawings (and any amendments thereto) for the Street Improvements and Stormwater Improvements;

D. The preparation of construction drawings and related construction documents for the Street Improvements and Stormwater Improvements; and

E. The scheduling of regular meetings with Phelps as are appropriate to render periodic status updates on the progress of any planning work.

4.2. Upon approval of the Final Design by the Public Works Director, and of the Milestone Deadlines by the Developer and the Public Works Director, Developer will perform the following administrative services:

A. By April 21, 2016, or such date thereafter as may be mutually agreed by the Parties, Developer will obtain written bids from each of the Infrastructure Contractors to complete the Street Improvements, the Stormwater Improvements and separately that portion of the Stormwater Improvements to be paid with SMAC funds, and the related aspects of the Private Development Site Improvement Work. The parties acknowledge that the Street Improvements, Stormwater Improvements, and the related aspects of the Private Development Site Improvement Work will, among other things, require coordination of mass grading, removal of dredge material from three engineered ponds, relocation of topsoil, and other matters relating to earthwork, and the parties shall cooperate in determining the scope of, and performing, such earthwork. Developer will require each Infrastructure Contractor to specify a total bid, and separately specify the amounts bid for the Street Improvements, the Stormwater Improvements and separately that portion of the Stormwater Improvements to be paid with SMAC funds, and the related aspects of the Private Development Site Improvement Work. Developer will also require each Infrastructure Contractor to bid the Street Improvements and the Stormwater Improvements together as an alternative bid without the Private Development Site Improvement Work. Each bidder will be required to specify a separate bid price for all mass grading required for the Street Improvements, the Stormwater Improvements, and the related aspects of the Private Development Site Improvement Work, and to also separately allocate such price among the Street Improvements, the Stormwater Improvements, and the related aspects of the Private Development Site Improvement Work.

B. The bid documents for the Street Improvements and Stormwater Improvements will be approved by the Public Works Director, include the Milestone Deadlines, and be prepared per City requirements and will be bid on the basis of unit costs for specific items of work. City staff will review the bids. Developer and City staff will review bids, and if Developer and City staff agree on a recommendation for a single Infrastructure Contractor, subject to the City's rights under **Section 8.10**, and approval of the award of contract for the Street Improvements and Stormwater Improvements by the Governing Body, Developer and City will award the bids to that Infrastructure Contractor on May 2, 2016, or such date thereafter as mutually agreed by the Parties, provided that such awards shall be conditioned upon Closing by May 3, 2016, or such date thereafter as mutually agreed by the Parties.

C. If City staff and Developer fail to agree on a recommendation for a single Infrastructure Contractor by April 29, 2016, or the Governing Body fails to award the bids for the Street Improvements and Stormwater Improvements to a recommended single Infrastructure Contractor by May 2, 2016, then upon agreement by both the City and Developer, the bidding process may be repeated in accordance with **Section 4.2(A)**. Alternatively, the Developer and the Governing Body may award alternative bids for the Street Improvements, Stormwater Improvements and Private Developer Site Improvement Work to different Infrastructure Contractors, in which case the provisions of **Section 4.2(D)** relating to the City's

contract, the potential adjustment of Target Completion Dates, as defined in Exhibit B, coordination, reimbursement of Reimbursable Expenses and Developer's election to have its Infrastructure Contractor perform the mass grading, shall govern.

D. If there is no award of bid by the City or repeat of the bidding process as contemplated in **Section 4.2(C)**, the following additional provisions shall apply to this Agreement, but only if the Closing occurs on or before May 3, 2016 or such later date as agreed to by the Parties:

- i. Subject to Closing and the City's rights under **Section 8.1** to reject bids and to revise the scope of the Street Improvements and the Stormwater Improvements, the City will separately seek bids for the Street Improvements and the Stormwater Improvements and contract for the Street Improvements and the Stormwater Improvements, after Closing coordinate and manage the Street Improvements and the Stormwater Improvements, and use all commercially reasonable efforts to cause each to be completed in accordance with the Milestone Deadlines, and include in each contract for the Street Improvements and the Stormwater Improvements a liquidated damages provision whereby the contractor shall pay to the City liquidated damages, in an amount to be determined by the City, if such contractor fails to meet any of the Milestone Deadlines. If the liquidated damages provision of a City contract entered into pursuant to this subsection is triggered by the failure of the City's contractor to meet any of the Milestone Deadlines, (a) the City shall retain any and all liquidated damages received, and (b) if, solely as result of such failure, Developer is prevented from meeting the 90% threshold of target units, square fee, or sites for the Planned Neighborhood Units by any of the applicable Target Completion Dates, as defined in Exhibit B hereto, the Target Completion Date applicable to such Planned Neighborhood Unit shall be extended by mutual agreement of the Parties, as reasonably required to account for such contractor's failure.
- ii. Subject to Closing, the Developer will separately bid, contract for, coordinate and manage the Private Development Site Improvement Work.
- iii. The City and Developer will use all commercially reasonable efforts to coordinate the construction of their respective improvements in an efficient and timely manner to the extent possible.
- iv. Developer shall be reimbursed Reimbursable Expenses from TIF Bonds Proceeds.
- v. If Developer contracts with one of the Infrastructure Contractors, subject to permitted easements and other consents required from JCPRD, and upon prior written notice to the City which must be received within ten (10) business days after Closing, Developer may elect to have its Infrastructure Contractor perform all aspects of the mass grading allocated in the bid provided by such Infrastructure Contractor to the Street Improvements and the Stormwater Improvements, but only if prior to performing such mass grading Developer causes its Infrastructure Contractor to provide the Public Works Director with evidence reasonably satisfactory to the Public Works Director and City Attorney that the City is an added third party beneficiary to all bonds, indemnifications, insurance coverage and warranties provided to the Developer under the Developer's

contract with such Infrastructure Contractor. If the foregoing conditions are satisfied, the costs for such mass grading allocated to Street Improvements and Stormwater Improvements as specified in the bid provided by such Infrastructure Contractor shall be eligible for reimbursement from TIF Bonds Proceeds.

4.3. The following provisions will apply if City and Developer agree on a single Infrastructure Contractor, a bid is awarded to a single Infrastructure Contractor in accordance with **Section 4.2(B)**, and the Closing occurs on or before May 3, 2016 or such later date as agreed to by the Parties:

A. Subject to Closing and the City's rights under **Section 8.1(C)** to reject bids and to revise the scope of the Street Improvements and the Stormwater Improvements, the City will contract directly with the Infrastructure Contractor for the Street Improvements, the Stormwater Improvements and separately that portion of the Stormwater Improvements to be paid with SMAC funds, and, subject to Closing, the Developer or MB-18, as applicable, will contract directly with the Infrastructure Contractor for the related aspects of the Private Development Site Improvement Work. Each contract will include provisions which require the Infrastructure Contractor to maintain adequate separate records as to the costs of the Street Improvements, the Stormwater Improvements and separately that portion of the Stormwater Improvements to be paid with SMAC funds, and Private Development Site Improvement Work. Each contract will also include provisions which authorize Developer to manage and coordinate construction of the Street Improvements, Stormwater Improvements, and the related aspects of the Private Development Site Improvement Work in the manner set forth herein. Developer will not be required to enter into any agreements for any work related to the Street Improvements and Stormwater Improvements. City will not be required to enter into any agreements for any work related to the Private Development Site Improvement Work.

B. The City may enter into a separate contract for inspection services relating to the Street Improvements and Stormwater Improvements (the "**Inspection Services**"). The inspector will ensure that the Street Improvements and Stormwater Improvements are constructed to the City's and JCPRD's specifications. The Inspection Services will be managed by the City, and the City will cause the inspector to provide periodic inspection reports to the City. City will make available to JCPRD and Developer copies of such periodic inspection reports upon request.

C. Developer will manage and coordinate the construction activities of The Infrastructure Contractor in accordance with all of the terms of the respective contracts. If Developer becomes aware of any failure or potential failure to comply with the provisions of the contract relating to the Street Improvements or Stormwater Improvements, Developer will promptly notify the Public Works Director of such failure or potential failure.

D. Developer will schedule regular meetings with each of Phelps and the Infrastructure Contractor, as applicable, and will advise the Public Works Director, and other City staff and its inspectors as determined by the Public Works Director and the JCPRD staff of such meetings so that they may attend. Developer will provide periodic status updates on the progress of construction work and will participate in any significant negotiations that may be conducted by the City with the Infrastructure Contractor if required by the City.

E. Developer will advise City and be responsible for performing on behalf of City any reasonable related additional services which are necessary and/or appropriate for the successful planning, design, development, and construction of the Street Improvements and Stormwater Improvements.

F. Subject to Developer's duties hereunder to keep City informed regarding the progress of construction of the Street Improvements and Stormwater Improvements, and subject to any express limitations set forth in this Agreement, Developer has general authority and discretion to make decisions relating to the coordination, construction and supervision of the simultaneous work comprising the Street Improvements, Stormwater Improvements and the Private Development Site Improvement Work and has the authority to take such actions as Developer reasonably deems necessary, proper or desirable for the furtherance of the Street Improvements and Stormwater Improvements. Notwithstanding the foregoing, Developer may not take any of the following actions without obtaining the prior approval of City:

- i. Make any changes to the Final Design, Milestone Activities or Milestone Deadlines.
- ii. Approve change orders or any amendments to the City contracts.
- iii. Approve any payments to the Infrastructure Contractor relating to the City contracts.
- iv. Enter into any agreements or waivers or releases which will be binding upon City.

4.4. Developer will perform its duties under this Agreement without payment of any fee, but otherwise at City's sole cost and expense (but payable solely from TIF Bonds Proceeds), in a manner consistent with the terms and conditions of this Agreement. The City agrees that Developer's third-party costs and expenses incurred in connection with Developer's services provided in connection with planning, design, development and construction of the Street Improvements and Stormwater Improvements (the "**Reimbursable Expenses**"), whether incurred before or after the Effective Date, provided such expenses have been approved in writing in advance by the Public Works Director, are reimbursable from TIF Bonds Proceeds. The City shall not be liable to the Developer for the Reimbursable Expenses. The Reimbursable Expenses incurred before the Effective Date are listed on the attached Exhibit C. The Parties agree that Developer shall not be liable for any costs related to the Street Improvements or the Stormwater Improvements.

4.5. The primary purpose of this Agreement is to complete the Street Improvements, Stormwater Improvements and the Private Development Site Improvement Work as efficiently, timely and cost effectively as possible. Due to the City contracting directly with third parties to perform any work related to the Street Improvements and the Stormwater Improvements, all representations and warranties regarding the Street Improvements and the Stormwater Improvements will be made to the City by such third parties. The City acknowledges that Developer is agreeing to perform its duties under this Agreement as a service to the City, without compensation other than reimbursement from TIF Bonds Proceeds of the Reimbursable Expenses, and that Developer makes no representation or warranty regarding any aspect of the Street Improvements or Stormwater Improvements. However, Developer will perform the services required to be performed by it under this Agreement in a manner at least equivalent in quality and efficiency to other experienced, first-class developers performing similar services for similar properties in the metropolitan area in which the Project is located, and in any event exercising its commercially reasonable efforts, skill and expertise in the best interest of the City.

4.6. To the extent permitted by law and subject to the limitations of the Kansas Tort Claims Act, and except to the extent arising out of the negligence or intentional misconduct of Developer, its members, directors, shareholders, officers, employees and agents, or a Developer Default, the City will protect, defend, indemnify and hold harmless Developer its members, directors, shareholders, officers, employees and agents (collectively, the “**Developer Indemnified Parties**”) against and from any and all third party claims, demands, damages, liabilities, losses, costs and expenses (including, but not limited to, reasonable attorney’s fees), arising out of or in connection with the activities of Developer pursuant to this **Section 4** hereof, but excluding any claims, demands, damages, liabilities, losses, costs and expenses relating to or arising out of the Private Development Site Improvement Work. In the event any suit, action, investigation, claim or proceeding (collectively, an “**Action**”) is begun or made as a result of which the City may become obligated to one or more of the Developer Indemnified Parties hereunder, any one of the Developer Indemnified Parties shall give prompt notice to the City of the occurrence of such event. The rights set forth in this **Section 4.6** shall survive the termination of this Agreement.

5. Insurance.

5.1. The Developer shall procure and maintain, or cause to be procured and maintained, at its expense, the following insurance coverage:

A. Workers Compensation (if required) -- Statutory Limits, with Employer’s Liability limits of \$100,000 each employee, \$500,000 policy limit;

B. Commercial General Liability for bodily injury and property damage liability claims with limits of not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate; and

C. Commercial Automobile Liability for bodily injury and property damage with limits of not less than \$1,000,000 each accident for all owned, non-owned and hired automobiles.

5.2. In addition, Developer and City agree to require all consultants and sub-consultants (including architects and engineers, but, except as provided in **Section 4.2(D)(v)**, excluding construction contractors who are required to provide insurance pursuant to the separate construction contracts with Developer and City) to obtain and provide insurance coverage in types and amounts as mutually agreed by Developer and City and to require satisfaction of all other insurance requirements provided in this Agreement.

5.3. Developer’s insurance shall be from an insurance carrier with an A.M. Best rating of A-VII or better, shall be on the GL ISO Occurrence form or such other form as may be approved by City, and shall include, by endorsement to be attached to the certificate of insurance, City, and its divisions, departments, officials, officers and employees, and other parties as specified in writing by City as additional insureds as their interest may appear, except that the additional insured requirement shall not apply to Workers Compensation coverage. Such endorsement shall include premises operations and completed operations. Each certificate of insurance shall include a copy of an endorsement that states that such insurance will not be canceled until after thirty (30) days’ written notice of cancellation has been given to the City. Subrogation against City and City’s Agent shall be waived, as allowed by law. Developer’s insurance policies shall be endorsed to indicate that Developer’s insurance coverage is primary and any insurance maintained by City or City’s Agent is non-contributing as respects the work of

Developer.

5.4. From and after the Effective Date, Developer shall provide the City with certificates and endorsements evidencing the insurance required by this **Section 5**.

6. Term; Termination.

6.1. The term of this Agreement (the “**Term**”) commences on the Effective Date and ends on the first to occur of:

- A. A termination pursuant to **Section 3**.
- B. April 18, 2016 if the Bond Pricing does not occur on such date and the Bond Pricing Date and the Closing Date are not extended by mutual agreement of the Parties.
- C. May 3, 2016 if the Closing does not occur on such date and the date of Closing is not extended by mutual agreement of the Parties.
- D. The date of an election by a party hereto to terminate this Agreement for Cause (as defined in **Section 6.2**).
- E. The date of completion (in accordance with the City’s construction contracts) of the Street Improvements and Stormwater Improvements.
- F. The date of termination of this Agreement pursuant to **Section 6.3**.
- G. The date of termination of the Development Agreement.

The earliest of the dates in **Sections 6.1(A)** through **6.1(G)** above is the “**Termination Date**”.

6.2. Termination for Cause. Notwithstanding anything to the contrary herein, either City or Developer may terminate this Agreement for “**Cause**” at any time. For purposes hereof, a termination for Cause is a termination based on the material default of a party in its obligations under this Agreement or the Development Agreement and the failure of such party to cure or to commence to cure and diligently proceed with curing such default within 15 days after the giving by the other party of written notice of such default, or if such default is not capable of being completed with such 15-day period, the failure of such party to commence such cure during such 15-day period and continue to make reasonable and diligent efforts to effectuate the same.

6.3. Bankruptcy. If Developer files a petition in bankruptcy or for a reorganization or arrangement or other relief under the United States Bankruptcy Code or any similar statute, or if any such proceeding is filed against either party and is not dismissed or vacated within 60 days after the filing, or if a court having jurisdiction issues an order or decree appointing a receiver, custodian or liquidator for a substantial part of the property of either party which decree or order remains in force undischarged and unstayed for a period of 60 days, or City or Developer makes an assignment for the benefit of creditors or admits in writing its inability to pay its debts as they become due, then City may terminate this Agreement immediately upon written notice to Developer.

7. **No Development Fee.** Developer acknowledges and agrees that Developer will benefit from the anticipated economies resulting from City's agreement to allow a single contractor to perform the Street Improvements, Stormwater Improvements and the Private Development Site Improvement Work, and that accordingly Developer will not be paid any fees for its activities hereunder. If this Agreement is terminated for any reason other than a termination by the City for Cause, Developer remains entitled to collect Reimbursable Expenses incurred prior to the date of termination of this Agreement.

8. Miscellaneous.

8.1. Limitations.

A. City acknowledges and agrees that Developer is not assuming the duties of Phelps, the Infrastructure Contractor, or any inspector with respect to the design and construction of the Street Improvements and Stormwater Improvements, and that the City will look solely to Phelps and Infrastructure Contractor for any claims relating to faulty design and construction of the Street Improvements and Stormwater Improvements.

B. Developer acknowledges and agrees that the Reimbursable Expenses will be paid solely from the TIF Bonds Proceeds.

C. The Governing Body of the City is not obligated under this Agreement to accept any bids for the Street Improvements and the Stormwater Improvements determined by the Governing Body to be unacceptable.

D. Developer acknowledges and agrees that the City shall have no obligation to use its taxing authority or any funds of the City to pay the costs of design and construction of the Street Improvements and the Stormwater Improvements, which costs shall be payable solely from funds available in the Construction Fund held by the TIF Bonds Trustee (including TIF Bonds Proceeds and SMAC funds). Developer further acknowledges and agrees that if the amounts bid for the Street Improvements and the Stormwater Improvements exceed amounts in the Construction Fund available to pay for the Street Improvements and the Stormwater Improvements (including any mass grading assumed by Developer under **Section 4.2(D)(v)**), the City may reject any and all bids, and in such case the City may also reduce the scope of the Street Improvements or the Stormwater Improvements as the City determines necessary in its sole and absolute discretion, in order to obtain bids which will allow the City to complete such improvements within the budget available in the Construction Fund.

E. The Parties acknowledge that all of the conditions described in **Article II** of the Development Agreement must be satisfied by the Bond Pricing Date. It is hereby recognized, stipulated and agreed by Developer and the City that neither party shall have any duty to proceed with Closing or to do or perform any of the duties or obligations to be performed at Closing unless and until each and all of the conditions described in **Article II** of the Development Agreement have either been satisfied or waived in accordance with the applicable provisions of **Article II** of the Development Agreement by the Bond Pricing Date.

8.2. Developer Default and City Remedies.

A. Developer shall be in default under this Agreement (“**Developer Default**”) if Developer fails to keep or perform any covenant or obligation herein contained on Developer’s part to be kept or performed, and Developer fails to remedy the same within thirty (30) days after the City has given Developer written notice specifying such failure and requesting that it be remedied; provided, however, that if any event of default shall be such that it cannot be corrected within such period, it shall not constitute an event of default if corrective action is instituted by Developer within such period and diligently pursued until the default is corrected.

B. In the event of a Developer Default, City shall be entitled to exercise either of the following as its exclusive remedy:

- i. terminate this Agreement for Cause in accordance with **Section 6.2**, in which case, except for the extension of Target Completion Dates which may be triggered under **Section 4.2(D)(i)**, and the rights under **Sections 4.6, 8.4** and **8.20** hereof, all of which shall survive such Termination, the rights and obligation of the Parties hereunder, shall terminate; or
- ii. without terminating this Agreement for Cause, to seek specific performance and injunctive or other equitable relief to enforce performance and observance by the Developer of any provision of this Agreement to be performed by the Developer.

8.3. City Default and the Developer Remedies.

A. The City shall be in default under this Agreement (“**City Default**”) if the City fails to keep or perform any covenant or obligation herein contained on City’s part to be kept or performed, and the City fails to remedy the same within thirty (30) days after Developer has given the City written notice specifying such failure and requesting that it be remedied; provided, however, that if any event of default shall be such that it cannot be corrected within such period, it shall not constitute an event of default if corrective action is instituted by the City within such period and diligently pursued until the default is corrected.

B. In the event of a City Default, Developer shall be entitled to exercise either of the following as its exclusive remedy:

- i. terminate this Agreement for Cause in accordance with **Section 6.2**, in which case, except for the extension of Target Completion Dates which may be triggered under **Section 4.2(D)(i)**, and the rights under **Sections 4.6, 8.4** and **8.20** hereof, all of which shall survive such Termination, the rights and obligation of the Parties hereunder, shall terminate; or
- ii. without terminating this Agreement for Cause, to seek specific performance and injunctive or other equitable relief to enforce performance and observance by the City of any provision of this Agreement to be performed by the City.

8.4. Mutual Waiver. Developer and the City each waives, releases and discharges the other from all claims or demands brought against the applicable Party by third parties with respect to any

claims for any losses, damages, liabilities or expenses (including attorneys' fees) incurred or sustained on account of injury to persons or damage to property or business arising out of the performance of this Agreement and the planning, design, development and construction of the Street Improvements, the Stormwater Improvements and the Private Development Site Improvement Work, regardless whether any such claim or demand may arise because of the fault or negligence of the other party or its subsidiaries, affiliates, officers, employees, directors, agents or independent contractors. Each policy of insurance maintained by the Parties applicable to the Project will contain a specific waiver of subrogation reflecting the above, except as prohibited by law. Notwithstanding anything to the contrary contained in this Agreement, neither party is liable to the other for consequential, speculative or punitive damages. The rights set forth in this **Section 8.4** shall survive the termination of this Agreement. Nothing in this **Section 8.4** limits the obligations of the City set forth in **Section 4.6**.

8.5. Attorneys' Fees. Notwithstanding any other provisions herein to the contrary, if any action or proceeding is brought by City or Developer to enforce either party's respective rights under this Agreement, the substantially prevailing party will be entitled to recover from the unsuccessful party therein, in addition to all other remedies, all costs incurred by the substantially prevailing party in such action or proceeding, including reasonable attorneys' fees.

8.6. Captions/Headings. Titles of articles and section references are used in this Agreement solely for the convenience of those examining it and are not to be resorted to as aids in its construction or interpretation.

8.8. Law Governing. This Agreement will be interpreted and construed in accordance with the laws of the state of Kansas.

8.9. Binding Effect; Assignment. This Agreement binds and inures to the benefit of the parties hereto and their respective permitted successors and assigns. Neither party may assign its interests, rights or obligations under this Agreement without the prior written approval of the other party, but City may make a collateral assignment to a lender without the approval of Developer.

8.10. Entire Agreement; Amendment; No Joint Venture. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and no other agreement prior to or contemporaneous with this Agreement relating to the subject matter hereof will be effective except as expressly set forth or incorporated herein. Any purported amendment or modification hereto will not be effective unless it is set forth in writing and executed by both parties hereto, or their respective successors or assigns. Nothing in this Agreement creates a joint venture or partnership between City and Developer, it being intended that Developer is acting as an independent contractor in connection with the performance of its obligations under this Agreement.

8.11. Time of Essence. Time is of the essence of this Agreement.

8.12. Written Notice. Unless otherwise expressly stated herein, all notices required under this Agreement will be in writing and will be deemed to have been duly given if delivered in person, by overnight courier or by registered or certified mail to the following addresses:

If to Developer: VanTrust Real Estate, LLC
4900 Main Street, Suite 400
Kansas City, Missouri 64112
Attention: David Harrison and Justin Duff

With a copy to: F. Chase Simmons, Esq.
Polsinelli, PC
900 W. 48th Place, Suite 900
Kansas City, Missouri 64112

If to City: City of Prairie Village
ATTN: City Administrator
City Hall
7700 Mission Road
Prairie Village, KS 66208

With a copy to: Catherine P. Logan, Esq.
Lathrop & Gage LLC
10851 Mastin
Suite 1000
Overland Park, KS 66210

or at such other address as the parties may hereafter designate by written notice to the other in accordance with this **Section 8.12**. Notices so delivered will be deemed given upon receipt, if delivered in person or by overnight courier, or three business days after deposit in the United States mail, if delivered by registered or certified mail.

8.13. Force Majeure. If either party is delayed or prevented from performing any act required in this Agreement (excluding, however, the payment of money) by reason of acts of God, strikes, lockouts, labor troubles, inability to procure materials, governmental laws or regulations, orders or directives of any legislative, administrative, or judicial body or any governmental department (provided that the City may not claim a *force majeure* delay resulting from the City's voluntary failure to timely perform its obligations hereunder), inability to obtain any governmental licenses, permissions or authorities (despite commercially reasonable pursuit of such licenses, permissions or authorities), war, terrorism, or other causes beyond that party's reasonable control, the performance of such act is excused for the period of the delay and the period of the performance of any such act will be extended for a period equivalent to the period of such delay.

8.14. Waiver and Extensions. Either City or Developer may at any time waive any inaccuracies in the representations made by the other party in this Agreement, waive compliance with any of the covenants, agreements, representations or warranties of the other party contained in this Agreement, waive any condition for its benefit, or waive or extend the time for performance of all or any portion of any of the obligations of the other party hereto. No such waiver is effective unless it is intentionally and specifically waived in a writing signed by the party granting such extension or waiver.

8.15. No Third Party Beneficiary. The parties hereto do not intend to confer any benefit

hereunder on any person, firm or entity other than the parties hereto.

8.17. Severability. If any term, covenant, condition, agreement, section or provision of this Agreement is deemed invalid or unenforceable by a court of competent and final jurisdiction, this Agreement will not terminate or be deemed void or voidable, but will continue in full force and effect, and stricken provision will be replaced with a like, but legally enforceable, provision which most nearly accomplishes the intention of the parties hereto, and if no such provision is available, the remainder of this Agreement will be enforced.

8.18. Incorporation of Exhibits. The Exhibits attached hereto and incorporated herein by reference are a part of this Agreement to the same extent as if fully set forth herein.

8.19. Applicable Laws and Requirements. The parties acknowledge and agree that the ability of the City to enter into and perform this Agreement is subject to the Applicable Laws and Requirements.

8.20. Non-liability of Officials, Employees and Agents of the City. No recourse shall be had for any claim based thereon or upon any representation, obligation, covenant or agreement contained in this Agreement against any past, present or future official, officer, employee or agent of the City, under any rule of law or equity, statute or constitution or by the enforcement of any assessment or penalty or otherwise, and all such liability of any such officials, officers, employees or agents as such is hereby expressly waived and released as a condition of and consideration for the execution of this Agreement. The rights set forth in this **Section 8.20** shall survive the termination of this Agreement.

8.21. Conduct of Parties. No conduct or course of action undertaken or performed by the Parties will have the effect of, or be deemed to have the effect of, modifying, altering or amending the terms, covenants and conditions of this Agreement. Failure of either Party to exercise any power or right given hereunder or to insist upon strict compliance with the term hereof will not be, nor be deemed to be, a waiver of such Party's right to demand exact compliance with the terms of this Agreement.

8.22. Survival. Except as otherwise expressly provided herein, the rights and obligations of the Parties hereunder shall not survive a Termination.

[Remainder of page intentionally left blank. Signature pages follow.]

IN WITNESS WHEREOF, the parties hereto have executed and delivered this Development Agreement to be effective as of the Effective Date.

CITY OF PRAIRIE VILLAGE, KANSAS

Laura Wassmer, Mayor

ATTEST:

Joyce Hagen Mundy, City Clerk

APPROVED AS TO FORM:

Catherine P. Logan, City Attorney

DEVELOPER:

VANTRUST REAL ESTATE, LLC,
a Delaware limited liability company

By: _____
Name: David M. Harrison
Title: President

EXHIBIT A
MILESTONE ACTIVITIES

- [to be supplied by March 21]

EXHIBIT B

TARGET COMPLETION DATES

Planned Neighborhood Units and related target units, square feet or sites (as referred to in Article VIII of the Development Agreement) and target dates for the 90% completion threshold (“**Target Completion Dates**”) from Article VIII “Unit Reduction Reallocation” and Exhibit I of Development Agreement:

| Planned Neighborhood Units | Target Completion Date as provided in Exhibit I of Development Agreement |
|---|--|
| APARTMENTS – Target: 280 units | All construction is complete and 90% threshold (252 units) is met through demonstration of certificates of occupancy on or before 4/30/2018 |
| INN – Target: 44 units | All construction is complete and 90% threshold (40 rooms) is met through demonstration of certificates of occupancy on or before 12/31/2017 |
| INN – Target 5,000 sq. ft. retail | All construction of shell space, but not any tenant improvements, is complete and 90% threshold (4,500 sq.ft.) is met through demonstration of certificates of occupancy on or before 12/31/2017 |
| SINGLE FAMILY HOMES SITES – Target: 53 sites ¹ | 90% threshold (48 sites) construction ready site completed on or before 12/31/2017 |
| TOWNHOMES – Target: 70 units | Construction-ready sites supporting 90% threshold (63 townhome units) complete on or before 12/31/2017 |

¹ With respect to the Single Family Site and the Townhomes Site, “completed” means that all horizontal improvements necessary to permit immediate construction of a Single Family Home or Townhome, respectively, are complete, in place and the site is immediately eligible for a building permit.

EXHIBIT C
APPROVED REIMBURSABLE EXPENSES
INCURRED PRIOR TO THE EFFECTIVE DATE



Council Committee of Whole Meeting Date: March 21, 2016

Meadowbrook Due Diligence Items

The Development Agreement between the City and MB-18 LLC requires approval by the Governing Body of multiple matters prior to the issuance of TIF Bonds and the simultaneous real estate closing pursuant to which bond proceeds will be paid the MB-18 LLC and MB-18 LLC deeds the Park Site property directly to Johnson County Parks and Recreation District.

The following due diligence items are included in the agenda packet for the March 21, 2016 Committee of the Whole Meeting:

1. Scope of “Pond Work”. To be approved by City, JCPRD and Developer. This has now been expanded to include SMAC Stormwater work as will ultimately be included in the bid packages approved by the Public Works Director for the Stormwater Work. Items depicting the Scope of Pond Work are attached. The costs for this work, now referred to as the “Stormwater Work” are being paid for by TIF Bonds Proceeds and SMAC funds. Because of the SMAC funds, the City will be the entity that contracts with a contractor for this work, which is included in the Public Infrastructure Improvement Agreement.
2. Scope of Initial Trail Work. To be approved by the City and JCPRD. This is the initial trail work which has been approved in the Park Master Plan. A depiction of the applicable page of the Park Master Plan, which has been approved by the City and JCPRD, is attached.
3. Title Commitment and Survey. The Title Commitment is attached and the survey is available in pdf format as well as large printed format at City Hall. Most of the items listed are routine public and utility easements, some of which will be removed when the Park Site is replatted. Except #27 lists a number of survey matters that were identified in 2010 as encroachments, which Parks will be required to resolve when it makes changes to any of the improvements currently located on the Property (or the encroachments which will be eliminated as improvements are removed).
4. Project Easements. The attached document designated “Easements Plan” was approved on March 16, 2016 by the JCPRD Board.

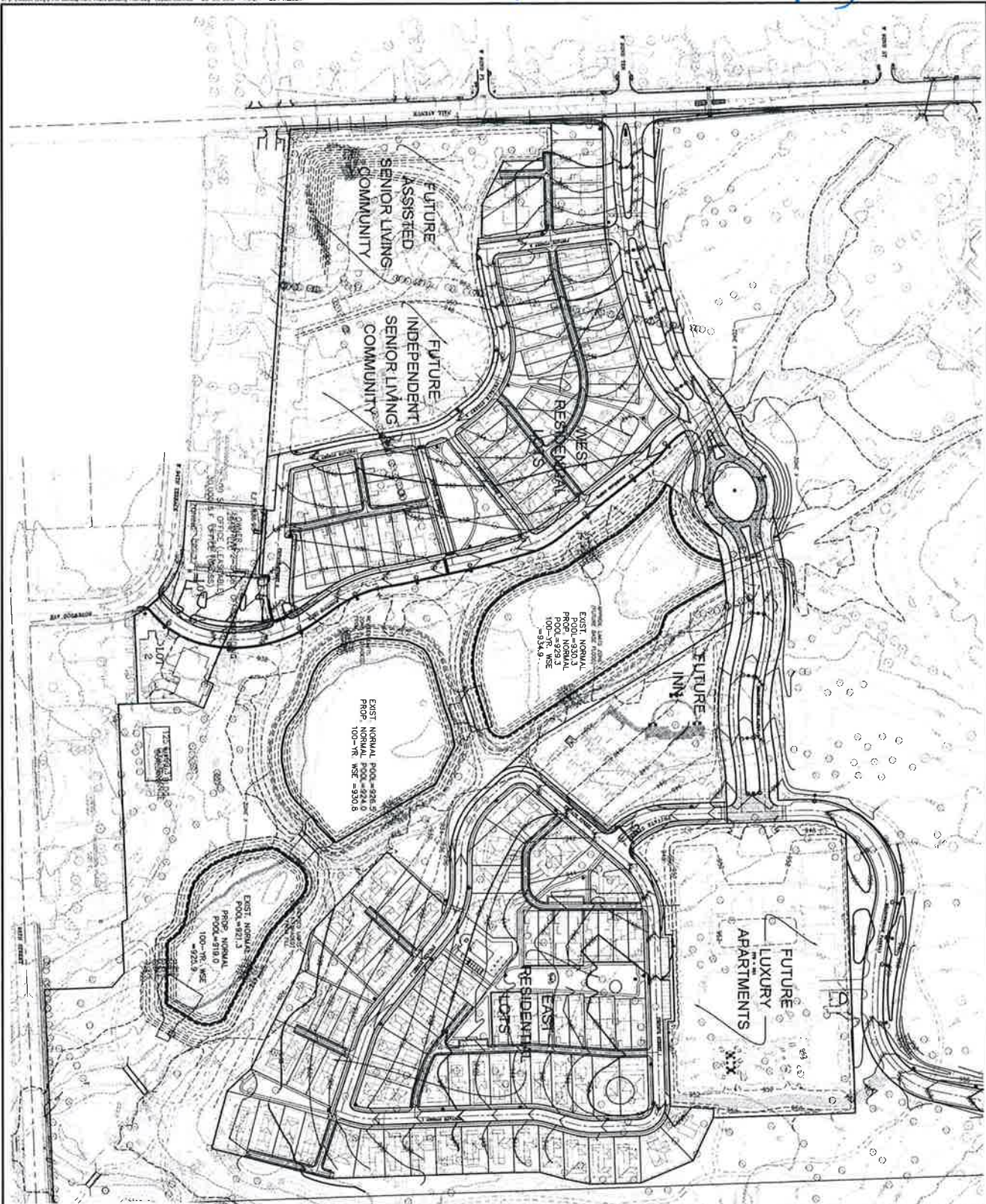
PREPARED BY

Katie Logan
City Attorney

March 17, 2016

Scope of Pond Work - "Stormwater Improvements" (P.1 of 2)

2:\Projects\182006\182006 Final Development Plans\Grading Plan.dwg (Last Date: 05-24-18) 10:54:28 AM - 0 Miles Max. Factor: 1



| | | | | | | | | | | |
|------|-------------|----------|------|--|-------|--|-----|--|------|--|
| C2.1 | PROJECT NO: | 182006 | Rev: | | Date: | | By: | | App: | |
| | DATE: | 05-24-18 | | | | | | | | |
| | DESIGNED: | DEU | | | | | | | | |
| | CHECKED: | | | | | | | | | |
| | APPROVED: | | | | | | | | | |

GRADING PLAN - OVERALL
 MEADOWBROOK PARK
 PRAIRIE VILLAGE, KANSAS
 FINAL DEVELOPMENT PLANS

PEI
PLANNING
ENGINEERING
WATER/SEWER/STORM

PHILIPS ENGINEERING, INC.
 1229 H. W. Wheeler
 Olathe, Kansas 66061
 (913) 822-1110
 F: (913) 822-4658
www.philipseng.com

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| |

Slope of PWD Work - "Stormwater Improvements" (P. 2 of 2)



Scope of Initial Trail work indicated in RED

MEADOWBROOK PARK

MASTER PLAN



- TIF Improvements**
- Multi-purpose lawn
 - ADA parking improvements
 - Restroom
 - Trails: 2.5 miles, 3 Bridges, 10 Benches
 - Great Lawn
 - Native Plantings and Forays
 - Berms at Nail
 - Ponds: Sediment Removal, Earthwork, Grading, waterfall structure, bridge, soft edges
 - Maintenance Building: Sanitary, fuel tank, parking lot and entry gate

3 | TIF IMPROVEMENTS ILLUSTRATION

January 22, 2016



JOHNSON COUNTY
Park & Recreation
District



COMMITMENT FOR TITLE INSURANCE

ISSUED BY

First American Title Insurance Company

AGREEMENT TO ISSUE POLICY

We agree to issue a policy to you according to the terms of this Commitment. When we show the policy amount and your name as the proposed insured in Schedule A, this Commitment becomes effective as of the Commitment Date shown in Schedule A.

If the Requirements shown in this commitment have not been met within six months after the Commitment Date our obligation under this Commitment will end. Also, our obligation under this Commitment will end when the Policy is issued and then our obligation to you will be under the Policy.

Our obligation under this Commitment is limited by the following:

- The Provisions in Schedule A.
- The Requirements in Schedule B-I.
- The Exceptions in Schedule B-II.
- The Conditions on the other side of this page 1.

This Commitment is not valid without SCHEDULE A and Sections I and II of SCHEDULE B.

FIRST AMERICAN TITLE INSURANCE COMPANY has caused this Commitment to be signed by its authorized officers and the Commitment will become valid when countersigned by an authorized signatory as of Effective Date shown in Schedule A.

First American Title Insurance Company

Dennis J. Gilmore
President

Jeffrey S. Robinson
Secretary

This commitment is invalid unless the insuring provisions and Schedules A and B are attached.

Conditions

1. **DEFINITIONS**
(a) "Mortgage" means, deed of trust or other security instrument. (b) "Public Records" means title records that give constructive notice of matters affecting the title according to the state law where the land is located.
2. **LATER DEFECTS**
The Exceptions in Schedule B Section II may be amended to show any defects, liens or encumbrances that appear for the time in the public records or are created or attach between the Commitment Date and the date on which all of the Requirements (a) and (b) of Schedule B - Section I are met. We shall have no liability to you because of this amendment.
3. **EXISTING DEFECTS**
If any defects, liens or encumbrances existing at Commitment Date are not shown in Schedule B, we may amend Schedule B to show them. If we do amend Schedule B to show these defects, liens or encumbrances, we shall be liable to you according to Paragraph 4 below unless you knew of this information and did not tell us about it in writing.
4. **LIMITATION OF OUR LIABILITY**
Our only obligation is to issue to you the Policy referred to in this Commitment, when you have met its Requirements. If we have any liability to you for any loss you incur because of an error in this Commitment, our liability will be limited to your actual loss caused by your relying on this Commitment when you acted in good faith to:

comply with the Requirements shown in Schedule B - Section I

or

eliminate with our written consent any Exceptions shown in Schedule B - Section II.

We shall not be liable for more than the Policy Amount shown in Schedule A of this Commitment and our liability is subject to the terms of the Policy form to be issued to you.
5. **CLAIMS MUST BE BASED ON THIS COMMITMENT**
Any claim, whether or not based on negligence, which you may have against us concerning the title to the land must be based on this Commitment and is subject to its terms.



First American Title Insurance Company
National Commercial Services

7200 College Blvd., Overland Park, KS 66210
(913)451-4611 Phone - (913)451-8891 Fax

COMMITMENT FOR TITLE INSURANCE

Schedule A

1. Effective Date: January 04, 2016, at 8:00 AM
FIRST AMENDMENT
2. Policy or policies to be issued:
 - a. ALTA Owner's Policy (06.17.06) \$TBD
 Proposed Insured: Premium: \$TBD
 Johnson County Park and Recreation District
 - b. ALTA Loan Policy (06.17.06) \$TBD
 Proposed Insured: Premium: \$TBD
 To Be Determined
3. Title to the fee simple estate or interest in the land described or referred to in this Commitment is at the effective date hereof vested in:

 MB - 18, LLC, a Kansas limited liability company
4. The land referred to in this Commitment is described as follows:

**Legal Description attached hereto as Exhibit A
and by this reference incorporated herein.**

**If there are any questions concerning this commitment,
please contact Thomas Jensen at TJensen@firstam.com.**

COMMITMENT FOR TITLE INSURANCE

Schedule B - Section I (Requirements)

The following are the requirements to be complied with:

1. Pay the agreed amounts for the interest in the land and/or mortgage to be insured.
2. Pay us the premiums, fees and charges for the Policy.
3. Documents satisfactory to us creating the interest in the land and/or mortgage to be insured must be signed, delivered and recorded.
4. You must tell us in writing the name of anyone not referred to in this Commitment who will get an interest in the land or who will make a loan on the land. We may then make additional requirements or exceptions.
5. If there has been construction, improvements or repairs to or on the property in the last 12 months, or a portion or all of the loan proceeds will be used for such, then unrecorded mechanics lien coverage will not be furnished unless arrangements are made prior to closing. If the property is 1-4 family residential, a Mechanic's Lien Indemnity Agreement secured by a satisfactory Letter of Credit will need to be furnished to the company. If the property is not 1-4 family residential, either the aforesaid secured indemnity or satisfactory financial statements, indemnities, affidavits and possibly lien waivers, will need to be furnished to the company. Failure to notify the company in writing before closing will invalidate any mechanic's lien coverage given in the policy.
6. In order to delete Exceptions 1, 5 and 6 on Schedule B - II, the Company requires a properly completed and executed Owner's Affidavit in a form that is acceptable to the Company.
7. In regard to MB - 18, LLC, we require the following:
 - A) Furnish a copy of the Articles of Organization and the Operating Agreement.
 - B) Furnish a Certificate of Good Standing from the Kansas, Secretary of State's office.
 - C) Furnish a resolution of the members authorizing the proposed transaction.
 - D) The proposed transaction should be executed by all the members of the LLC unless provided otherwise in the operating agreement. If the members of the above referenced limited liability company are entities other than individuals, additional requirements will be made.

Upon review of these items we reserve the right to make further requirements.

8. In regard to City of Prairie Village, we require the following:

Furnish a proper resolution authorizing the proposed transaction and identifying the parties authorized to execute instruments necessary to close this transaction.

Upon review of these items we reserve the right to make further requirements.

This commitment is invalid unless the insuring provisions and Schedules A and B are attached.

9. In regard to Johnson County Park and Recreation District, we require the following:

Furnish a proper resolution authorizing the proposed transaction and identifying the parties authorized to execute instruments necessary to close this transaction.

Upon review of these items we reserve the right to make further requirements.

10. Partial Termination of UCC-1 Financing Statement naming Wells Fargo Bank, National Association as secured party and MB - 18, LLC, a Kansas limited liability company as debtor, filed March 02, 2011, recorded in Book 201103, Page 000815. (Includes other property)

An amendment to the financing statement was recorded November 25, 2013 in Book 201311, Page 006874 of Official Records.

11. Proof of payment of taxes shown at Exception No. 7 on Schedule B - Section II.

12. It is our understanding that only a portion of the premises in question is to be the subject of the proposed transaction.

Furnish a Survey prepared by a registered land surveyor dated no more than 90 days prior to the closing date of subject transaction and certified to the proposed insured(s) and First American Title Insurance Company, meeting the minimum standards for ALTA/ACSM surveys.

The survey must establish a satisfactory land description which precisely sets forth the location of the land's boundaries.

Upon receipt thereof the Company reserves the right to make additional requirements/exceptions as it may deem necessary.

In the event of a cancellation, there will be a minimum charge of \$450.00.

CLOSING INFORMATION NOTE: If the closing for the subject property is to be conducted by First American Title Insurance Company, we require all monies due to be in the form of a Cashier's Check or Wire Transfer. If the parties use a cashier's check in lieu of wired funds, it may take 24-48 hours to verify with the institution issuing the check that we have good funds. **We are unable to close until we receive this verification and THIS MAY DELAY CLOSING.**

The above applies to all closings unless other specific arrangements are made. Due to wide variances in banking practices and lack of control over funds "on the wire" we cannot accept financial responsibility for delays in the clearing of funds.

This commitment is invalid unless the insuring provisions and Schedules A and B are attached.

COMMITMENT FOR TITLE INSURANCE

Schedule B - Section II (Exceptions)

Schedule B of the policy or policies to be issued will contain the exceptions to the following matters unless the same are disposed of to the satisfaction of the Company.

1. Defects, liens, encumbrances, adverse claims, or other matters, if any, created, first appearing in the public records or attaching subsequent to the effective date hereof but prior to the date the proposed Insured acquires for value of record the estate or interest or mortgage thereon covered by this Commitment.
2. Rights or claims of parties in possession not shown by the public records.
3. Encroachments, overlaps, boundary disputes, shortage in area, or any other matters which would be disclosed by an accurate survey and inspection of the premises.
4. Easements or claims of easements not shown by the public records.
5. Any lien, or right to a lien for services, labor or material heretofore or hereafter furnished, imposed by law and not shown by the public records.
6. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public record. Proceedings by a public agency which may result in taxes or assessments, or notice of such proceedings, whether or not shown by the records of such agency or the public record.
7. Taxes and assessments for the year 2015 and subsequent years.

Taxes for the year 2015 in the amount of \$138.88 are HALF PAID. This amount includes the following installments for special assessments: NONE
TAX PARCEL NO. OF251233-1013

Taxes for the year 2015 in the amount of \$84,773.76 are HALF PAID. This amount includes the following installments for special assessments: PVCSTMWATER
TAX PARCEL NO. OF251233-2001

Taxes for the year 2015 in the amount of \$2,924.73 are HALF PAID. This amount includes the following installments for special assessments: PVCSTMWATER
TAX PARCEL NO. OF251233-2002

Taxes for the year 2015 in the amount of \$3,615.11 are HALF PAID. This amount includes the following installments for special assessments: PVCSTMWATER
TAX PARCEL NO. OF251233-2023

Taxes for the year 2015 in the amount of \$53,638.51 are HALF PAID. This amount includes the following installments for special assessments: PVCSTMWATER
TAX PARCEL NO. OF251233-2026

This commitment is invalid unless the insuring provisions and Schedules A and B are attached.

Taxes for the year 2015 in the amount of \$161.38 are HALF PAID. This amount includes the following installments for special assessments: PVCSTMWATER
TAX PARCEL NO. OP2300000B 0001 (Lot 1)

Taxes for the year 2015 in the amount of \$142.01 are HALF PAID. This amount includes the following installments for special assessments: PVCSTMWATER
TAX PARCEL NO. OP2300000B 0002 (Lot 2)

Taxes for the year 2015 in the amount of \$122.01 are HALF PAID. This amount includes the following installments for special assessments: PVCSTMWATER
TAX PARCEL NO. OP2300000B 0003 (Lot 3)

Taxes for the year 2015 in the amount of \$170.01 are HALF PAID. This amount includes the following installments for special assessments: PVCSTMWATER
TAX PARCEL NO. OP2300000B 0004 (Lot 4)

Taxes for the year 2015 in the amount of \$138.01 are HALF PAID. This amount includes the following installments for special assessments: PVCSTMWATER
TAX PARCEL NO. OP2300000B 0005 (Lot 5)

Taxes for the year 2015 in the amount of \$138.01 are HALF PAID. This amount includes the following installments for special assessments: PVCSTMWATER
TAX PARCEL NO. OP2300000B 0006 (Lot 6)

Taxes for the year 2015 in the amount of \$134.01 are HALF PAID. This amount includes the following installments for special assessments: PVCSTMWATER
TAX PARCEL NO. OP2300000B 0007 (Lot 7)

Taxes for the year 2015 in the amount of \$94.01 are HALF PAID. This amount includes the following installments for special assessments: NONE
TAX PARCEL NO. OP2300000B 0008 (Lot 8)

Taxes for the year 2015 in the amount of \$94.01 are HALF PAID. This amount includes the following installments for special assessments: NONE
TAX PARCEL NO. OP2300000B 0009 (Lot 9)

Taxes for the year 2015 in the amount of \$94.01 are HALF PAID. This amount includes the following installments for special assessments: NONE
TAX PARCEL NO. OP2300000B 0010 (Lot 10)

Taxes for the year 2015 in the amount of \$94.01 are HALF PAID. This amount includes the following installments for special assessments: NONE
TAX PARCEL NO. OP2300000B 0011 (Lot 11)

Taxes for the year 2015 in the amount of \$126.01 are HALF PAID. This amount includes the following installments for special assessments: PVCSTMWATER
TAX PARCEL NO. OP2300000B 0012 (Lot 12)

Taxes for the year 2015 in the amount of \$258.95 are HALF PAID. This amount includes the following installments for special assessments: PVCSTMWATER
TAX PARCEL NO. OP2300000B 000A1 (Lot A)

8. Easements, restrictions and setback lines as per plat, recorded in Plat Book 19, Page 15.

This commitment is invalid unless the insuring provisions and Schedules A and B are attached.

9. Easement granted to Kansas City Power & Light Company over a portion of the premises in question as set out in Condemnation Suit No. [22314](#), as more fully described therein.
10. An easement to Kansas City Power and Light Company in the document recorded March 13, 1933 in Misc. [Book 19, Page 490](#) of Official Records.

The above easement was more specifically defined and limited by a Partial Release of Easement filed in [Book 201009, Page 002656](#).
11. An easement to Kansas City Power and Light Company in the document recorded April 22, 1957 in Misc. [Book 87, Page 226](#) of Official Records.
12. An easement to The Gas Service Company in the document recorded July 29, 1957 as Document No. 538138 in Misc. [Book 89, Page 41](#) of Official Records.
13. An easement to Indian Creek Sewer Sub-District No. 2 in the document recorded as Document No. 551002 in Misc. [Book 94, Page 477](#) of Official Records.
14. An easement to The Board of County Commissioners in the document recorded February 17, 1961 as Document No. 617132 in Misc. [Book 117, Page 256](#) of Official Records.

Partial Disclaimer filed of record in [Book 952, Page 960](#).
15. An easement to Lateral Sewer District No. 19, Indian Creek Sewer Sub-District No. 2, Johnson County, Kansas in the document recorded as Document No. 983074 in [Book 966, Page 615](#) of Official Records.
16. An easement to Kansas City Power and Light Company in the document recorded May 15, 1974 as Document No. 985342 in [Book 971, Page 159](#) of Official Records.
17. An easement to Kansas City Power and Light Company in the document recorded October 22, 1974 as Document No. 1000656 in [Book 1000, Page 465](#) of Official Records.
18. An easement to Defense Plant Corporation in the document dated August 25, 1943 in Misc. [Book 28, Page 589](#) of Official Records.
19. An easement to Johnson County, Kansas in the document recorded as Document No. 398148 in Misc. [Book 44, Page 618](#) of Official Records.
20. Easement and Right-of-Way reserved in the Warranty Deed filed June 7, 1967 as Document No. 780025 in Deed [Book 617, Page 691](#), over a portion of the premises in question, as more fully described therein.
21. An easement to The City of Prairie Village in the document recorded July 9, 1986 as Document No. 1620152 in [Book 2377, Page 335](#) of Official Records.
22. Drainage Easement granted to The City of Prairie Village in the document recorded July 9, 1986 as Document No. 1620153 in [Book 2377, Page 337](#) of Official Records.
23. An easement to Lateral Sewer District No. 22, Indian Creek Sewer Sub-District No. 2 in the document recorded February 13, 1987 as Document No. 1678738 in [Book 2517, Page 141](#) of Official Records.

This commitment is invalid unless the insuring provisions and Schedules A and B are attached.

24. Storm Sewer Easement granted by the instrument filed February 13, 1987 as Document No. 1678735 in [Book 2517, Page 135](#), over a portion of the premises in question, as more fully described therein.
25. An easement to Lateral Sewer District No. 22 Indian Creek Sewer Sub-District No. 2 in the document recorded August 5, 1987 as Document No. 1730190 in [Book 2641, Page 861](#) of Official Records.
26. Terms and provisions of Resolution No. WD02-15 for and/or enlarging Consolidated Main Sewer District of Johnson County, Kansas filed February 26, 2002 as Document No. 3380017 in [Book 7667, Page 774](#).
27. The following matters disclosed by an ALTA/ACSM survey made by Phelps Engineering, Inc. on August 24, 2010, last revised January 26, 2011, designated Job No. 100380:
 - a. Any discrepancy between the actual boundaries of the land and the apparent boundaries indicated by fences;
 - b. Concrete pad over storm drainage easement in Misc. [Book 117, Page 256](#);
 - c. Concrete and rail road tie wall over KCP&L easement in Misc. [Book 87, Page 226](#);
 - d. Wood Bridges within KCP&L easement in Condemnation suit no: [22314](#);
 - e. Apparent sanitary encroachment;
 - f. Wood wall, tennis courts and Clubhouse Deck over sewer easement in Misc. [Book 94, Page 477](#);
 - g. Cart Path and Tees onto Roe Avenue Right-of-Way in Southeast Corner;
 - h. Sanitary Sewer south of Somerset Drive;
 - i. Curb Inlet North of Headwall along west property line;
 - j. Telephone Risers along south property line;
 - k. Light Pole along south property line; and
 - l. Various encroachments of fences and parking areas into zoning setback areas.
28. An easement to Kansas City Power & Light Company in the document recorded September 14, 2010 in [Book 201009, Page 005089](#) of Official Records.
29. Terms and Provisions as set forth in Water Facilities Easement, by and between Consolidated Fire District #2 of NE Johnson County and MB-18, LLC, a Kansas limited liability company, recorded in [Book 201311, Page 006919](#).
30. Permanent Drainage Easement to the City of Prairie Village, Kansas in the document recorded in [Book 201206, Page 000488](#) of Official Records.
31. Temporary Construction Easement to the City of Prairie Village, Kansas in the document recorded in [Book 201206, Page 000490](#) of Official Records.
32. Permanent Sidewalk and Utility Easement to the City of Prairie Village, Kansas in the document recorded in [Book 201206, Page 000492](#) of Official Records.
33. Permanent Public Right of Way Easement to the City of Prairie Village, Kansas in the document recorded in [Book 201206, Page 000493](#) of Official Records.
34. Terms and Provisions as set forth in Declaration of Restrictive Covenants and Right of First Offer/Refusal, by and between MB-18, LLC, a Kansas limited liability company and Consolidated Fire District #2 of NE Johnson County, recorded in [Book 201311, Page 006917](#).

This commitment is invalid unless the insuring provisions and Schedules A and B are attached.

35. Tenancy rights, either as month to month, or by virtue of written leases of persons in possession of any part of the subject property.

NOTE: If any requirements shown on Schedule B-Section I of this Commitment are not complied with, then the requirement or the matters constituting the requirement will be shown as an exception or exceptions on the Policy or Policies provided the Company elects to issue such Policy or Policies.

EXHIBIT A

ALL OF LOTS 1 THROUGH 12 AND ALL OF LOT A, EXCEPT THE SOUTH 10.00 FEET OF BLOCK B, MEADOWBROOK ACRES, A PLATTED SUBDIVISION OF LAND AND ALL THAT PART OF THE WEST HALF OF SECTION 33, TOWNSHIP 12 SOUTH, RANGE 25 EAST, IN THE CITY OF PRAIRIE VILLAGE, JOHNSON COUNTY, KANSAS, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF THE SOUTHWEST QUARTER OF SAID SECTION 33, THENCE S 2°06'14" E, ALONG THE WEST LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 33, A DISTANCE OF 43.50 FEET; THENCE N 87°34'46" E, A DISTANCE OF 30.00 FEET TO THE INTERSECTION OF THE SOUTHERLY RIGHT-OF-WAY LINE OF SOMERSET DRIVE AND THE EASTERLY RIGHT-OF-WAY LINE OF NALL AVENUE, BOTH AS NOW ESTABLISHED, SAID POINT ALSO BEING THE POINT OF BEGINNING; THENCE ALONG THE SOUTHERLY RIGHT-OF-WAY LINE OF SAID SOMERSET DRIVE, FOR THE FOLLOWING FIVE (5) COURSES; THENCE N 87°34'46" E, A DISTANCE OF 34.10 FEET; THENCE NORTHEASTERLY ON A CURVE TO THE LEFT, SAID CURVE BEING TANGENT TO THE LAST DESCRIBED COURSE AND HAVING A RADIUS OF 648.00 FEET, AN ARC DISTANCE OF 347.53 FEET; THENCE NORTHEASTERLY ON A CURVE TO THE RIGHT, SAID CURVE BEING TANGENT TO THE LAST DESCRIBED COURSE AND HAVING A RADIUS OF 552.00 FEET, AN ARC DISTANCE OF 89.09 FEET; THENCE N 66°05'54" E, A DISTANCE OF 122.60 FEET; THENCE NORTHEASTERLY ON A CURVE TO THE LEFT, SAID CURVE HAVING AN INITIAL TANGENT BEARING OF N 67°31'22" E AND A RADIUS OF 640.00 FEET, AN ARC DISTANCE OF 112.91 FEET TO A POINT ON THE WEST PLAT LINE OF WEST RIDING, 2ND PLAT, A PLATTED SUBDIVISION OF LAND IN THE CITY OF PRAIRIE VILLAGE, JOHNSON COUNTY, KANSAS; THENCE S 13°32'29" E (PLATTED S 11°43'23" E), ALONG THE WEST PLAT LINE OF SAID WEST RIDING, 2ND PLAT, A DISTANCE OF 183.42 FEET TO THE SOUTHWEST PLAT CORNER OF SAID WEST RIDING, 2ND PLAT; THENCE N 87°37'32" E (PLATTED N 89°26'38" E), ALONG THE SOUTH PLAT LINE OF SAID WEST RIDING, 2ND PLAT AND THE NORTH PLAT LINE OF SAID MEADOWBROOK ACRES AND IT'S EASTERLY EXTENSION, A DISTANCE OF 1904.29 FEET TO THE NORTHEAST CORNER OF LOT 1, SAID MEADOWBROOK ACRES, SAID NORTHEAST CORNER ALSO BEING 30.00 FEET WEST OF THE NORTHEAST CORNER OF THE SOUTHWEST QUARTER OF SAID SECTION 33; THENCE S 1°50'49" E, ALONG THE EAST LINE OF SAID LOTS 1 THROUGH 12 AND LOT A, BLOCK B, SAID EAST LINE BEING 30.00 FEET WEST OF AND PARALLEL WITH THE EAST LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 33, A DISTANCE OF 2612.75 FEET TO A POINT ON THE NORTH RIGHT-OF-WAY LINE OF 95TH STREET, AS NOW ESTABLISHED, SAID POINT BEING 40.00 FEET NORTH OF THE SOUTH LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 33; THENCE S 87°40'29" W, ALONG THE NORTH RIGHT-OF-WAY LINE OF SAID 95TH STREET AND BEING 40.00 FEET NORTH OF AND PARALLEL WITH THE SOUTH LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 33, A DISTANCE OF 590.23 FEET TO A POINT ON THE EAST LINE OF A DEED, AS RECORDED IN THE JOHNSON COUNTY REGISTER OF DEEDS OFFICE IN BOOK 201311 AT PAGE 006875; THENCE NORTHERLY, NORTHWESTERLY AND WESTERLY ALONG THE EAST, NORTHEAST AND NORTH LINES OF SAID DEED FOR THE FOLLOWING FIVE (5) COURSES; THENCE N 2°06'14" W, A DISTANCE OF 157.50 FEET; THENCE N 48°59'31" W, A DISTANCE OF 43.24 FEET; THENCE S 87°40'29" W, A DISTANCE OF 120.50 FEET; THENCE N 27°56'01" W, A DISTANCE OF 14.23 FEET; THENCE S 87°40'29" W, A DISTANCE OF 15.01 FEET TO THE NORTHEAST PLAT CORNER OF GREENVIEW PLACE, A PLATTED SUBDIVISION OF LAND IN THE CITY OF PRAIRIE VILLAGE, JOHNSON COUNTY, KANSAS; THENCE CONTINUING S 87°40'29" W (PLATTED S 89°47'09" W), ALONG THE NORTH PLAT LINE OF SAID GREENVIEW PLACE, A DISTANCE OF 490.00 FEET TO THE NORTHWEST PLAT CORNER OF SAID GREENVIEW PLACE, SAID NORTHWEST PLAT CORNER ALSO BEING A POINT ON THE EAST LINE OF A SURVEY OF IMPROVEMENTS AS RECORDED IN THE JOHNSON COUNTY REGISTER OF DEEDS OFFICE IN BOOK 1013 AT PAGE 383; THENCE N 2°06'14" W (SURVEYED N 0°00'00" E), A DISTANCE OF 161.30 FEET; THENCE N 22°14'50" E, A DISTANCE OF

40.28 FEET; THENCE N 67°41'14" W, A DISTANCE OF 62.00 FEET; THENCE S 22°14'50" W, A DISTANCE OF 15.00 FEET TO A POINT ON THE NORTHERLY LINE OF A DEED RECORDED IN THE JOHNSON COUNTY REGISTER OF DEEDS OFFICE IN BOOK 6242 AT PAGE 978; THENCE N 67°41'14" W (DEEDED N 65°35'00" W), ALONG THE NORTHERLY LINE OF SAID DEED, A DISTANCE OF 85.57 FEET; THENCE NORTHERLY ON A CURVE TO THE LEFT, SAID CURVE HAVING AN INITIAL TANGENT BEARING OF N 5°31'37" E AND A RADIUS OF 325.00 FEET, AN ARC DISTANCE OF 231.41 FEET; THENCE N 35°16'13" W, A DISTANCE OF 58.93 FEET; THENCE NORTHWESTERLY ON A CURVE TO THE RIGHT, SAID CURVE BEING TANGENT TO THE LAST DESCRIBED COURSE AND HAVING A RADIUS OF 291.00 FEET, AN ARC DISTANCE OF 137.75 FEET; THENCE NORTHERLY ON A CURVE TO THE LEFT, SAID CURVE BEING TANGENT TO THE LAST DESCRIBED COURSE AND HAVING A RADIUS OF 520.00 FEET, AN ARC DISTANCE OF 38.35 FEET; THENCE N 12°22'24" W, A DISTANCE OF 161.04 FEET; THENCE NORTHWESTERLY ON A CURVE TO THE LEFT, SAID CURVE BEING TANGENT TO THE LAST DESCRIBED COURSE AND HAVING A RADIUS OF 520.00 FEET, AN ARC DISTANCE OF 32.48 FEET; THENCE N 15°57'08" W, A DISTANCE OF 99.30 FEET; THENCE NORTHWESTERLY ON A CURVE TO THE LEFT, SAID CURVE BEING TANGENT TO THE LAST DESCRIBED COURSE AND HAVING A RADIUS OF 210.00 FEET, AN ARC DISTANCE OF 82.46 FEET; THENCE N 38°27'04" W, A DISTANCE OF 263.82 FEET; THENCE NORTHWESTERLY ON A CURVE TO THE LEFT, SAID CURVE BEING TANGENT TO THE LAST DESCRIBED COURSE AND HAVING A RADIUS OF 200.00 FEET, AN ARC DISTANCE OF 47.31 FEET; THENCE N 52°00'20" W, A DISTANCE OF 15.96 FEET; THENCE NORTHWESTERLY ON A CURVE TO THE RIGHT, SAID CURVE BEING TANGENT TO THE LAST DESCRIBED COURSE AND HAVING A RADIUS OF 160.00 FEET, AN ARC DISTANCE OF 56.83 FEET; THENCE NORTHEASTERLY ON A CURVE TO THE RIGHT, SAID CURVE HAVING AN INITIAL TANGENT BEARING OF N 61°12'26" E AND A RADIUS OF 267.47 FEET, AN ARC DISTANCE OF 55.09 FEET; THENCE EASTERLY ON A CURVE TO THE RIGHT, SAID CURVE BEING TANGENT TO THE LAST DESCRIBED COURSE AND HAVING A RADIUS OF 85.00 FEET, AN ARC DISTANCE OF 45.67 FEET; THENCE EASTERLY ON A CURVE TO THE LEFT, SAID CURVE BEING TANGENT TO THE LAST DESCRIBED COURSE AND HAVING A RADIUS OF 135.79 FEET, AN ARC DISTANCE OF 160.95 FEET; THENCE NORTHEASTERLY ON A CURVE TO THE RIGHT, SAID CURVE BEING TANGENT TO THE LAST DESCRIBED COURSE AND HAVING A RADIUS OF 70.00 FEET, AN ARC DISTANCE OF 51.19 FEET; THENCE EASTERLY ON A CURVE TO THE RIGHT, SAID CURVE BEING TANGENT TO THE LAST DESCRIBED COURSE AND HAVING A RADIUS OF 479.59 FEET, AN ARC DISTANCE OF 167.76 FEET; THENCE S 31°02'03" E, A DISTANCE OF 525.22 FEET; THENCE S 42°05'17" E, A DISTANCE OF 187.42 FEET; THENCE SOUTHEASTERLY ON A CURVE TO THE LEFT, SAID CURVE BEING TANGENT TO THE LAST DESCRIBED COURSE AND HAVING A RADIUS OF 210.00 FEET, AN ARC DISTANCE OF 175.61 FEET; THENCE N 90°00'00" E, A DISTANCE OF 58.60 FEET; THENCE EASTERLY ON A CURVE TO THE RIGHT, SAID CURVE BEING TANGENT TO THE LAST DESCRIBED COURSE AND HAVING A RADIUS OF 160.00 FEET, AN ARC DISTANCE OF 56.44 FEET; THENCE S 43°15'03" W, A DISTANCE OF 187.59 FEET; THENCE S 46°44'57" E, A DISTANCE OF 260.00 FEET; THENCE S 73°30'05" E, A DISTANCE OF 89.85 FEET; THENCE S 64°07'33" E, A DISTANCE OF 260.00 FEET; THENCE S 42°37'29" E, A DISTANCE OF 76.34 FEET; THENCE S 75°24'44" E, A DISTANCE OF 140.00 FEET; THENCE N 14°35'16" E, A DISTANCE OF 281.19 FEET; THENCE N 1°44'24" W, A DISTANCE OF 430.62 FEET; THENCE N 0°15'29" W, A DISTANCE OF 60.14 FEET; THENCE N 14°48'03" E, A DISTANCE OF 59.96 FEET; THENCE N 11°51'43" E, A DISTANCE OF 59.86 FEET; THENCE N 00°40'00" W, A DISTANCE OF 59.97 FEET; THENCE N 1°49'44" W, A DISTANCE OF 60.00 FEET; THENCE N 23°07'43" W, A DISTANCE OF 132.03 FEET; THENCE N 65°02'30" W, A DISTANCE OF 110.25 FEET; THENCE N 1°50'49" W, A DISTANCE OF 330.98 FEET; THENCE S 88°09'11" W, A DISTANCE OF 660.57 FEET; THENCE SOUTHERLY ON A CURVE TO THE LEFT, SAID CURVE HAVING AN INITIAL TANGENT BEARING OF S 33°40'41" W AND A RADIUS OF 160.00 FEET, AN ARC DISTANCE OF 99.20 FEET; THENCE S 1°50'49" E, A DISTANCE OF 62.07 FEET; THENCE S 88°09'11" W, A DISTANCE OF 95.15 FEET; THENCE WESTERLY ON A CURVE TO THE LEFT, SAID CURVE BEING TANGENT TO THE LAST DESCRIBED COURSE AND HAVING A RADIUS OF 562.89 FEET, AN ARC DISTANCE OF 84.71 FEET; THENCE WESTERLY ON A CURVE TO THE RIGHT, SAID CURVE BEING TANGENT TO THE LAST DESCRIBED COURSE AND HAVING A RADIUS OF 444.50 FEET, AN ARC DISTANCE OF 199.48 FEET; THENCE WESTERLY ON A CURVE TO THE LEFT, SAID CURVE BEING TANGENT TO THE LAST DESCRIBED COURSE AND HAVING A RADIUS OF 599.59 FEET, AN ARC DISTANCE OF 334.73 FEET; THENCE WESTERLY ON A CURVE TO THE RIGHT, SAID CURVE BEING TANGENT TO THE LAST DESCRIBED COURSE AND HAVING A RADIUS OF 70.00 FEET, AN ARC DISTANCE OF 34.52 FEET; THENCE WESTERLY ON A CURVE TO THE LEFT, SAID CURVE BEING TANGENT

TO THE LAST DESCRIBED COURSE AND HAVING A RADIUS OF 124.17 FEET, AN ARC DISTANCE OF 132.74 FEET; THENCE SOUTHWESTERLY ON A CURVE TO THE RIGHT, SAID CURVE BEING TANGENT TO THE LAST DESCRIBED COURSE AND HAVING A RADIUS OF 100.00 FEET, AN ARC DISTANCE OF 55.53 FEET; THENCE SOUTHWESTERLY ON A CURVE TO THE LEFT, SAID CURVE BEING TANGENT TO THE LAST DESCRIBED COURSE AND HAVING A RADIUS OF 387.47 FEET, AN ARC DISTANCE OF 175.65 FEET; THENCE SOUTHWESTERLY ON A CURVE TO THE RIGHT, SAID CURVE BEING TANGENT TO THE LAST DESCRIBED COURSE AND HAVING A RADIUS OF 180.27 FEET, AN ARC DISTANCE OF 88.04 FEET; THENCE S 74°05'30" W, A DISTANCE OF 185.25 FEET; THENCE WESTERLY ON A CURVE TO THE RIGHT, SAID CURVE BEING TANGENT TO THE LAST DESCRIBED COURSE AND HAVING A RADIUS OF 444.65 FEET, AN ARC DISTANCE OF 115.78 FEET; THENCE S 88°57'33" W, A DISTANCE OF 222.26 FEET; THENCE N 2°06'14" W, A DISTANCE OF 50.01 FEET; THENCE N 4°57'47" W, A DISTANCE OF 300.69 FEET TO A POINT ON THE EASTERLY RIGHT-OF-WAY LINE OF SAID NALL AVENUE; THENCE N 2°06'14" W, ALONG THE EASTERLY RIGHT-OF-WAY LINE OF SAID NALL AVENUE, A DISTANCE OF 711.37 FEET TO THE POINT OF BEGINNING, EXCEPT ANY PART USED OR DEDICATED FOR STREETS, ROADS OR PUBLIC RIGHTS OF WAY.

We Are Committed to Safeguarding Customer Information

In order to better serve your needs now and in the future, we may ask you to provide us with certain information. We understand that you may be concerned about what we will do with such information – particularly any personal or financial information. We agree that you have a right to know how we will utilize the personal information you provide to us. Therefore, together with our parent company, The First American Corporation, we have adopted this Privacy Policy to govern the use and handling of your personal information.

Applicability

This Privacy Policy governs our use of the information which you provide to us. It does not govern the manner in which we may use information we have obtained from any other source, such as information obtained from a public record or from another person or entity. First American has also adopted broader guidelines that govern our use of personal information regardless of its source. First American calls these guidelines its *Fair Information Values*, a copy of which can be found on our website at www.firstam.com.

Types of Information

Depending upon which of our services you are utilizing, the types of nonpublic personal information that we may collect include:

- Information we receive from you on applications, forms and in other communications to us, whether in writing, in person, by telephone or any other means;
- Information about your transactions with us, our affiliated companies, or others; and
- Information we receive from a consumer reporting agency.

Use of Information

We request information from you for our own legitimate business purposes and not for the benefit of any nonaffiliated party. Therefore, we will not release your information to nonaffiliated parties except: (1) as necessary for us to provide the product or service you have requested of us; or (2) as permitted by law. We may, however, store such information indefinitely, including the period after which any customer relationship has ceased. Such information may be used for any internal purpose, such as quality control efforts or customer analysis. We may also provide all of the types of nonpublic personal information listed above to one or more of our affiliated companies. Such affiliated companies include financial service providers, such as title insurers, property and casualty insurers, and trust and investment advisory companies, or companies involved in real estate services, such as appraisal companies, home warranty companies, and escrow companies. Furthermore, we may also provide all the information we collect, as described above, to companies that perform marketing services on our behalf, on behalf of our affiliated companies, or to other financial institutions with whom we or our affiliated companies have joint marketing agreements.

Former Customers

Even if you are no longer our customer, our Privacy Policy will continue to apply to you.

Confidentiality and Security

We will use our best efforts to ensure that no unauthorized parties have access to any of your information. We restrict access to nonpublic personal information about you to those individuals and entities who need to know that information to provide products or services to you. We will use our best efforts to train and oversee our employees and agents to ensure that your information will be handled responsibly and in accordance with this Privacy Policy and First American's *Fair Information Values*. We currently maintain physical, electronic, and procedural safeguards that comply with federal regulations to guard your nonpublic personal information.



Book SMSD Policies
 Section D: Fiscal Management
 Title Tax Increment Finance (TIF) Review
 Number DL
 Status First Reading
 Legal

This policy describes the manner in which the Shawnee Mission School District will review proposals made by developers to establish redevelopment districts within the boundaries of the School District that rely on tax increment financing (TIF).

In conducting this review, the School District will be guided by K.S.A. 12-1771, which provides, in pertinent part, "No privately owned property subject to ad valorem taxes shall be acquired and redeveloped ... if ... the board of education levying taxes on such property determines by resolution adopted within 30 days following the conclusion of the hearing for the establishment of the redevelopment district ... that the proposed redevelopment district ... will have an adverse effect on such ... school district." The School District, by its board of education, will make an independent determination as to whether such a resolution should be adopted under the statute.

As a matter of policy, the School District is committed to (1) supporting economic development initiatives in the fourteen municipalities that make up the School District; (2) acting in partnership with the county, cities, and other taxing entities on economic development initiatives; and (3) ensuring that the tax base of the School District is not adversely impacted in the long term by the establishment of TIF redevelopment districts in a manner not contemplated by statute. To ensure the best possible review, the Shawnee Mission School District encourages a dialogue between the School District, the developer, and the host municipality commencing in the earliest stages of the TIF proposal process.

In conducting the review contemplated by statute, the School District will consider a variety of factors, including those set forth below.

1. An in-depth description of the TIF redevelopment district proposal, including all documents and supporting materials submitted to the municipality, should be submitted by the developer to the School District, in a timely manner.
2. The School District will review TIF redevelopment district proposals in light of applicable statutes and the policy underlying those statutes.
3. The School District will review the financial impact, short term and long term, of the TIF redevelopment district proposal on the School District and on its ad valorem tax base, and will encourage the submission of material that addresses those issues.
4. The School District will consider proposals made to ameliorate the financial impact of the TIF redevelopment district on the School District.
5. The School District will more favorably consider TIF redevelopment district proposals that (a) contain a sunset provision; (b) specify an ad valorem tax impact of fifty percent or less; (c) rely on sales tax rather than ad valorem taxes; or (d) provide that excess revenue is to be captured to pay

debt, with the TIF retired as early as possible.

6. The School District will subject TIF proposals that involve residential areas to greater scrutiny in light of the potential for increased service requirements on the district.

7. The School District will establish a committee to conduct the review described in this policy and to make recommendations regarding each TIF proposal to the board of education. The committee will include the superintendent, the deputy superintendent, the chief financial officer and a board member. The committee may employ consultants to gather information that will assist the School District and the board in conducting the review contemplated by statute and by this policy.

Last Modified by Terry Wintering on February 22, 2016



\$406,800 Appraised Value 2015

Ward 3



PRAIRIE VILLAGE

2015 Exterior Grant Program

Exterior Grant Program Brochure

- Maintaining a positive image is important to the City. The appearance of our **neighborhoods** plays a vital role in the perception of the quality of the community. The City wants to encourage homeowners to invest in their properties by making improvements on their building exteriors. The improved appearance of homes will make **our neighborhoods** more attractive and contribute to the enhanced **viability of the area** and the **community**.

Origin of Exterior Grant

- Background: Homes are well built and facing maintenance problems that come with age.
- Eligibility: located within grant improvement area, taxes current, property insurance in effect, and conform to City Code.
- Areas were chosen using map of **codes violations** from 2003-2005.
- Awareness and promotion of program: codes inspectors give out to homes with violations within designated areas, press release, and Village Voice.

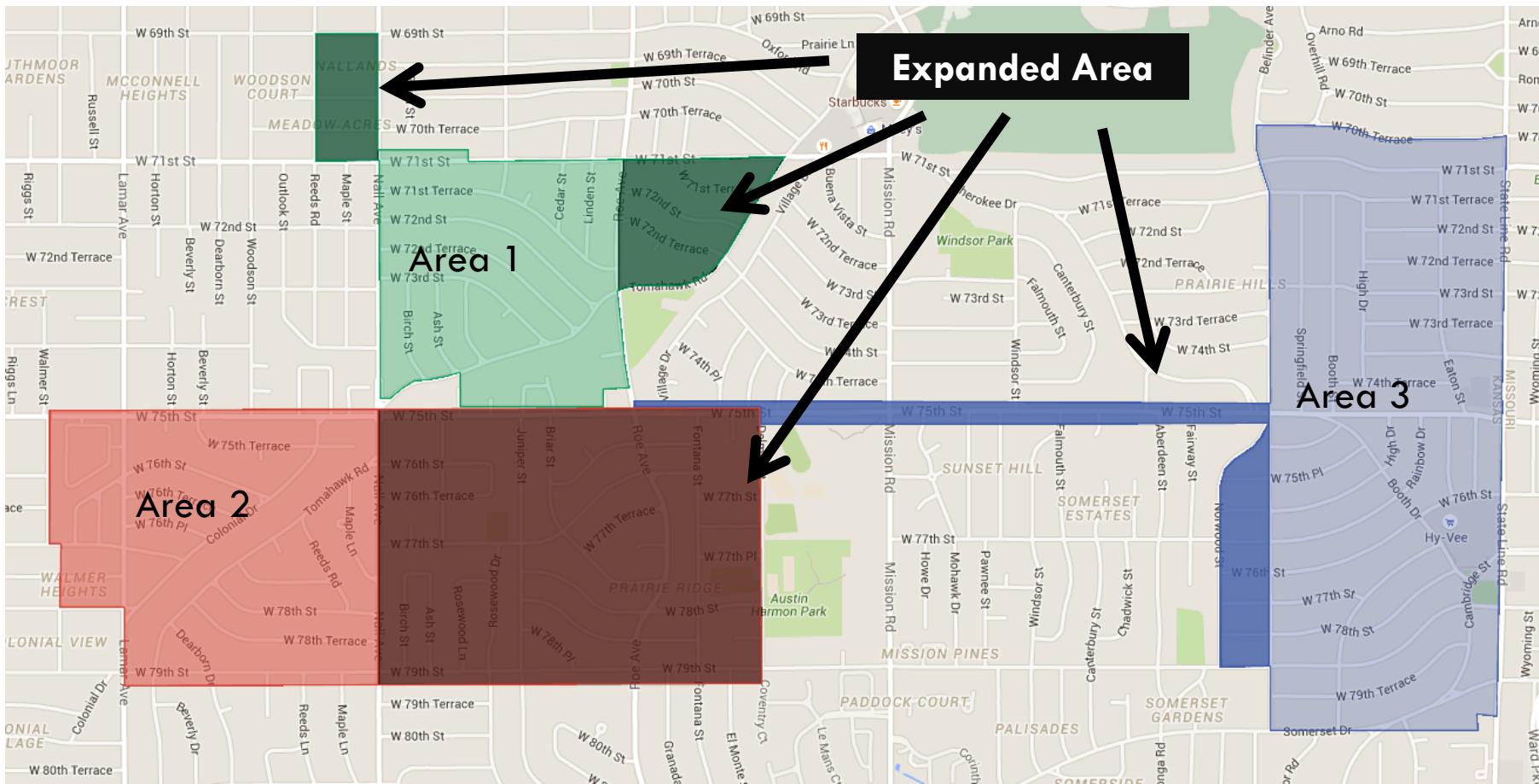
Timeline of Exterior Grant

- December 3, 2007 Under old business, at request of Councilmember Michael Kelly, staff did preliminary research into an exterior grant program. A vote was taken to pursue additional research. (9-1)
- February 19, 2008 Final presentation to Council by Michael Kelly. No discussion noted.
- March 3, 2008 Passed Council #13 on Consent Agenda with no Council discussion.

2010 Exterior Grant Changed

- “Staff recommended minor boundary changes **noting code issues** west of Tomahawk but to the east is generally well maintained.”
- Charles Clark “...assist property owners with **code issues** to improve their property.”
- Staff stated “...property does not have to have **code violations**...although that was the **impetus for establishing the program**.”
- Staff “**did not believe that the boundary changes would incur more applications** because of the scope of the projects.”

2010 Map



Darker areas represent expansion since 2008

Original Map vs. 2015 Map

- 2008 Map – 1.1 square miles
- 2015 Map – 1.69 square miles
- Since 2008, 0.59 square mile increase (approx.)
 - ▣ Area 1: .08 sq. mile increase (33%) – Ward 2
 - ▣ Area 2: .41 sq. mile increase (124%) – Wards 2 and 4
 - ▣ Area 3: .10 sq. mile increase (20%) – Wards 3 and 6
 - ▣ OVERALL 53% increase since 2008
- ▣ **75%** of Prairie Village is **NOT** eligible for a grant

Issues with Current Program

- We are **subsidizing homes** with appraised values over \$200,000 (24%), including one recipient's (2015) **appraisal value of \$406,000**.
- The program is not being used in the manner which was intended and approved.
- In the last three years, **only 2 of 73** recipients were directly related to a documented **codes violation**.
- The March 1 application date doesn't serve code violations in a timely way if violations occur March 2 through January.
- Those receiving code violations often can't afford the \$5,000 minimum required expenditure.
- It includes new construction.
- Excludes 75% of the tax paying residents.
- Designated "areas" are arbitrary.

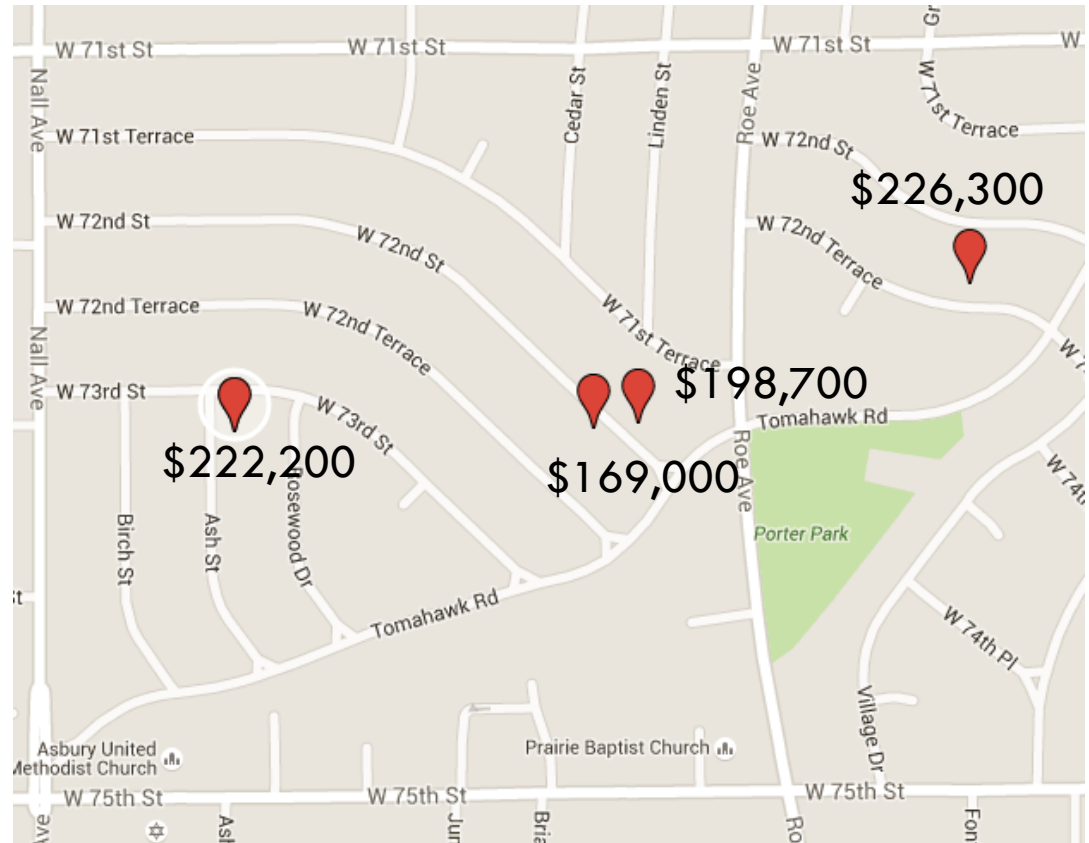
Area 1 - Grants Awarded 2015

Average Home Value: **\$204,275**

□ 4 Grants Awarded

- 4821 W 72nd St
- 4808 W 72nd St
- 4500 W 72nd Ter
- 7305 Ash St

□ WARD 2

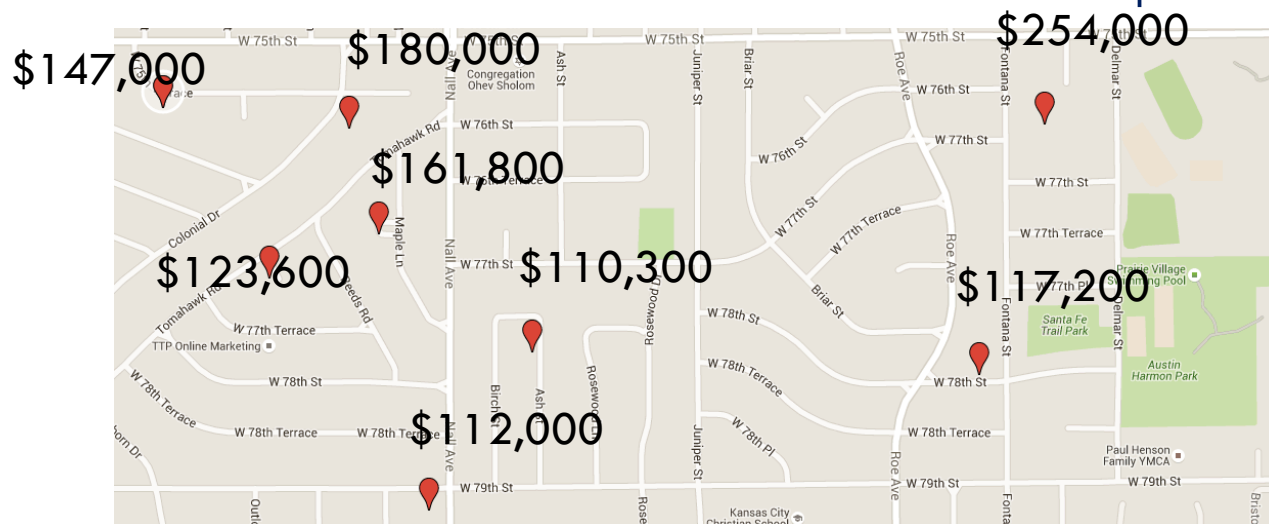


Area 2 – 8 Grants Awarded 2015

Average Home Value \$150,737

- 7738 Ash St
- 6007 W 75th Ter
- 7701 Tomahawk Rd
- 7535 Fontana St
- 7521 Colonial Dr

- 5501 W 79th St
- 4504 W 78th St
- 7732 Maple St
- WARD 2: \$139,000**
- WARD 4: \$185,600**



Recipient's of Exterior Grant

Johnson County Appraisal Averages

| | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 |
|--------------|---------------|--------|---------------|---------------|---------------|---------------|
| Area 1 | \$144k | \$162k | \$177k | \$167k | \$177k | \$204k |
| WARD 2 | | | | | | |
| Area 2 | \$191k | \$139k | \$148k | \$188k | \$133k | \$151k |
| WARD 2 and 4 | | | | | | |
| Area 3 | \$124k | \$154k | \$158k | \$129k | \$161k | \$181k |
| WARD 3 and 6 | | | | | | |

Area 3

Before



After



Area 3

Before

- New windows (front and back), driveway, and front fence
- Improvements made to landscaping in front of home

After



2016 Exterior Grant Information

- As of today...
- 11 grant requests
- Average appraisal value: \$182,000
- * Highest being \$220,000
- Total allocated money: \$21,000

Proposed Changes

- **All** Prairie Village residents are eligible for grant money as long as they meet the agreed upon criteria.
- A Johnson County Appraisal accompanies the application and would not exceed \$175k appraised value.
 - This would include 3,769 homes that would now qualify.
- Offer the program on a twice a year (March 15 and June 15) with \$25,000 for each application deadline in order to address codes violations in a more timely manner not to exceed \$50k.
- ~~Improvements would be to the front of the house with the exception being exterior painting of the house.~~
- Includes only existing homes and structures.
- Reduce the resident's minimum cost from \$5,000 to \$2,500 so that code violations are more likely to be addressed.
- Increased home value is increased home value...it should not be limited to arbitrary boundaries set in 2011.

**COUNCIL MEETING AGENDA
CITY OF PRAIRIE VILLAGE
Council Chambers
Monday, March 21, 2016
7:30 PM**

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

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

VI. **CONSENT AGENDA**

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

By Staff

- 1. Approve regular City Council Minutes - March 7, 2016
- 2. Approve Claims Ordinance 2940

By Committee

- 3. Adopt Ordinance No. 2346 - Amending the legal age to purchase tobacco products from 18 to 21

VII. **COMMITTEE REPORTS**

Council Committee of the Whole

- COU2016-12 Approve the Construction Contract for the 2016 Paving and CARS Program
- COU2016-13 Approve Public Infrastructure Improvement Agreement with HMB18 for Meadowbrook project
- COU2016-14 Approve Project Easements, Scope of Pond Work, and Initial Trail Work related to the Meadowbrook project

Planning Commission

- PC2015-110 Consider Final Plat for Mission Chateau

Arts Council

Arts Council Update

- VIII. **MAYOR'S REPORT**
- IX. **STAFF REPORTS**
- X. **OLD BUSINESS**
- XI. **NEW BUSINESS**
- XII. **ANNOUNCEMENTS**
- XIII. **ADJOURNMENT**

**If any individual requires special accommodations - for example, qualified interpreter, large print, reader, hearing assistance - in order to attend the meeting, please notify the City Clerk at 385-4616, no later than 48 hours prior to the beginning of the meeting.
If you are unable to attend this meeting, comments may be received by e-mail at cityclerk@pvkansas.com**

CONSENT AGENDA
CITY OF PRAIRIE VILLAGE

March 21, 2016

**CITY COUNCIL
CITY OF PRAIRIE VILLAGE
March 7, 2016**

The City Council of Prairie Village, Kansas, met in regular session on Monday, March 7, 2016 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, Steve Noll, Eric Mikkelson, Andrew Wang, Brooke Morehead, Sheila Myers, Dan Runion, David Morrison (by phone), Ted Odell and Terrence Gallagher.

Staff present was: Tim Schwartzkopf, Chief of Police; Keith Bredehoeft, Public Works Director; Katie Logan, City Attorney; Wes Jordan, Assistant City Administrator; Lisa Santa Maria, Finance Director; Zach Bauer, Management Intern; Nolan Sunderman, Assistant to the City Administrator and Joyce Hagen Mundy, City Clerk. Also present were teen council members Dennis Rice and Kellie O'Toole; City Planning Consultant Chris Brewster with Gould Evans.

INTRODUCTION OF STUDENTS & SCOUTS

A student from Bishop Miege High School was in attendance for his American Government class.

PUBLIC PARTICIPATION

No one addressed the City Council.

CONSENT AGENDA

Erick Mikkelson stated he had questions on item #4 and asked that it be removed.

Council President Brooke Morehead moved for the approval of the Consent Agenda for March 7, 2016 with items #1 through #3:

1. Approve Regular City Council Minutes - February 16, 2016.
2. Approve Claims Ordinance 2939.
3. Approve contract for the remainder of 2016 with Animal Medical Center (AMC) to board and dispose of dogs, cats and other animals found running at large or otherwise impounded pursuant to City ordinance.
4. Removed

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

Mr. Mikkelson noted he did not see any contingency language in the proposed resolution consenting to the enlargement of the consolidated main sewer district and questioned how this would be handled if the Meadowbrook redevelopment did not occur.

City Attorney Katie Logan advised that originally the owners of the Meadowbrook property refused sanitary sewer service. One of the conditions for the development of this property is its inclusion into the Johnson County Consolidate Main Sewer District; in order for this to take place, the County has to have the City's consent. She added that all of the approvals are conditioned on the closure of the property. The enlargement of the district will not occur if the development does not occur.

Eric Mikkelson moved the City Council approve Resolution 2016-01 consenting to the enlargement of consolidated main sewer district of Johnson County, Kansas, by

the Board of County Commissioners pursuant to Johnson County Charter Resolution No. 29-92. The motion was seconded by Steve Noll and passed unanimously.

COMMITTEE REPORTS

Council Committee of the Whole

COU2016-10 Consider Contract with O'Donnell & Sons Construction for the 2016 Concrete Repair Program

On behalf of the Council Committee of the Whole, Council President Brooke Morehead moved the City Council authorize the Mayor to execute a construction contract with O'Donnell & Sons Construction Company, Inc for the 2016 Concrete Repair Program in the amount of \$690,000. The motion was seconded by Steve Noll and passed unanimously.

Planning Commission

PC2016-03 Consider request for approval of a Special Use Permit for the operation of an Animal Daycare Program at 8827 Roe Avenue

Planning Consultant Chris Brewster stated the Queen of Paws Boutique and Spa recently moved into 8827 Roe after outgrowing its previous location. Animal Day Care operations are not specifically addressed in the City's code. Staff felt as this was similar to animal boarding services, a special use permit should be required, particularly as this property is located in a C-1 district that is intended to allow a variety of small-scale commercial uses that support and serve the needs of nearby residential neighborhoods.

The uses and performance standards specifically promote them at a scale and intensity that balances the ability to serve the commercial needs of neighbors with potential impacts from those businesses. Of particular emphasis for this application are standards C. and D. regarding outdoor operations and noise. Many of the concerns associated with allowing boarding of animals and by association dog daycare facilities

deals with the potential noise impacts and whether the animals will be kept or periodically cared for outside, where adjacent property could be impacted. The proposed application is prohibited by the general performance standards from conducting any activities outdoors or for any activity that would create noise perceptible outside of the building. The applicant has stated that all activities occur inside her facility.

The requested Special Use Permit is for an animal day care business associated with a pet grooming and training services. The Special Use Permit as recommended by the Planning Commission would authorize up to 20 dogs (under 20 pounds) and up to 15 dogs (over 20 pounds) for dog daycare facilities in an indoor operation.

The applicant held a neighborhood meeting on January 14, 2016 at her facility in accordance with the Planning Commission Citizen Participation Policy and one couple attended and after touring her facility expressed their support. Over sixty persons attended the public hearing with several speaking in support of the application and one expressing concern with noise from overnight boarding.

The Planning Commission found the Findings of Fact as set out in the zoning ordinance and the Golden Factors to be favorable for the reasons set forth in the February 2, 2016 minutes and recommends that the Governing Body approve a Special Use Permit for the operation of an animal day care program at Queen of Paws Boutique and Spa located at 8827 Roe Avenue subject to four conditions addressing that this is an accessory to the primary business of animal training, the number of animals allowed, limitations of outdoor activity and length of time.

Dan Runion asked how many animals the applicant currently provides service to. Mr. Brewster responded ten to twelve animals on a regular basis with her business growing.

Mr. Runion noted dogs bark and asked how the noise would be addressed. Mr. Brewster replied the Commission has restricted that all activities occur indoors and limited the number of animals that can be outside at any one time. This is a day operation only and the noise comments received were relative to evening noise. The adjacent veterinary clinic is currently only allowed to provide overnight boarding for medical care and observation.

Ted Odell moved the Governing Body adopt Ordinance 2347 granting a Special Use Permit to allow the operation of an animal daycare program at 8827 Roe Avenue subject to the conditions recommended by the Planning Commission. The motion was seconded by Jori Nelson.

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

Mayor's Report

Mayor Wassmer reported that she and other Prairie Village Foundation members recently toured the Village Presbyterian Food Pantry which the Foundation supports. She was impressed with the services they provide to the community. She also attended two of the three public information meetings on the proposed design standards and thanked all who participated, particularly Chris Brewster and Wes Jordan for their leadership on this issue. Mayor Wassmer had the privilege to join 26 other mayors and

over 860 participants in the annual Greater Kansas City Mayors' Prayer Breakfast.

STAFF REPORTS

Public Safety

- Chief Schwartzkopf reminded the Council of the upcoming "Coffee with a Cop" on Friday, March 18th at Starbucks in the Village.
- Chief Schwartzkopf introduced recently promoted Captain Myron Ward.

Public Works

- Mr. Bredehoeft reported the Community Center renovations are completed and hoped that the City Council was able to go view the improvements.
- The position of "Field Superintendent" is currently vacant.
- Bids were opened last Friday for the 2016 CARS & Paving Program. Several competitive bids were received below the engineer's estimate for the projects.
- The Finance Committee recently met to discuss issuing bonds for the purchase of street lights from KCP&L.
- Mr. Bredehoeft recently met with Hollis + Miller regarding the next step for the City Hall/PD entrance project.
- Mr. Bredehoeft reported that he had a very positive meeting with the Kenilworth neighborhood regarding the Roe connection to the proposed Meadowbrook project. They were pleased with the relocation of the entrance further to the west.
- He also recently met with the residents impacted by the Delmar/Fontana project.

Administration

- Wes Jordan reported the three public information meetings on the proposed design standards were well attended and elicited a significant amount of comments. Staff will be gathering and forwarding those comments and e-mails to the City Council for review and consideration. He noted this will be an emotional decision for some based on the comments made. Mr. Jordan stated that Chris Brewster had excellent presentations and answered questions and provided clear explanations to the residents attending.

OLD BUSINESS

Ted Odell noted there was currently a temporary road for travel related to park improvements on the east side of the tennis courts at Taliaferro Park and confirmed that the roadway would be removed and the area regarded at the completion of the park improvements. He also felt a sidewalk should be constructed at that location. Mr. Bredehoeft responded both of these items will be done this spring.

NEW BUSINESS

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

ANNOUNCEMENTS

Committee meetings scheduled for the next two weeks include:

| | | |
|--------------------------------|------------|-----------|
| JazzFest Committee | 03/08/2016 | 5:30 p.m. |
| Prairie Village Arts Council | 03/09/2016 | 5:30 p.m. |
| Park & Recreation Committee | 03/09/2016 | 6:30 p.m. |
| Council Committee of the Whole | 03/21/2016 | 6:00 p.m. |
| City Council | 03/21/2015 | 7:30 p.m. |

=====

The Prairie Village Arts Council is pleased to present the art of Pat Jessee and Roberta Leaverton in the R.G. Endres Gallery during the month of March. The artists' reception will be Friday, March 11th from 6:30 to 7:30 p.m.

The State of the County address will be given on Tuesday, March 22 at the Ritz Charles in Overland Park - 11:30 a.m. to 1:15 p.m. RSVP to Joyce by March 14th.

The 2016 annual Large Item Pick up has been scheduled. Items from homes on 75th Street and north of 75th Street will be collected on Saturday, April 9th. Items from homes south of 75th Street will be collected on Saturday, April 16th.

ADJOURNMENT

With no further business to come before the City Council the meeting was adjourned at 7:55 p.m.

Joyce Hagen Mundy
City Clerk

CITY TREASURER'S WARRANT REGISTER

DATE WARRANTS ISSUED:

Warrant Register Page No. 1

March 21, 2016

Copy of Ordinance
2940

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 | | | |
| 11757-11758 | 2/5/2016 | 470.64 | |
| 11759 | 2/8/2016 | 451.79 | |
| 11760-11860 | 2/12/2016 | 467,331.80 | |
| 11861-11863 | 2/19/2016 | 1,259.67 | |
| 11864-11924 | 2/26/2016 | 214,563.29 | |
| Payroll Expenditures | | | |
| 2/5/2016 | | 260,546.38 | |
| 2/16/2016 | | 285,804.26 | |
| Electronic Payments | | | |
| Electronic Pmnts | 2/1/2016 | 187.92 | |
| Electronic Pmnts | 2/3/2016 | 17.02 | |
| Electronic Pmnts | 2/4/2016 | 10,739.24 | |
| Electronic Pmnts | 2/5/2016 | 2,136.26 | |
| Electronic Pmnts | 2/8/2016 | 3,524.09 | |
| Electronic Pmnts | 2/10/2016 | 1,367.05 | |
| Electronic Pmnts | 2/17/2016 | 944.99 | |
| Electronic Pmnts | 2/19/2016 | 3,259.19 | |
| Electronic Pmnts | 2/23/2016 | 399.11 | |
| Electronic Pmnts | 2/24/2016 | 1,600.88 | |
| Electronic Pmnts | 2/29/2016 | 56,361.39 | |
| TOTAL EXPENDITURES: | | | 1,310,964.97 |
| Voided Checks | Check # | (Amount) | |
| Johnson County Government | 11815 | (159.00) | |
| TOTAL VOIDED CHECKS: | | | (159.00) |
| GRAND TOTAL CLAIMS ORDINANCE | | | 1,310,805.97 |

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

Passed this 21st day of March 2015.

Signed or Approved this 21st day of March 2015.

(SEAL)
ATTEST: *Richard J. Hinton* 3-4-16
City Treasurer

ATTEST: *[Signature]* 3-4-16
Finance Director

COUNCIL COMMITTEE OF THE WHOLE
March 7, 2016

The Council Committee of the Whole met on Monday March 7, 2016 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, Steve Noll, Eric Mikkelson, Andrew Wang, Sheila Myers, Dan Runion, Ted Odell and Terrence Gallagher.

Staff Members present: Captain Wes Lovett; Keith Bredehoeft, Public Works Director; Katie Logan, City Attorney; Wes Jordan, Assistant City Administrator; Lisa Santa Maria, Finance Director; Nolan Sunderman, Assistant to the City Administrator; Zach Bauer, Management Intern and Joyce Hagen Mundy, City Clerk.

COU2016-08 Consider approval of an Ordinance amending the legal age to purchase tobacco products from 18 to 21

The Mayor and City Council identified the Tobacco 21 initiative as a 2016 priority for discussion. At the February 16th meeting, the City Council directed the city attorney to draft a proposed ordinance changing the legal age for purchasing tobacco products including liquid nicotine from 18 to 21 years of age. Ordinances to change the purchase age to 21 have been approved in Kansas City, Kansas and Missouri as well as Olathe, Gladstone and Independence. The Shawnee Mission School District Board of Education recently passed a resolution supporting this initiative and requested their constituent cities increase the legal age for purchasing tobacco to 21.

Nolan Sunderman presented the draft ordinance prepared by the city attorney. Mayor Wassmer asked if the draft followed the Kansas City model. Mr. Sunderman replied it followed the city of Olathe model. She questioned the inclusion of a fine for possession by a minor.

Katie Logan stated the ordinance is an amendment to the Uniform Public Offense Code which was previously adopted and includes a fine. Sheila Myers stated the ordinance as presented did not include a fine.

Eric Mikkelson noted the city has always had regulations regarding the purchase and possession of cigarettes or tobacco products by a minor. What was presented was a proposal to increase the age for purchasing these to 21. There has always been a fine on the books and that was not changed.

Terrence Gallagher asked if the proposed ordinance included the provision relating to possible non-monetary consequences. Mrs. Logan responded the ordinance included the following language: "In addition, the judge may require a person charged with violating this section to appear in court and/or may require completion of a tobacco education program."

Jori Nelson asked if there have been a large number of violations of this code. Captain Lovett replied that to his knowledge there have not been.

Eric Mikkelson noted the e-mailed letter he and other council members received from the American Heart Association and American Lung Association in support of this legislation. It stated that a vast majority of those individuals addicted to tobacco had their first cigarette under the age of 18. He feels that the long term affect of this legislation will impact tobacco addictions and save lives of Prairie Village children.

Eric Mikkelson made the following motion, which was seconded by Jori Nelson and passed by a vote of 9 to 1 with Mr. Runion voting in opposition.

**MOVE THE GOVERNING BODY ADOPT ORDINANCE 2346
AMENDING ORDINANCE NO. 2339 WHICH INCORPORATED BY
REFERENCE THE "UNIFORM PUBLIC OFFENSE CODE FOR KANSAS
CITIES" EDITION OF 2015, BY AMENDING SECTION TWO OF
ORDINANCE 2339 GOVERNING POSSESSION OF CIGARETTES,
LIQUID NICOTINE OR TOBACCO PRODUCTS BY PERSONS UNDER
THE AGE OF 18, PURCHASE OF CIGARETTES, LIQUID NICOTINE OR
TOBACCO PRODUCTS BY PERSONS UNDER THE AGE OF 21, AND
SELLING, GIVING OR FURNISHING CIGARETTES, LIQUID NICOTINE
OR TOBACCO PRODUCTS TO PERSONS UNDER THE AGE OF 21
COUNCIL ACTION REQUIRED
CONSENT AGENDA**

Discussion on Bidding of Solid Waste Services and Glass Recycling Alternate

At the February 16th meeting of the Council Committee of the Whole, Wes Jordan presented history on the city's solid waste program and costs over the past five years and requested input from the committee on its desire to go out to bid for solid waste services as the current contract with Waste Management expires at the end of the year.

Mr. Jordan reviewed the answers received by the interested contractors that indicate that they can provide the services levels necessary for Prairie Village. References from other cities were given. Each felt they could offer a competitive bid and reviewed how they handle customer complaints. Mr. Jordan noted that representatives from three of the companies were present to answer any additional questions. He added that he also received a call from Honey Creek Disposal Service out of Lawrence expressing an interest in bidding to provide services to Prairie Village.

Mr. Jordan stated the City Council has two options, either to go out to bid for solid waste services or to renegotiate its contract with Waste Management. The last time the service was bid was in 2002.

Jori Nelson asked what the costs would be for the provision of trash receptacles. Mr. Jordan responded those costs would be covered in the bids received as an operational

cost. Each has indicated that they can provide these. The bid will also specify that residents have the option for a smaller 35 gallon container.

Brooke Morehead asked if staff had the necessary criteria to prepare the bid documents. Mr. Jordan responded that staff needs to know if the Council wants to make any changes in the service levels required. He added most of the calls received are related to yard waste and allowing the same number of bags each month will help address many of those. He also feels residents need to have the option for smaller containers.

Ted Odell expressed concern with the amount of staff time that would be involved in a transition. Mr. Jordan replied there will be a significant amount of coordination involved if a change is made. Staff has talked about this and the solid waste account includes funds for administration that could be used to cover the cost of hiring a temporary staff person to coordinate the transition.

Dan Runion asked what the term of the contract would be and suggested that possibly "most favored nation clause" language could be included that would require the bidder to offer comparable prices to those offered to other cities. Mr. Jordan replied the length of term is a decision of the Council and that staff is recommending an initial five year term.

Eric Mikkelson noted that since this discussion began he has also received comments from residents who are very supportive of the current provider. He stated that once the bids are received the City Council in their review could factor in the transition costs. Mr. Mikkelson stated he would like to hear comments from the providers present.

Council President Brooke Morehead invited the contractors present to address the Council.

Hank Potts with Republic Services/Allied Waste acknowledged the transition could be an issue and suggested that in the bid document the contractor is asked to outline their transition plan if awarded the contract. The process will need to involve time and education for the residents. He stated there are three major manufacturers of trash containers with a minimal difference in cost. The RFP can address any number of conditions.

Ted Odell asked what landfill they used and its life expectancy. Mr. Potts responded they use Sugar Creek with a life expectancy estimate of 50 years.

Terrence Gallagher asked if his company would accept a penalty clause for missed pick-ups. Mr. Potts replied that such a clause is customary.

Mayor Wassmer asked if they would be able to offer glass recycling. Mr. Potts reviewed the problems with glass recycling and noted the limited return for recycled glass.

Ashley stated she is sensitive to staff time; however, she feels the Council needs to go out to bid to be honest and to make sure we're doing what is right for our residents.

Andy Barton with WCA/Town & Country noted that pick up days can be specified in the RFP to ensure that the residents don't have a change in pick-up dates. He agreed with Mrs. Weaver that after 12 years, it is time to investigate the options available. He stated that the more time available to address the transition in service, the more successful it will be. In the past they have partnered with Ripple Glass on recycling. He does not know if curbside glass recycling would be cost effective. Mr. Barton stated WCA has operations in ten states with 16 municipalities. The Landfill they use is in Sedalia with over a 20 year life span. They also have two transfer stations for the repackaging of trash. Mayor Wassmer asked about the difference between diesel trucks and natural gas trucks. Mr. Barton responded he wasn't sure of the differences.

Mr. Jordan stated that glass recycling would be kept as a separate bid.

Jon Blessings with Waste Management stated their pilot glass recycling program will begin next month. Their trucks are compressed natural gas and the Johnson County Landfill's life expectancy is 2043.

Sheila Myers confirmed that if the city does go out to bid, that is not saying that Waste Management will not continue as the city's provider. Mr. Jordan replied the City Council will review the bids, low bid does not have to be accepted, and quality of services can be factored in the decision.

Jori Nelson moved the city council direct staff to prepare bid documents for the bidding of solid waste services for the City to enable to Council to find the best option for its residents. The motion was seconded by Ashley Weaver and passed by a vote of 9 to 1 with Mr. Odell voting in opposition.

COU2016-10 Consider Contract for 2016 Concrete Repair Program

Keith Bredehoeft stated on February 19, 2016, the City Clerk opened bids for the 2016 Concrete Repair Program. The following seven bids were received:

| | |
|-------------------------------|----------------|
| O'Donnell & Sons | \$ 694,665.00 |
| Kansas Heavy | \$ 707,657.05 |
| Phoenix Concrete | \$ 740,543.09 |
| Miles Excavating | \$ 834,216.39 |
| JM Fahey | \$ 941,307.75 |
| Freeman Concrete Construction | \$1,060,712.63 |
| Amino Brothers | \$1,071,518.40 |
| Engineer's Estimate | \$ 728,028.05 |

This program consists of repairs to deteriorated concrete sidewalk, curb and ADA ramps. The primary location of work for 2016 is the City's Maintenance District #31. City staff reviewed the bids for accuracy and found no errors. Mr. Bredehoeft noted that although O'Donnell has not done this program previously, they have completed several projects in the City and staff feels they will do an excellent job. The primary area for this project is area #31 which is generally between Belinder and Mission Road from 71st

Street to 75th Street. Funding is available for this program in the Capital Infrastructure Program Project CONC2016.

Sheila Myers made the following motion, which was seconded by Ted Odell and passed unanimously:

MOVE THE CITY COUNCIL AUTHORIZE THE MAYOR TO EXECUTE THE CONSTRUCTION CONTRACT WITH O'DONNELL & SONS CONSTRUCTION COMPANY, INC. FOR PROJECT CONC2016: 2016 CONCRETE REPAIR PROGRAM IN THE AMOUNT OF \$690,000

**COUNCIL ACTION TAKEN
03/07/2016**

Presentation and discussion on 2017 Exterior Grant Program

Jori Nelson presented information on the origin and history of the Exterior Grant Program which began in 2007 as an initiative of former Councilman Michael Kelly. The program was revised in 2010 extending the identified areas eligible to participate in the program. The original area covered 1.1 square miles of Prairie Village. The current area covers 1.69 square miles. Ms. Nelson noted that 75% of Prairie Village is not eligible for this program.

Ms Nelson stated she has the following issues with the current program:

- It is subsidizing homes with appraised values over \$200,000 including one recipient in 2015 with a home appraised value of \$406,000.
- The program is not being used in the manner which was intended and approved.
- In the last three years, only 2 of 73 recipients were directly related to a documented codes violation.
- The March 1 application date doesn't serve code violations occurring March 2 through January 1st.
- Those receiving code violations often can't afford the \$5,000 minimum required expenditure.
- The program includes new construction.
- The program excludes 75% of the taxpaying residents.
- The designated "areas" are arbitrary.

Ms. Nelson provided the following analysis of the 2015 program:

| Area | # of Grants | Ave. Home Value | Ward |
|------|-------------|-------------------------------------|--------------------------------|
| 1 | 4 | \$204,275 | Ward 2 |
| 2 | 8 | \$150,737 \$139,000 \$185,600 | Total Area Ward 2 Ward 4 |
| 3 | 13 | \$181,484 \$216,328 | Total area Ward 3 |

| | | | | |
|--|--|-----------|--------|--|
| | | \$140,716 | Ward 6 | |
|--|--|-----------|--------|--|

Looks like the table row continued onto the page...may need to check spacing.

Ms. Nelson stated that she would like to see grant eligibility opened up to the entire city and based on a property's appraised value. She presented the following data on average appraised values of past grant recipients:

| | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 |
|---------------|--------|--------|--------|--------|--------|--------|
| Area 1 | \$144k | \$162k | \$177k | \$167k | \$177k | \$204k |
| Area 2 | \$191k | \$139k | \$148k | \$188k | \$133k | \$151k |
| Area 3 | \$124K | \$154k | \$158k | \$129k | \$161k | \$181k |

Ms. Nelson reported that as of today 11 grant applications have been received for the 2016 program with an averaged appraised value of \$182,000 (highest \$220,000) for a total of \$21,000 in grant funds.

Ms. Nelson stated she would like to Council to consider the following changes for the 2017 Exterior Grant Program:

- All Prairie Village residents are eligible for grant money as long as they meet the agreed upon criteria.
- A Johnson County Appraisal accompanies the application and would not exceed \$175k appraised value. (She noted under this criteria 3,769 homes would qualify)
- Offer the program on a twice a year basis (March and June) with \$25,000 for each application deadline in order to address codes violations in a more timely manner not to exceed \$50k.
- Improvements would be to the front of the house with the exception being exterior painting of the house.
- Includes only existing homes and structures.
- Reduce the resident's minimum cost from \$5,000 to \$2,500 so that code violations are more likely to be addressed.

Ms. Nelson stated increased home value is increased home value. It should not be limited to arbitrary boundaries established five years ago.

Ted Odell thanked Ms. Nelson for the information presented; however, since the information was not distributed prior to the meeting, he would like to see discussion on this issue be continued to allow council members time to review the information in detail. He stated the program is not designed to address code violations, but to provide an incentive for residents in areas where there are code violations to make improvements to their property.

Sheila Myers asked what the grant funds on the \$406,000 property were used for. Ms. Nelson responded they were used for a new driveway. Mrs. Myers asked how the suggested criteria for appraised value were derived. Ms. Nelson it was selected to address residents who probably needed more support and assistance to make improvements to their property. It is an arbitrary number for discussion purposes.

Dan Runion asked if information was available on the impact of the grants to appraised property values. Mr. Jordan replied the correlation between the improvements and appraised values has never been determined. He noted that due to the many factors involved in an appraisal, there may not be a direct correlation. Mr. Jordan also added that the normal cost to address a code violation is less than \$5000. Mr. Runion expressed concern that this may be viewed as a reward for having a code violation.

Eric Mikkelson echoed Mr. Runion's concern with this being seen as a reward. He stated this is a good program and thanked Mr. Odell for his ongoing support and commitment to the program. He also thanked Ms. Nelson for her analysis and pointing out possible ways to improve the program. He noted that he recently received an e-mail from a single mother constituent of his that needs assistance in making home improvements who applied for a 2016 grant and was told that she was not eligible because her home was located one block outside of the identified area. He cannot find a rational explanation as to why a neighbor is eligible and she is not.

Wes Jordan clarified the current minimum/maximum numbers for grant reimbursement at 20%.

Minimum Project Cost = \$5,000 (20% grant award would be \$1,000 to the applicant) -
Note: Councilmember Nelson recommended lowering the minimum project cost amount to \$2,500 (20% grant would be \$500)

Maximum Project Cost = \$12,500 (20% grant award would be \$2,500 to the applicant)

Terrance Gallagher asked if the appraisal numbers were from 2015 or 2016. Ms. Nelson replied they were 2015 numbers. Mr. Gallagher stated he would like see the numbers based on 2016 appraisals.

Committee members requested that Ms. Nelson send them the information she presented for further review and discussion at a later date.

Council President Brooke Morehead stated this item will be added to a future committee agenda.

EXECUTIVE SESSION

Sheila Myers moved pursuant to KSA 75-4319 (b) (6) that the Governing Body, recess into Executive Session in the Multi-Purpose Room for a period not to exceed 15 minutes for the purpose of discussing possible acquisition of property. Present will be the Mayor, City Council, Assistant City Administrator and City Attorney. The motion was seconded by Jori Nelson and passed unanimously.

The Council Committee of the Whole meeting was reconvened at 7:22 p.m.

ADJOURNMENT

With no further action to come before the Council Committee of the Whole, Council President Brooke Morehead adjourned the meeting at 7:24 p.m.

Brooke Morehead
Council President



ADMINISTRATION

Committee of the Whole Meeting: February 16, 2016

Committee of the Whole Meeting: March 7, 2016

City Council Meeting: March 21, 2016

Ordinance No. 2346 - Amending the legal age to purchase tobacco products from 18 to 21

Background:

The Mayor and City Council identified the Tobacco 21 initiative as a 2016 priority for discussion. During the February 16, 2016 Committee of the Whole Meeting, the City Council voted to move forward with a proposed ordinance.

City Attorney Katie Logan has prepared Ordinance No. 2346. Included in the attachments is a clean version as well as redline version regarding the specific changes. The changes include the change of age from 18 to 21 as well as the inclusion of liquid nicotine.

Healthy KC, a partnership of the Greater Kansas City Chamber of Commerce, Blue Cross and Blue Shield of Kansas City, as well as health and wellness leaders, have been working with leaders across the metropolitan area on tobacco prevention and cessation. One of the recommendations from the task force is to increase the legal age for buying tobacco from 18 to 21. The ordinances only prohibit the retail businesses from selling tobacco to individuals under the age of 21. This includes cigarettes, electronic cigarettes, and tobacco products. The possession and consumption of tobacco by individuals between 18 to 20 years of age remains legal.

Ordinances to change the purchase age to 21 have been approved in Kansas City, Missouri and Kansas City, Kansas as well as Olathe, Gladstone, and Independence. Other cities in the area are currently in discussion. To date, Merriam, Mission, and Shawnee have declined interest. The Shawnee Mission School District Board of Education recently passed a resolution supporting this initiative and requested their constituent cities increase the legal age of purchasing tobacco to 21.

The City of Prairie Village currently has 8 cigarette retailers licensed with the state:

- Shell (Akas Inc.) – 3901 Tomahawk Road
- Hen House – 6950 Mission
- Hen House – 4050 W. 83rd Street
- Hy-Vee Food & Drug – 7620 State Line Road
- Hy-Vee Gas – 7720 State Line Road
- Shell (Raytown Petroleum LLC) – 8120 Mission Road
- Rimann Liquor – 3917 Prairie Lane
- Walgreens – 4016 W. 95th Street

CVS Pharmacy no longer sells tobacco products as part of a nationwide initiative in 2014.

Jessica Hembree, Program Officer with the Health Care Foundation of Kansas City and Scott Hall, Vice President for Strategic Initiatives with the Greater Kansas City Chamber of Commerce, made a presentation at the February 16, 2016 Committee of the Whole meeting. They will be present on Monday to answer any additional questions.

Attachments:

1. Draft Ordinance No. 2346
2. Redline Version of Ordinance No. 2346
3. Healthy KC Tobacco 21 Model Ordinance

4. Tobacco 21 Overview
5. Letter from Dr. Roy Jensen, Director at The University of Kansas Cancer Center
6. Shawnee Mission School District Statement of Position – Health and Wellbeing

Prepared By:

Nolan Sunderman

Assistant to the City Administrator

Date: February 29, 2016

ORDINANCE NO. 2346

AN ORDINANCE AMENDING ORDINANCE NO. 2339 WHICH INCORPORATED BY REFERENCE THE “UNIFORM PUBLIC OFFENSE CODE FOR KANSAS CITIES” EDITION OF 2015, BY AMENDING SECTION TWO OF ORDINANCE 2339 GOVERNING POSSESSION OF CIGARETTES, LIQUID NICOTINE OR TOBACCO PRODUCTS BY PERSONS UNDER THE AGE OF 18, PURCHASE OF CIGARETTES, LIQUID NICOTINE OR TOBACCO PRODUCTS BY PERSONS UNDER THE AGE OF 21, AND SELLING, GIVING OR FURNISHING CIGARETTES, LIQUID NICOTINE OR TOBACCO PRODUCTS TO PERSONS UNDER THE AGE OF 21

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

Section 1. SECTION TWO OF ORDINANCE NO. 2339 IS HEREBY AMENDED TO READ AS FOLLOWS:

SECTION TWO

Article 1 of Chapter XI, Section 11-102 of the Code of the City of Prairie Village is hereby amended to read as follows:

11.102. Article 5 of the Uniform Public Offense Code, edition of 2015 is hereby amended by deleting existing Sections 5.6 and 5.7 and by inserting in place thereof the following:

Section 5.6 Purchase or Possession of Cigarettes or Tobacco Products by a Minor

It shall be unlawful for any person:

- (a) Who is under 21 years of age to purchase or attempt to purchase cigarettes, electronic cigarettes, liquid nicotine or tobacco products; or
- (b) Who is under 18 years of age to possess or attempt to possess cigarettes, electronic cigarettes, liquid nicotine or tobacco products. (K.S.A. 79-3321:3322, as amended).
- (c) For the purposes of this Section, the terms are defined in K.S.A. 79-3301 and amendments thereto, except liquid nicotine which is the active ingredient of the tobacco plant (nicotine) in liquefied form suitable for the induction of nicotine, whether by nasal spray, ingestion, smoking or other means, into the human body.

Violation of this section shall be an ordinance cigarette or tobacco infraction for which the fine shall be a minimum of \$25 and a maximum of \$100. In addition, the judge may require a person charged with violating this section to appear in court and/or may require completion of a tobacco education program.”

Section 5.7 Selling, Giving or Furnishing Cigarettes or Tobacco Products to a Minor.

- (a) It shall be unlawful for any person, directly or indirectly, to:
- (1) Sell, furnish or distribute cigarettes, electronic cigarettes, liquid nicotine or tobacco products to any person under 21 years of age; or
 - (2) Buy any cigarettes, electronic cigarettes, liquid nicotine or tobacco products for any person under 21 years of age.
- (b) It shall be a defense to a prosecution under this section if:
- (1) The defendant is a licensed retail dealer, or employee thereof, or a person authorized by law to distribute samples;
 - (2) The defendant sold, furnished or distributed the cigarettes, electronic cigarettes, liquid nicotine or tobacco products to the person under 21 years of age with reasonable cause to believe the person was of legal age to purchase or receive cigarettes, electronic cigarettes, liquid nicotine or tobacco products; and
 - (3) To purchase or receive the cigarettes, electronic cigarettes, liquid nicotine or tobacco products, the person under 21 years of age exhibited to the defendant a driver's license, Kansas non driver's identification card or other official or apparently official document containing a photograph of the person and purporting to establish that the person was of legal age to purchase or receive cigarettes, electronic cigarettes, liquid nicotine or tobacco products.
 - (4) For purposes of this section the person who violates this section shall be the individual directly selling, furnishing or distributing the cigarettes, electronic cigarettes, or tobacco products to any person under 21 years of age or the retail dealer who has actual knowledge of such selling, furnishing or distributing by such individual or both.
- (c) It shall be a defense to a prosecution under this subsection if:
- (1) The defendant engages in the lawful sale, furnishing or distribution of cigarettes, electronic cigarettes, or tobacco products by mail; and
 - (2) The defendant sold, furnished or distributed the cigarettes, electronic cigarettes, or tobacco products to the person by mail only after the person had provided to the defendant an unsworn declaration, conforming to K.S.A. 53- 601 and amendments thereto, that the person was 21 or more years of age.
- (d) For the purposes of this Section, the terms are defined in K.S.A. 79-3301 and amendments thereto, except liquid nicotine which is the active ingredient of the tobacco plant (nicotine) in liquefied

form suitable for the induction of nicotine, whether by nasal spray, ingestion, smoking or other means, into the human body.

(e) As used in this section, “sale” means any transfer of title or possession or both, exchange, barter, distribution or gift of cigarettes or tobacco products, with or without consideration. (K.S.A. Supp. 79-3302, 79-3321:79-3322).

Violation of this section shall constitute a Class B violation punishable by a minimum fine of \$200.

Section 2. Except as provided herein, all other provisions of Ordinance No. 2339 shall remain in full force and effect.

Section 3. This ordinance shall take effect and be enforced from and after its passage, approval, and publication as provided by law.

PASSED AND APPROVED THIS ___ DAY OF _____, 2016

Laura Wassmer, Mayor

ATTEST:

APPROVED AS TO FORM:

Joyce Hagen Mundy, City Clerk

Catherine P. Logan, City Attorney

Section 5.6 Purchase or Possession of Cigarettes or Tobacco Products by a Minor

It shall be unlawful for any person:

- (a) Who is under 18-21 years of age to purchase or attempt to purchase cigarettes, electronic cigarettes-, liquid nicotine or tobacco products; or
- (b) Who is under 18 years of age to possess or attempt to possess cigarettes, electronic cigarettes-, liquid nicotine or tobacco products. (K.S.A. 79-3321:3322, as amended).
- (c) For the purposes of this Section, the terms are defined in K.S.A. 79-3301 and amendments thereto, except liquid nicotine which is the active ingredient of the tobacco plant (nicotine) in liquefied form suitable for the induction of nicotine, whether by nasal spray, ingestion, smoking or other means, into the human body.

Violation of this section shall be an ordinance cigarette or tobacco infraction for which the fine shall be a minimum of \$25 and a maximum of \$100. In addition, the judge may require the juvenile a person charged with violating this section to appear in court with a parent or legal guardian-and/or may require completion of a tobacco education program."

Section 5.7 Selling, Giving or Furnishing Cigarettes or Tobacco Products to a Minor.

- (a) It shall be unlawful for any person-, directly or indirectly, to:
 - (1) Sell, furnish or distribute cigarettes, electronic cigarettes, liquid nicotine or tobacco products to any person under 18-21 years of age; or
 - (2) Buy any cigarettes, electronic cigarettes, liquid nicotine or tobacco products for any person under 18-21 years of age.
- (b) It shall be a defense to a prosecution under this section if:
 - (1) The defendant is a licensed retail dealer, or employee thereof, or a person authorized by law to distribute samples; and
 - (2) The defendant sold, furnished or distributed the cigarettes, electronic cigarettes, liquid nicotine or tobacco products to the person under 18-21 years of age with reasonable cause to believe the person was of legal age to purchase or receive cigarettes, electronic cigarettes-, liquid nicotine or tobacco products; and
 - (3) To purchase or receive the cigarettes, electronic cigarettes, liquid nicotine or tobacco products, the person under 18-21 years of age exhibited to the defendant a driver's license, Kansas non driver's identification card or other official or apparently official document containing a photograph of the person and purporting to establish that the person was of legal age to purchase or receive cigarettes, electronic cigarettes, liquid nicotine or tobacco products.

(4) For purposes of this section the person who violates this section shall be the individual directly selling, furnishing or distributing the cigarettes, electronic cigarettes, or tobacco products to any person under 18-21 years of age or the retail dealer who has actual knowledge of such selling, furnishing or distributing by such individual or both.

(c) It shall be a defense to a prosecution under this subsection if:

(1) The defendant engages in the lawful sale, furnishing or distribution of cigarettes, electronic cigarettes, or tobacco products by mail; and

(2) The defendant sold, furnished or distributed the cigarettes, electronic cigarettes, or tobacco products to the person by mail only after the person had provided to the defendant an unsworn declaration, conforming to K.S.A. 53- 601 and amendments thereto, that the person was 18-21 or more years of age.

(d) For the purposes of this Section, the terms are defined in K.S.A. 79-3301 and amendments thereto, except liquid nicotine which is the active ingredient of the tobacco plant (nicotine) in liquefied form suitable for the induction of nicotine, whether by nasal spray, ingestion, smoking or other means, into the human body.

(e) As used in this section, “sale-” means any transfer of title or possession or both, exchange, barter, distribution or gift of cigarettes or tobacco products, with or without consideration. (K.S.A. Supp. 79-3302, 79-3321:79-3322)-.

Violation of this section shall constitute a Class B violation punishable by a minimum fine of \$200.



Discussion of Tobacco 21 Initiative

Background:

The Mayor and City Council identified the Tobacco 21 initiative as a 2016 priority for discussion.

Healthy KC, a partnership of the Greater Kansas City Chamber of Commerce, Blue Cross and Blue Shield of Kansas City, as well as health and wellness leaders, have been working with leaders across the metropolitan area on tobacco prevention and cessation. One of the recommendations from the task force is to increase the legal age for buying tobacco from 18 to 21. The ordinances only prohibit the retail businesses from selling tobacco to individuals under the age of 21. This includes cigarettes, electronic cigarettes, and tobacco products. The possession and consumption of tobacco by individuals between 18 to 20 years of age remains legal.

Ordinances to change the purchase age to 21 have been approved in Kansas City, Missouri and Kansas City, Kansas as well as Olathe, Gladstone, and Independence. Other cities in the area are currently in discussion. To date, Merriam, Mission, and Shawnee have declined interest. The Shawnee Mission School District Board of Education recently passed a resolution supporting this initiative and requested their constituent cities increase the legal age of purchasing tobacco to 21.

The City of Prairie Village currently has 8 cigarette retailers licensed with the state:

- Shell (Akas Inc.) – 3901 Tomahawk Road
- Hen House – 6950 Mission
- Hen House – 4050 W. 83rd Street
- Hy-Vee Food & Drug – 7620 State Line Road
- Hy-Vee Gas – 7720 State Line Road
- Shell (Raytown Petroleum LLC) – 8120 Mission Road
- Rimann Liquor – 3917 Prairie Lane
- Walgreens – 4016 W. 95th Street

CVS Pharmacy no longer sells tobacco products as part of a nationwide initiative in 2014.

Jessica Hembree, Program Officer with the Health Care Foundation of Kansas City and Scott Hall, Vice President for Strategic Initiatives with the Greater Kansas City Chamber of Commerce, will be present on Tuesday and make a presentation.

Attachments:

1. Healthy KC Tobacco 21 Model Ordinance
2. Tobacco 21 Overview
3. Letter from Dr. Roy Jensen, Director at The University of Kansas Cancer Center
4. Shawnee Mission School District Statement of Position – Health and Wellbeing

Prepared By:

Nolan Sunderman
Assistant to the City Administrator
Date: February 8, 2016

I. Findings of Fact and Purpose

- a. [County/municipality] recognizes that the use of tobacco products has devastating health and economic consequences.
- b. Tobacco use is the foremost preventable cause of premature death in America.¹ It causes half a million deaths annually² and has been responsible for 20.8 million premature deaths in the U.S. over the past 50 years since the first Surgeon General's report on smoking in 1964.³
- c. This leads to more than \$300 billion in health care and lost worker productivity costs each year.⁴
- d. [County/municipality] further recognizes that young people are particularly susceptible to the addictive properties of tobacco products, and are particularly likely to become lifelong users.
- e. An estimated 5.6 million youth aged 0 to 17 are projected to die prematurely from a tobacco-related illness if prevalence rates do not change.⁵
- f. National data show that 95 percent of adult smokers begin smoking before they turn 21. The ages of 18 to 21 are a critical period when many smokers move from experimental smoking to regular, daily use.⁶
- g. Young minds are particularly susceptible to the addictive properties of nicotine.⁷ Tobacco industry documents show that those who start smoking by the age of 18 are almost twice as likely to become lifetime smokers as those who start after they turn 21.⁸
- h. Electronic smoking device use among minors has recently tripled.⁹
- i. In 2015, the Institute of Medicine concluded that raising the minimum legal sales age for tobacco products nationwide will reduce tobacco initiation, particularly among adolescents aged 15 to 17, improve health across the lifespan, and save lives; and that

Findings:

The purpose of including findings in a tobacco MLSA 21 ordinance is to clearly identify the problems to be addressed with the policy.

Findings can provide guidance to not only the policy drafters and decision makers, but the readers of the policy as well.

Common findings associated with a comprehensive tobacco MLSA policy will identify health concerns and other problems related to use and/or access to tobacco.

Findings specific to your jurisdiction, such as use rates among local teens and young adults, will provide further rationale for your ordinance.

Electronic Smoking Devices:

This finding supports the inclusion of electronic smoking devices in the sales restriction.

raising the minimum legal sales age for tobacco products nationwide to 21 would, over time, lead to a 12 percent decrease in smoking prevalence.¹⁰

- j. The Institute of Medicine also predicts that raising the minimum legal sales age for tobacco products nationwide to 21 would result in 223,000 fewer premature deaths, 50,000 fewer deaths from lung cancer, and 4.2 million fewer years of life lost for those born between 2000 and 2019, and would result in near immediate reductions in preterm birth, low birth weight, and sudden infant death syndrome.¹¹
- k. A growing number of communities, including the state of Hawaii, have enacted MLSA 21 laws to further restrict access to tobacco.¹²
- l. Three-quarters of adults favor raising the MLSA for tobacco products to 21, including seven in ten smokers.¹³
- m. The financial impact of tobacco MLSA 21 ordinances on retailers is likely to be minimal, decreasing tobacco sales by only 2%.¹⁴
- n. Raising the minimum age to purchase tobacco products is consistent with raising the legal drinking age to 21, which led to reduced alcohol use and dependence among youth, and contributed to the decline in drunk driving fatalities.¹⁵
- o. [County/municipality] adopts the following tobacco MLSA 21 ordinance to reduce tobacco use by keeping tobacco products out of the hands of young people.

Retail impact:

Tobacco retailers may oppose a tobacco MLSA 21 ordinance out of concern that they may lose business. This finding addresses that concern.

Legal drinking age:

Raising the legal drinking age to 21 has had significant public health benefits. Raising the tobacco MLSA to 21 may have similar benefits.

II. Jurisdiction

Pursuant to [provide applicable citation], this ordinance applies throughout [describe area subject to regulation].

Jurisdiction:

Some ordinances include a description of where the regulations that follow will apply.

This type of provision can be particularly important when one type of local government (such as a county) has the authority to enforce its regulation within another unit of government (such as a city or village).

III. Definitions

As used in this ordinance:

Definitions:

A thorough definitions section explains the language and wording used in an ordinance and also helps ensure the language is consistent throughout the entire document. A well-thought-out definition section can help reduce ambiguity and confusion. For example, defining “tobacco products” is important so those responsible for enforcing the policy know what products are included. This is critical because the tobacco industry is developing new ways to deliver nicotine to users.

Before writing a definitions section, you need to determine to what extent your county or municipality has the power to define terms. It is also important to see if any of these terms are already defined in other local authority. If one or more of these terms are defined differently, you might consider using an alternative term to avoid confusion.

- a. **“Distribute”** means any device furnish, give, provide, or to attempt to do so, whether gratuitously or for any type of compensation.
- b. **“Distributor”** means a person who distributes a tobacco product.

“Distribute” and **“distributor”** are common terms in local ordinances, and may already be defined elsewhere. If so, and if they mean something different than what you intend, consider using other terms instead to avoid confusion.

used to deliver aerosolized or vaporized nicotine to the person inhaling from the device, including, but not limited to, an e-cigarette, e-cigar, e-pipe, vape pen or e-hookah. Electronic smoking device includes any component, part, or accessory of such a device, whether or not sold separately, and includes any substance intended to be aerosolized or vaporized during the use of the device.

Electronic smoking device does not include drugs, devices, or combination products authorized for sale by the U.S. Food and Drug Administration, as those terms are defined in the Federal Food, Drug and Cosmetic Act.

Electronic smoking devices:

Electronic smoking devices should be defined because they are included in this ordinance’s age-based sales restriction.

- d. **“Person”** means any natural person, partnership, joint venture, society, club, trustee, trust, association, organization, or corporation, or any officer, agent, employee, factor, or any other personal representative thereof, in any capacity.
- e. **“Recipient”** means any person who obtains or attempts to obtain a tobacco product.
- f. **“Tobacco product”** means any product that is made from or derived from tobacco, and is intended for human consumption or is likely to be consumed, whether smoked, heated, chewed, absorbed, dissolved, inhaled or ingested by any other means, including, but not limited to, a cigarette, a cigar, pipe tobacco, chewing tobacco, snuff, snus, or an electronic smoking device. The term includes any component or accessory used in the consumption of a tobacco product, such as filters, rolling papers, pipes, or liquids used in electronic smoking devices. Tobacco product does not include drugs, devices, or combination products authorized for sale by the U.S. Food and Drug Administration, as those terms are defined in the Federal Food, Drug and Cosmetic Act.

Tobacco product:

A strong tobacco control policy must contain a thorough “tobacco product” definition.

First, a comprehensive definition(s) will cover all current, known tobacco products (as well as pipes, rolling papers, electronic smoking devices, and other “related” devices), and will be likely to cover future products as well.

Second, unless cessation products are specifically exempted, the sale of those products to persons under 21 may also be prohibited.

Finally, providing a comprehensive definition of “tobacco products” can aid in compliance and enforcement by clearly specifying what exactly is being prohibited.

IV. Minimum Legal Sales Age for Tobacco Products

The sale or distribution of any tobacco product to a person under the age of 21 is prohibited.

Possession, Use, and Purchase by Underage Individuals:

Prohibiting the possession, use, and purchase (PUP) of tobacco products by underage persons is a part of many ordinances. However, this ordinance does not include restrictions on the possession or use of tobacco products by those under 21.

PUP provisions may be unlikely to reduce youth smoking significantly. Also, they may undermine other conventional avenues of youth discipline, divert attention from more effective tobacco control strategies, and relieve the tobacco industry of responsibility for its marketing practices.

If a PUP provision seems politically necessary, it could be worded as follows:

The purchase or attempted purchase of any tobacco product by or on behalf of a person under the age of 21 is prohibited.

It may also be possible to include non-monetary consequences in the penalties section:

Individuals under the age of 21 who unlawfully purchase or attempt to purchase tobacco products may be subject to tobacco-related education classes, diversion programs, community service, or other penalties that [County/municipality] believes will be appropriate and effective.

For a discussion of the merits of PUP laws, see Gary Giovino & Melanie Wakefield, *Teen Penalties for Tobacco Possession, Use and Purchase: Evidence and Issues*, 12 TOBACCO CONTROL 6 (2003), http://tobaccocontrol.bmj.com/content/12/suppl_1/i6.full.

V. Age Verification

Before distributing any tobacco product, the distributor shall verify that the recipient is at least 21 years of age.

Each distributor shall examine the recipient's government-issued photographic identification. No such verification is required for a person over the age of 30. That a recipient appeared to be 30 years of age or older shall not constitute a defense to a violation of this section.

Age Verification:

Federal regulations require distributors to "card" cigarette and smokeless tobacco recipients who look younger than 27 years old. 21 C.F.R. § 1140.14(b)(2). However, state and local governments generally can adopt more restrictive tobacco regulations without being preempted by federal law. 21 U.S.C.A. § 387p.

Because this ordinance raises the minimum legal sale age for tobacco products, it makes sense to make a corresponding increase to the minimum carding age. For example, 30 years old is a simple, intuitive visual age line.

VI. Signage

No person shall sell or permit the sale of tobacco products in [county/municipality] unless a clearly visible notice is posted at the location where tobacco products are available for purchase. The [County/municipality] shall provide this notice, which shall state “No person under the age of 21 may purchase tobacco products,” legibly printed in letters at least one-half inch high.

Signage:

Requiring tobacco sellers to post a standardized notice raises awareness of the age restriction (both among distributors and the general public) and helps promote compliance.

If a state or local authority has an existing age-related signage requirement, mirroring that standard may be preferable.

VII. Enforcement

[County/municipality] or its authorized designee may conduct random, unannounced inspections at locations where tobacco products are distributed to test and ensure compliance with this ordinance.

Enforcement:

An enforcement section empowers your county or municipality to inspect distributors for compliance.

Synar Inspections

Your county or municipality can use Synar funds for these inspections. Although the Synar Amendment only requires a MLSA of 18, inspection funds are still available through Synar to jurisdictions that raise their MLSA to 21. Also, if e-cigarettes are included in your state’s definition of “tobacco product,” Synar funds are available for inspections of e-cigarette distributors. However, be aware that if 18- to 20-year-old decoys are used in unannounced Synar inspections and the state’s sales rate exceeded 20%, this could trigger Synar penalties.

VIII. Penalties

- a. **In General.** Any person found to have violated this ordinance shall be subject to a fine of no less than \$300 for the first offense, no less than \$600 for the second offense, and no less than \$1000 for each offense thereafter. Each violation, and every day in which a violation occurs, shall constitute a separate violation.
- b. **Licensees.** In addition to any other penalty, a licensee who violates any provision of this ordinance may be subject to license suspension, revocation, and/or non-renewal.

Penalties:

A penalties section specifies the consequences for violations.

Local governments often have the ability to impose criminal and/or civil penalties for ordinance violations.

When deciding what penalty to attach to these violations, you may want to review the authority for penalties provided for similar offenses in your county or municipality.

Licensing Consequences:

When distributors are licensed by the county or other municipality, the threat of license suspension revocation may be a more effective deterrent than a fine or other related sanction. Regardless of whether tobacco retailer licensing exists in your jurisdiction, penalties can be imposed against any general business license.

See the Consortium's publication [*License to Kill?: Tobacco Retailer Licensing as an Effective Enforcement Tool*](#) for further discussion of tobacco license penalties.

- c. **Criminal Prosecution.** Nothing in this section shall prohibit the [County/municipality] from initiating criminal proceedings for any alleged violation of this ordinance.

IX. Exceptions and Defenses

- a. The penalties in this ordinance do not apply to a person younger than 21 years old who purchases or attempts to purchase tobacco products while under the direct supervision of [County/municipality] staff for training, education, research, or enforcement purposes.

Employment Exemption:

This exemption clarifies that underage employees can sell or otherwise handle tobacco products. Because young retail clerks are more likely to sell tobacco to underage buyers, an ordinance may want to omit this exception. For an argument against allowing retail clerks under the age of 21 to sell tobacco, see Joseph DiFranza & Mardia Coleman, *Sources of Tobacco for Youths in Communities with Strong Enforcement of Youth Access Laws*, 10 TOBACCO CONTROL 323 (2001), <http://tobaccocontrol.bmj.com/content/10/4/323.full>.

- b. Nothing in this ordinance prohibits an underage person from handling tobacco products in the course of lawful employment.
- c. It shall be an affirmative defense to a violation of this ordinance for a person to have reasonably relied on proof of age as described by state law.

X. Severability

If any provision of this ordinance, or the application thereof to any person or circumstance, is held invalid, such invalidity shall not affect any other provision of this ordinance that can be given effect without the invalid provision or application. Each invalid provision or application of this ordinance is severable.

Severability Clause:

A severability clause improves the likelihood that even if some part of this ordinance is found invalid, the rest will stand.

XI. Effective Date

This ordinance shall take effect on [effective date].

Last updated: December 2015

Effective date:

A county or municipality should select an effective date that will provide sufficient time to educate distributors and the public of these new restrictions.

Notes

¹ Ctrs. for Disease Control & Prevention, *Current Cigarette Smoking Among Adults, United States, 2011*, 61(44) MORBIDITY & MORTALITY WLY. REP. 889, 889 (2012), <http://www.cdc.gov/mmwr/pdf/wk/mm6144.pdf>.

² U.S. DEP'T OF HEALTH & HUMAN SERVS., *THE HEALTH CONSEQUENCES OF SMOKING – 50 YEARS OF PROGRESS: A REPORT OF THE SURGEON GENERAL*, ch. 12 p. 659 (2014), <http://www.surgeongeneral.gov/library/reports/50-years-of-progress/index.html>.

³ *Id.*

⁴ *Id.* at 679; see also Xin Xu et al., *Annual Health Care Spending Attributable to Cigarette Smoking: An Update*, 48 AM. J PREV. MED. (2015).

⁵ U.S. DEP'T OF HEALTH & HUMAN SERVS., *supra* note 2.

⁶ Calculated by the Campaign for Tobacco-Free Kids based on data in the National Survey on Drug Use and Health (2013), <http://www.samhsa.gov/data/sites/default/files/NSDUHresultsPDFWHTML2013/Web/NSDUHresults2013.pdf>.

⁷ Angelica M. Morales et al., *Cigarette Exposure, Dependence, and Craving Are Related to Insula Thickness in Young Adult Smokers*, 39 NEUROPSYCHOPHARMACOLOGY 1816 (2014), <http://www.nature.com/npp/journal/v39/n8/full/npp201448a.html>.

⁸ *Estimated Change in Industry Trend Following Federal Excise Tax Increase*, LEGACY TOBACCO DOCUMENTS LIBRARY (Sept. 10, 1982), at 2, <https://industrydocuments.library.ucsf.edu/tobacco/docs/#id=nnnw0084>.

⁹ *E-cigarette Use Triples Among Middle and High School Students in Just One Year*, CTRS. FOR DISEASE CONTROL AND PREVENTION (Apr. 16, 2015), <http://www.cdc.gov/media/releases/2015/p0416-e-cigarette-use.html>.

¹⁰ INST. OF MED., *Public Health Implications of Raising the Minimum Age of Legal Access to Tobacco Products* (2015), <http://iom.nationalacademies.org/Reports/2015/TobaccoMinimumAgeReport.aspx>.

¹¹ *Id.*

¹² *Tobacco 21 Cities*, TOBACCO21.ORG (Apr. 2015), <http://tobacco21.org/state-by-state>; HAW. REV. STAT. § 709-908 (2015) (effective Jan. 1, 2016).

¹³ Brian A. King et al., *Attitudes Toward Raising the Minimum Age of Sale for Tobacco Among U.S. Adults*, 49 (4) AM. J. PREVENTATIVE MED. 583, 583 (2015).

¹⁴ See Jonathan P. Winickoff et al., *Retail Impact of Raising Tobacco Sales Age to Twenty-One*, 104 AM. J. PUB. HEALTH 18, 18 (2014).

¹⁵ William DeJong & Jason Blanchette, *Case Closed: Research Evidence on the Positive Public Health Impact of the Age 21 Minimum Legal Drinking Age in the United States*, J. STUD. ALCOHOL DRUGS 108 (SUPP. 17 2014).

TOBACCO ~~eighteen~~ twenty-one

Reducing Youth Smoking in Johnson and Wyandotte Counties

The Problem:

- » More than 95% of long-term smokers started before age of 21.
- » Adolescent brains are still developing and are uniquely sensitive to nicotine addiction.
- » While youth smoking cigarettes is slowly declining, e-cigarette use among youth has more than doubled in recent years.
- » E-cigarettes contain nicotine, toxic chemicals and carcinogens and are currently available to 18-year-olds.
- » On average, area youth try cigarettes for the first time at age 12.
- » Smokers cost up to 40% more than non-smokers in health care costs.
- » For private businesses, smoking employees have an excess cost of, on average, \$5,816 per year.
- » The primary place that underage smokers get tobacco is from their 18 to 20 year old peers.
- » Over 80% of high school seniors are older than 18 when they graduate.

The Solution: Increasing the minimum legal age of sale for tobacco products to 21.

Our Proposal:

1. The sale of tobacco products, e-cigarettes, vapor products and paraphernalia should be restricted to those 21 and over.

The Health Impact:

- » Increasing the minimum legal sale age of tobacco to 21 can reduce overall smoking rates by 12%.
- » A March, 2015 Institute of Medicine study estimated that Tobacco 21 would reduce smoking among 15-17 year old by 25% and among 18-20 year olds by 15%
- » Fewer smokers before 18 lead to fewer long-term smokers. In time, smoking prevalence will be significantly lower in our schools, workforce, and community.

Supporters:

- » 75% of U.S. adults, including 70% of current smokers.
- » 118 cities in eight states and the entire state of Hawaii have passed Tobacco 21.
- » Countless health organizations throughout the KC metro area.

How do we do this?

Through simple changes to local ordinances. Sample ordinances can be provided for reference and guidance.

Dear Mayor Wassmer,

In just eight months, The University of Kansas Cancer Center will submit its application to obtain Comprehensive Cancer Center designation from the National Cancer Institute (NCI). This level of designation is the highest honor a cancer center can achieve – just 45 cancer centers throughout the U.S. have received the award - and none are in our region.

In order for us to receive Comprehensive designation, KU Cancer Center must demonstrate that we are significantly improving the health of our communities. We must show that we are providing highly effective and wide-spanning outreach capabilities with dissemination into the general population.

And one of our biggest challenges is helping people to stop smoking.

Last year, cancer became the number one cause of death in Kansas, and lung cancer is the biggest culprit. More than 2,000 Kansans were diagnosed with lung cancer, one of the most preventable types of cancer, and most of these people will die for one reason alone: they smoked cigarettes.

The 'Healthy KC' initiative, launched by the Greater Kansas City Chamber of Commerce, has put forward a 'Tobacco 21' proposal that would raise the age of purchase for tobacco products, including e-cigarettes, from 18 to 21 years of age. By raising the age of tobacco purchase to 21, we can have a dramatic impact on access to cigarettes in our schools. This will, in turn, reduce the number of children that get addicted to cigarettes and, subsequently, reduce the burden of lung cancer as well as cancer of the mouth, lips, sinuses, larynx, pharynx, esophagus, stomach, pancreas, kidney, colon and bladder.

KU Cancer Center stands firmly behind efforts to reduce cancer in our region. Our Cancer Control & Population Health Research Program scientists have recently received significant funding from the NCI to conduct smoking cessation trials throughout the state. We know 31 percent of all cancers could be eradicated if people no longer smoked, and we strive to see a minimum of a 20 percent decrease in the use of tobacco over the next 15 years.

With your support of 'Tobacco 21,' we stand far better equipped to enhance our application for Comprehensive designation, which will allow us to continue to receive critical research funding to effectively prevent cancer as well as care for future cancer patients.

Thank you for helping save the lives of thousands of Kansans.

Roy A. Jensen, M.D.
Director
The University of Kansas Cancer Center
Kansas Masonic Cancer Research Institute
William R. Jewell, M.D. Distinguished Masonic Professor
3901 Rainbow Blvd
2017 Wahl Hall West
Mail Stop 1027
Kansas City, Kansas 66160-7312
Phone: (913) 588-2568
www.kucancercenter.org

THE UNIVERSITY OF KANSAS
CANCER CENTER

STATEMENT OF POSITION - HEALTH AND WELLBEING

The Shawnee Mission Board of Education believes all students, staff, parents and patrons should strive to maintain healthy lifestyles.

The Shawnee Mission Board of Education recognizes and appreciates recent actions taken by the governing bodies of Kansas City, Missouri, and Kansas City, Kansas, to increase the legal age for purchase of tobacco products, including e-cigarettes and smokeless tobacco, to age 21.

The Shawnee Mission Board of Education hereby encourages governing bodies of the fourteen Johnson County municipalities served by the Shawnee Mission School District to consider increasing the legal age for purchase of tobacco products, including e-cigarettes and smokeless tobacco, to age 21.

Adopted November 23, 2015

Shawnee Mission School Board

Sara Goodburn, President



PUBLIC WORKS DEPARTMENT

Council Committee Meeting Date: March 21, 2016

Council Meeting Date: March 21, 2016

COU2016-12 CONSIDER APPROVAL OF THE CONSTRUCTION CONTRACT FOR THE 2016 PAVING AND CARS PROGRAMS

RECOMMENDATION

Move to authorize the Mayor to sign the construction contract with O'Donnell and Sons Construction Company for the 2016 Paving and CARS Programs for \$2,900,000 and transferring \$55,400 from PAVP2016 to MIRD0004.

BACKGROUND

This project includes work on many streets throughout the City. It is funded by the 2016 Paving Program and the 2016 CARS Program. These streets will be rehabilitated and will include repair or replacement of the concrete curb/gutter and asphalt pavement.

Street Projects

- 64th Terrace (Hodges to Nall)
- 69th Terrace (Tomahawk to Roe)
- 69th Street (Roe to Fonticello)
- 70th Terrace (Nall to Reeds)
- 72nd Street (State Line to High) with sidewalk
- Howe Drive CDS (77th to End) with sidewalk
- Booth Drive (75th to 78th)
- Belinder Avenue (75th to Somerset)
- Dearborn Drive (79st to 81st)
- Dearborn Drive Circle (off of Dearborn)
- Dearborn Drive CDS (Dearborn to End)
- 82nd Terrace (Somerset to Roe)

On March 4, 2016, the City Clerk opened bids for the project. Four acceptable bids were received:

| | |
|-------------------------------|----------------|
| Amino Brothers | \$3,994,426.45 |
| McAnany Construction | \$3,221,854.11 |
| JM Fahey Construction Co | \$2,872,038.40 |
| O'Donnell & Sons Construction | \$2,867,325.65 |
| Engineer's Estimate | \$3,514,000.00 |

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

The contract will be awarded for \$2,900,000.

The 2016 CARS project has approximately \$114,524 in aesthetics which were bid as an alternate. Partial funding is available for the aesthetics in the 2016 CARS Program, the remaining \$55,400 in funding is proposed to be funded from the 2016 Paving Program.

FUNDING SOURCES

Funding is available as follows:

2016 Paving Project (PAVP2016) \$1,900,000

2016 CARS Project (MIRD0004) \$1,000,000

Recommend transfer \$55,400 from PAVP2016 to MIRD004 as follows:

2016 Paving Project (PAVP2016) \$1,844,600

2016 CARS Project (MIRD0004) \$1,055,400

RELATION TO VILLAGE VISION

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

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

TR1a. Provide sidewalks in new and existing areas to allow for continuous pedestrian movement around Prairie Village.

TR1b. Ensure that infrastructure improvements meet the needs of all transportation users.

ATTACHMENTS

1. Construction Agreement with O'Donnell and Sons Construction

PREPARED BY

Melissa Prenger, Senior Project Manager

March 16, 2016

CONSTRUCTION AGREEMENT

For

PROJECT:

**PAVP2016 - 2016 PAVING PROGRAM
MIRD0005 - 2016 CARS PROJECT**

BETWEEN

CITY OF PRAIRIE VILLAGE, KS

AND

**CONSTRUCTION CONTRACT
FOR
PROJECT**

**PROJECT PAVP2016- 2016 PAVING PROGRAM
PROJECT MIRD0005- 2016 CARS PROJECT**

**BETWEEN
THE CITY OF PRAIRIE VILLAGE, KANSAS
AND**

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 _____, hereinafter termed in this agreement, “**Contractor**”, for the construction and completion of Project 2016 PAVING AND CARS PROGRAM, (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 _____ DOLLARS (\$ _____) 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 Facia 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 affect that it is agreed that the right of the assignee in and to any moneys due or to become due to the Contractor shall be subject to all prior liens of all persons, firms and corporations for services rendered or materials supplied for the performance of the Work called for in this Contract.
- 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

(typed company name)

By: _____
(signed)

By: _____
(signed)

Laura Wassmer _____

(typed name)

Mayor _____

(typed title)

City of Prairie Village _____

(typed company name)

7700 Mission Road _____

(typed address)

Prairie Village, Kansas 66208 _____

(typed city, state, zip)

(typed telephone number)

(date of execution)

(date of execution)

SEAL

ATTEST:

APPROVED BY:

City Clerk, Joyce Hagen-Mundy

City Attorney, Catherine Logan

(If the Contract is not executed by the President of the Corporation, 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.)

PUBLIC INFRASTRUCTURE IMPROVEMENT AGREEMENT

THIS PUBLIC INFRASTRUCTURE IMPROVEMENT AGREEMENT (“**Agreement**”) is made and entered into this day of , 2016 (the “**Effective Date**”), by and between the **CITY OF PRAIRIE VILLAGE, KANSAS**, a municipal corporation duly organized under the laws of the State of Kansas (the “**City**”) and **VANTRUST REAL ESTATE, LLC**, a Delaware limited liability company (the “**Developer**”). Each of the City and Developer is herein called a “**Party**” and the City and Developer are collectively called the “**Parties**.”

RECITALS

A. The City and MB-18, LLC, a Kansas limited liability company (“**MB-18**”) entered into a Development Agreement dated December 21, 2015 (the “**Development Agreement**”) providing for the implementation of a redevelopment project plan for certain property owned by MB-18 which is the location of the former Meadowbrook Country Club, which includes, but is not limited to, the conveyance by MB-18 to the Johnson County Parks and Recreation District (“**JCPRD**”) of approximately 82 acres of the property for use as a public park, and certain public improvements related to the public park, all in conjunction with development of a senior living facility, a luxury apartment facility, a hotel facility, townhomes and single family residences by MB-18 and its permitted assigns within property to be retained by MB-18.

B. MB-18 and Developer are parties to a Development Agreement dated March 4, 2015, pursuant to which MB-18 engaged Developer to provide, among other services, development and construction management services to MB-18 in connection with the real property owned by MB-18.

C. Terms not otherwise defined herein shall have the meaning ascribed to such terms in the Development Agreement.

D. The Project includes the Street Improvements (as defined in Section 1(a) hereof) and the Stormwater Improvements (as defined in Section 1(b) hereof), including a public street, to be constructed on the Park Site, and stormwater improvements, including dredging and improvements to existing ponds on the Park Site, described in the Preliminary Park Project Budget attached as “**Exhibit C**” to the Development Agreement.

E. The Project also includes the Private Development Site Improvement Work to be completed by Developer on the Private Development Site.

F. The Parties desire to enter into this Agreement to consider engaging a single contractor to ensure that the Street Improvements, Stormwater Improvements, and the related aspects of the Private Development Site Improvement Work are completed as efficiently, timely and cost effectively as possible, and in accordance with completion dates (“**Milestone Deadlines**”) approved by the Public Works Director and the Developer for the activities (the “**Milestone Activities**”) set forth on Exhibit A and in order to prevent delays in the completion by Developer of the target units, square feet or sites for the Planned Neighborhood Units by the dates specified in the Development Agreement.

G. The Developer has proposed, and the Public Works Director of the City (“**Public Works Director**”) has approved Phelps Engineering, Inc. (“**Phelps**”) as a potential engineer for the City in connection with the Street Improvements and Stormwater Improvements, and the following entities as a potential single contractor for the Street Improvements, Stormwater Improvements and the Private Development Site Improvement Work: Emery Sapp & Sons, Inc., Kissick Construction Company, and Superior Bowen Asphalt Company (each an “**Infrastructure Contractor**”).

H. As of the Effective Date, the Parties anticipate the following calendar in connection with the matters relating to bidding by the Infrastructure Contractors:

- By April 13, 2016 - final bid packet approved by Public Works Director, including Milestone Deadlines, delivered to Infrastructure Contractors (prior this date 75% bid packets will have been delivered).
- April 18, 2016 - GO TIF Bonds offered for sale (the “**Bond Pricing**”) and sale approved by Governing Body of City (the “**Bond Pricing Date**”).
- April 21, 2016 - bid due date.
- April 29, 2016 - Public Works Director report and bid recommendation final .
- May 2, 2016 - City Council considers Public Works Director report and recommendation and may award bid to a single Infrastructure Contractor, subject to Closing.
- May 3, 2016 – Closing (the “**Closing Date**”).

AGREEMENT

NOW THEREFORE, in consideration of the foregoing facts and circumstances, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, City and Developer hereby agree as follows:

1. Street Improvements, Stormwater Improvements and Private Development Site Improvement Work. The following improvements are the subject of this Agreement:

- (a) all improvements for a public street on the Park Site, including, but not limited to, grading work, asphalt pavement, curb and gutter, sidewalk, street lights, drainage improvements, conduits, and landscaping (the “**Street Improvements**”);
- (b) stormwater management improvements on the Park Site, including, but not limited to, work on existing ponds located on the Park Site, in accordance with plans submitted by the City to the Johnson County Stormwater Management Advisory Council (“SMAC”) (the “**Stormwater Improvements**”) which the Parties anticipate will be funded in part with a matching grant from SMAC; and
- (c) the Private Development Site Improvement Work.

The preliminary design for the Street Improvements and the Private Development Site Improvement Work is shown on the Preliminary Development Plan for the Project approved by the City Planning Commission of the City on November 12, 2015.

2. Engineering. Prior to the Effective Date, Developer engaged Phelps to perform all duties of the engineer for the Private Development Site Improvement Work. In connection with such services

Phelps has also initiated and substantially advanced design of the Street Improvements and the Stormwater Improvements, including, but not limited to, the planning, analysis, final design and finalizing the construction documents for the Street Improvements and Stormwater Improvements, with input from the Public Works Director. Upon approval by the Governing Body of the City, and contingent upon Closing, the City may, by separate agreement, engage Phelps as engineer for the Street Improvements and Stormwater Improvements, accept the completed engineering services performed by Phelps, and accept Phelps' obligations as professional engineer for the Street Improvements and Stormwater Improvements. The City shall have no obligation to reimburse Phelps or the Developer for engineering services performed by Phelps in connection with the Street Improvements and Stormwater Improvements unless the City has engaged Phelps and the Closing occurs. If the Closing occurs by May 3, 2016, or such date thereafter as mutually agreed by the Parties, City agrees that the engineering services performed by Phelps in connection with the Street Improvements and Stormwater Improvements, as reasonably approved by the Public Works Director, are reimbursable from the TIF Bonds Proceeds. Developer will not be required to enter into any agreements for any work related to the Street Improvements and Stormwater Improvements. In the event that Phelps fails to provide the required services in a satisfactory or timely manner as required by such agreement, the City may select and engage an alternate engineer to complete the engineering services required for the Street Improvements and Stormwater Improvements.

3. Final Design and Milestone Deadlines. The Public Works Director and staff of the Public Works Department of the City have been, and will continue to, collaborate and consult with JCPRD, Phelps, and SMAC so that the final design and construction design documents for the Street Improvements and Stormwater Improvements, as approved by the Public Works Director (the “**Final Design**”), and Milestone Deadlines as approved by the Public Works Director and the Developer upon completion of Final Design, will be ready for final bid packages currently anticipated to be delivered to the Infrastructure Contractors April 13, 2016, so that bids can be received by the Developer and City by April 21, 2016. On or prior to April 13, 2016, the Public Works Director and the Developer may agree in writing to Milestone Deadlines different from those stated in Exhibit A, and such writing will be incorporated into this Agreement. This Agreement shall terminate if, on or before April 13, 2016, either the Public Works Director or the Developer delivers written notice to the other that it no longer agrees to the Milestone Deadlines set forth in Exhibit A.

4. Cooperation by Parties.

4.1. Prior to Closing, the Parties will coordinate, cooperate, and mutually consult with each other, JCPRD and SMAC, as to the following matters:

A. The preparation of a budget for the Street Improvements and Stormwater Improvements, and separately that portion of the Stormwater Improvements to be paid with SMAC funds;

B. The selection of contractors and other consultants as may be necessary for the planning, design, development, and construction of the Street Improvements and Stormwater Improvements;

C. The preparation by Phelps of all plans, specifications and drawings (and any amendments thereto) for the Street Improvements and Stormwater Improvements;

D. The preparation of construction drawings and related construction documents for the Street Improvements and Stormwater Improvements; and

E. The scheduling of regular meetings with Phelps as are appropriate to render periodic status updates on the progress of any planning work.

4.2. Upon approval of the Final Design by the Public Works Director, and of the Milestone Deadlines by the Developer and the Public Works Director, Developer will perform the following administrative services:

A. By April 21, 2016, or such date thereafter as may be mutually agreed by the Parties, Developer will obtain written bids from each of the Infrastructure Contractors to complete the Street Improvements, the Stormwater Improvements and separately that portion of the Stormwater Improvements to be paid with SMAC funds, and the related aspects of the Private Development Site Improvement Work. The parties acknowledge that the Street Improvements, Stormwater Improvements, and the related aspects of the Private Development Site Improvement Work will, among other things, require coordination of mass grading, removal of dredge material from three engineered ponds, relocation of topsoil, and other matters relating to earthwork, and the parties shall cooperate in determining the scope of, and performing, such earthwork. Developer will require each Infrastructure Contractor to specify a total bid, and separately specify the amounts bid for the Street Improvements, the Stormwater Improvements and separately that portion of the Stormwater Improvements to be paid with SMAC funds, and the related aspects of the Private Development Site Improvement Work. Developer will also require each Infrastructure Contractor to bid the Street Improvements and the Stormwater Improvements together as an alternative bid without the Private Development Site Improvement Work. Each bidder will be required to specify a separate bid price for all mass grading required for the Street Improvements, the Stormwater Improvements, and the related aspects of the Private Development Site Improvement Work, and to also separately allocate such price among the Street Improvements, the Stormwater Improvements, and the related aspects of the Private Development Site Improvement Work.

B. The bid documents for the Street Improvements and Stormwater Improvements will be approved by the Public Works Director, include the Milestone Deadlines, and be prepared per City requirements and will be bid on the basis of unit costs for specific items of work. City staff will review the bids. Developer and City staff will review bids, and if Developer and City staff agree on a recommendation for a single Infrastructure Contractor, subject to the City's rights under **Section 8.10**, and approval of the award of contract for the Street Improvements and Stormwater Improvements by the Governing Body, Developer and City will award the bids to that Infrastructure Contractor on May 2, 2016, or such date thereafter as mutually agreed by the Parties, provided that such awards shall be conditioned upon Closing by May 3, 2016, or such date thereafter as mutually agreed by the Parties.

C. If City staff and Developer fail to agree on a recommendation for a single Infrastructure Contractor by April 29, 2016, or the Governing Body fails to award the bids for the Street Improvements and Stormwater Improvements to a recommended single Infrastructure Contractor by May 2, 2016, then upon agreement by both the City and Developer, the bidding process may be repeated in accordance with **Section 4.2(A)**. Alternatively, the Developer and the Governing Body may award alternative bids for the Street Improvements, Stormwater Improvements and Private Developer Site Improvement Work to different Infrastructure Contractors, in which case the provisions of **Section 4.2(D)** relating to the City's

contract, the potential adjustment of Target Completion Dates, as defined in Exhibit B, coordination, reimbursement of Reimbursable Expenses and Developer's election to have its Infrastructure Contractor perform the mass grading, shall govern.

D. If there is no award of bid by the City or repeat of the bidding process as contemplated in **Section 4.2(C)**, the following additional provisions shall apply to this Agreement, but only if the Closing occurs on or before May 3, 2016 or such later date as agreed to by the Parties:

- i. Subject to Closing and the City's rights under **Section 8.1** to reject bids and to revise the scope of the Street Improvements and the Stormwater Improvements, the City will separately seek bids for the Street Improvements and the Stormwater Improvements and contract for the Street Improvements and the Stormwater Improvements, after Closing coordinate and manage the Street Improvements and the Stormwater Improvements, and use all commercially reasonable efforts to cause each to be completed in accordance with the Milestone Deadlines, and include in each contract for the Street Improvements and the Stormwater Improvements a liquidated damages provision whereby the contractor shall pay to the City liquidated damages, in an amount to be determined by the City, if such contractor fails to meet any of the Milestone Deadlines. If the liquidated damages provision of a City contract entered into pursuant to this subsection is triggered by the failure of the City's contractor to meet any of the Milestone Deadlines, (a) the City shall retain any and all liquidated damages received, and (b) if, solely as result of such failure, Developer is prevented from meeting the 90% threshold of target units, square fee, or sites for the Planned Neighborhood Units by any of the applicable Target Completion Dates, as defined in Exhibit B hereto, the Target Completion Date applicable to such Planned Neighborhood Unit shall be extended by mutual agreement of the Parties, as reasonably required to account for such contractor's failure.
- ii. Subject to Closing, the Developer will separately bid, contract for, coordinate and manage the Private Development Site Improvement Work.
- iii. The City and Developer will use all commercially reasonable efforts to coordinate the construction of their respective improvements in an efficient and timely manner to the extent possible.
- iv. Developer shall be reimbursed Reimbursable Expenses from TIF Bonds Proceeds.
- v. If Developer contracts with one of the Infrastructure Contractors, subject to permitted easements and other consents required from JCPRD, and upon prior written notice to the City which must be received within ten (10) business days after Closing, Developer may elect to have its Infrastructure Contractor perform all aspects of the mass grading allocated in the bid provided by such Infrastructure Contractor to the Street Improvements and the Stormwater Improvements, but only if prior to performing such mass grading Developer causes its Infrastructure Contractor to provide the Public Works Director with evidence reasonably satisfactory to the Public Works Director and City Attorney that the City is an added third party beneficiary to all bonds, indemnifications, insurance coverage and warranties provided to the Developer under the Developer's

contract with such Infrastructure Contractor. If the foregoing conditions are satisfied, the costs for such mass grading allocated to Street Improvements and Stormwater Improvements as specified in the bid provided by such Infrastructure Contractor shall be eligible for reimbursement from TIF Bonds Proceeds.

4.3. The following provisions will apply if City and Developer agree on a single Infrastructure Contractor, a bid is awarded to a single Infrastructure Contractor in accordance with **Section 4.2(B)**, and the Closing occurs on or before May 3, 2016 or such later date as agreed to by the Parties:

A. Subject to Closing and the City's rights under **Section 8.1(C)** to reject bids and to revise the scope of the Street Improvements and the Stormwater Improvements, the City will contract directly with the Infrastructure Contractor for the Street Improvements, the Stormwater Improvements and separately that portion of the Stormwater Improvements to be paid with SMAC funds, and, subject to Closing, the Developer or MB-18, as applicable, will contract directly with the Infrastructure Contractor for the related aspects of the Private Development Site Improvement Work. Each contract will include provisions which require the Infrastructure Contractor to maintain adequate separate records as to the costs of the Street Improvements, the Stormwater Improvements and separately that portion of the Stormwater Improvements to be paid with SMAC funds, and Private Development Site Improvement Work. Each contract will also include provisions which authorize Developer to manage and coordinate construction of the Street Improvements, Stormwater Improvements, and the related aspects of the Private Development Site Improvement Work in the manner set forth herein. Developer will not be required to enter into any agreements for any work related to the Street Improvements and Stormwater Improvements. City will not be required to enter into any agreements for any work related to the Private Development Site Improvement Work.

B. The City may enter into a separate contract for inspection services relating to the Street Improvements and Stormwater Improvements (the "**Inspection Services**"). The inspector will ensure that the Street Improvements and Stormwater Improvements are constructed to the City's and JCPRD's specifications. The Inspection Services will be managed by the City, and the City will cause the inspector to provide periodic inspection reports to the City. City will make available to JCPRD and Developer copies of such periodic inspection reports upon request.

C. Developer will manage and coordinate the construction activities of The Infrastructure Contractor in accordance with all of the terms of the respective contracts. If Developer becomes aware of any failure or potential failure to comply with the provisions of the contract relating to the Street Improvements or Stormwater Improvements, Developer will promptly notify the Public Works Director of such failure or potential failure.

D. Developer will schedule regular meetings with each of Phelps and the Infrastructure Contractor, as applicable, and will advise the Public Works Director, and other City staff and its inspectors as determined by the Public Works Director and the JCPRD staff of such meetings so that they may attend. Developer will provide periodic status updates on the progress of construction work and will participate in any significant negotiations that may be conducted by the City with the Infrastructure Contractor if required by the City.

E. Developer will advise City and be responsible for performing on behalf of City any reasonable related additional services which are necessary and/or appropriate for the successful planning, design, development, and construction of the Street Improvements and Stormwater Improvements.

F. Subject to Developer's duties hereunder to keep City informed regarding the progress of construction of the Street Improvements and Stormwater Improvements, and subject to any express limitations set forth in this Agreement, Developer has general authority and discretion to make decisions relating to the coordination, construction and supervision of the simultaneous work comprising the Street Improvements, Stormwater Improvements and the Private Development Site Improvement Work and has the authority to take such actions as Developer reasonably deems necessary, proper or desirable for the furtherance of the Street Improvements and Stormwater Improvements. Notwithstanding the foregoing, Developer may not take any of the following actions without obtaining the prior approval of City:

- i. Make any changes to the Final Design, Milestone Activities or Milestone Deadlines.
- ii. Approve change orders or any amendments to the City contracts.
- iii. Approve any payments to the Infrastructure Contractor relating to the City contracts.
- iv. Enter into any agreements or waivers or releases which will be binding upon City.

4.4. Developer will perform its duties under this Agreement without payment of any fee, but otherwise at City's sole cost and expense (but payable solely from TIF Bonds Proceeds), in a manner consistent with the terms and conditions of this Agreement. The City agrees that Developer's third-party costs and expenses incurred in connection with Developer's services provided in connection with planning, design, development and construction of the Street Improvements and Stormwater Improvements (the "**Reimbursable Expenses**"), whether incurred before or after the Effective Date, provided such expenses have been approved in writing in advance by the Public Works Director, are reimbursable from TIF Bonds Proceeds. The City shall not be liable to the Developer for the Reimbursable Expenses. The Reimbursable Expenses incurred before the Effective Date are listed on the attached Exhibit C. The Parties agree that Developer shall not be liable for any costs related to the Street Improvements or the Stormwater Improvements.

4.5. The primary purpose of this Agreement is to complete the Street Improvements, Stormwater Improvements and the Private Development Site Improvement Work as efficiently, timely and cost effectively as possible. Due to the City contracting directly with third parties to perform any work related to the Street Improvements and the Stormwater Improvements, all representations and warranties regarding the Street Improvements and the Stormwater Improvements will be made to the City by such third parties. The City acknowledges that Developer is agreeing to perform its duties under this Agreement as a service to the City, without compensation other than reimbursement from TIF Bonds Proceeds of the Reimbursable Expenses, and that Developer makes no representation or warranty regarding any aspect of the Street Improvements or Stormwater Improvements. However, Developer will perform the services required to be performed by it under this Agreement in a manner at least equivalent in quality and efficiency to other experienced, first-class developers performing similar services for similar properties in the metropolitan area in which the Project is located, and in any event exercising its commercially reasonable efforts, skill and expertise in the best interest of the City.

4.6. To the extent permitted by law and subject to the limitations of the Kansas Tort Claims Act, and except to the extent arising out of the negligence or intentional misconduct of Developer, its members, directors, shareholders, officers, employees and agents, or a Developer Default, the City will protect, defend, indemnify and hold harmless Developer its members, directors, shareholders, officers, employees and agents (collectively, the “**Developer Indemnified Parties**”) against and from any and all third party claims, demands, damages, liabilities, losses, costs and expenses (including, but not limited to, reasonable attorney’s fees), arising out of or in connection with the activities of Developer pursuant to this **Section 4** hereof, but excluding any claims, demands, damages, liabilities, losses, costs and expenses relating to or arising out of the Private Development Site Improvement Work. In the event any suit, action, investigation, claim or proceeding (collectively, an “**Action**”) is begun or made as a result of which the City may become obligated to one or more of the Developer Indemnified Parties hereunder, any one of the Developer Indemnified Parties shall give prompt notice to the City of the occurrence of such event. The rights set forth in this **Section 4.6** shall survive the termination of this Agreement.

5. Insurance.

5.1. The Developer shall procure and maintain, or cause to be procured and maintained, at its expense, the following insurance coverage:

A. Workers Compensation (if required) -- Statutory Limits, with Employer’s Liability limits of \$100,000 each employee, \$500,000 policy limit;

B. Commercial General Liability for bodily injury and property damage liability claims with limits of not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate; and

C. Commercial Automobile Liability for bodily injury and property damage with limits of not less than \$1,000,000 each accident for all owned, non-owned and hired automobiles.

5.2. In addition, Developer and City agree to require all consultants and sub-consultants (including architects and engineers, but, except as provided in **Section 4.2(D)(v)**, excluding construction contractors who are required to provide insurance pursuant to the separate construction contracts with Developer and City) to obtain and provide insurance coverage in types and amounts as mutually agreed by Developer and City and to require satisfaction of all other insurance requirements provided in this Agreement.

5.3. Developer’s insurance shall be from an insurance carrier with an A.M. Best rating of A-VII or better, shall be on the GL ISO Occurrence form or such other form as may be approved by City, and shall include, by endorsement to be attached to the certificate of insurance, City, and its divisions, departments, officials, officers and employees, and other parties as specified in writing by City as additional insureds as their interest may appear, except that the additional insured requirement shall not apply to Workers Compensation coverage. Such endorsement shall include premises operations and completed operations. Each certificate of insurance shall include a copy of an endorsement that states that such insurance will not be canceled until after thirty (30) days’ written notice of cancellation has been given to the City. Subrogation against City and City’s Agent shall be waived, as allowed by law. Developer’s insurance policies shall be endorsed to indicate that Developer’s insurance coverage is primary and any insurance maintained by City or City’s Agent is non-contributing as respects the work of

Developer.

5.4. From and after the Effective Date, Developer shall provide the City with certificates and endorsements evidencing the insurance required by this **Section 5**.

6. Term; Termination.

6.1. The term of this Agreement (the “**Term**”) commences on the Effective Date and ends on the first to occur of:

- A. A termination pursuant to **Section 3**.
- B. April 18, 2016 if the Bond Pricing does not occur on such date and the Bond Pricing Date and the Closing Date are not extended by mutual agreement of the Parties.
- C. May 3, 2016 if the Closing does not occur on such date and the date of Closing is not extended by mutual agreement of the Parties.
- D. The date of an election by a party hereto to terminate this Agreement for Cause (as defined in **Section 6.2**).
- E. The date of completion (in accordance with the City’s construction contracts) of the Street Improvements and Stormwater Improvements.
- F. The date of termination of this Agreement pursuant to **Section 6.3**.
- G. The date of termination of the Development Agreement.

The earliest of the dates in **Sections 6.1(A)** through **6.1(G)** above is the “**Termination Date**”.

6.2. Termination for Cause. Notwithstanding anything to the contrary herein, either City or Developer may terminate this Agreement for “**Cause**” at any time. For purposes hereof, a termination for Cause is a termination based on the material default of a party in its obligations under this Agreement or the Development Agreement and the failure of such party to cure or to commence to cure and diligently proceed with curing such default within 15 days after the giving by the other party of written notice of such default, or if such default is not capable of being completed with such 15-day period, the failure of such party to commence such cure during such 15-day period and continue to make reasonable and diligent efforts to effectuate the same.

6.3. Bankruptcy. If Developer files a petition in bankruptcy or for a reorganization or arrangement or other relief under the United States Bankruptcy Code or any similar statute, or if any such proceeding is filed against either party and is not dismissed or vacated within 60 days after the filing, or if a court having jurisdiction issues an order or decree appointing a receiver, custodian or liquidator for a substantial part of the property of either party which decree or order remains in force undischarged and unstayed for a period of 60 days, or City or Developer makes an assignment for the benefit of creditors or admits in writing its inability to pay its debts as they become due, then City may terminate this Agreement immediately upon written notice to Developer.

7. **No Development Fee.** Developer acknowledges and agrees that Developer will benefit from the anticipated economies resulting from City's agreement to allow a single contractor to perform the Street Improvements, Stormwater Improvements and the Private Development Site Improvement Work, and that accordingly Developer will not be paid any fees for its activities hereunder. If this Agreement is terminated for any reason other than a termination by the City for Cause, Developer remains entitled to collect Reimbursable Expenses incurred prior to the date of termination of this Agreement.

8. Miscellaneous.

8.1. Limitations.

A. City acknowledges and agrees that Developer is not assuming the duties of Phelps, the Infrastructure Contractor, or any inspector with respect to the design and construction of the Street Improvements and Stormwater Improvements, and that the City will look solely to Phelps and Infrastructure Contractor for any claims relating to faulty design and construction of the Street Improvements and Stormwater Improvements.

B. Developer acknowledges and agrees that the Reimbursable Expenses will be paid solely from the TIF Bonds Proceeds.

C. The Governing Body of the City is not obligated under this Agreement to accept any bids for the Street Improvements and the Stormwater Improvements determined by the Governing Body to be unacceptable.

D. Developer acknowledges and agrees that the City shall have no obligation to use its taxing authority or any funds of the City to pay the costs of design and construction of the Street Improvements and the Stormwater Improvements, which costs shall be payable solely from funds available in the Construction Fund held by the TIF Bonds Trustee (including TIF Bonds Proceeds and SMAC funds). Developer further acknowledges and agrees that if the amounts bid for the Street Improvements and the Stormwater Improvements exceed amounts in the Construction Fund available to pay for the Street Improvements and the Stormwater Improvements (including any mass grading assumed by Developer under **Section 4.2(D)(v)**), the City may reject any and all bids, and in such case the City may also reduce the scope of the Street Improvements or the Stormwater Improvements as the City determines necessary in its sole and absolute discretion, in order to obtain bids which will allow the City to complete such improvements within the budget available in the Construction Fund.

E. The Parties acknowledge that all of the conditions described in **Article II** of the Development Agreement must be satisfied by the Bond Pricing Date. It is hereby recognized, stipulated and agreed by Developer and the City that neither party shall have any duty to proceed with Closing or to do or perform any of the duties or obligations to be performed at Closing unless and until each and all of the conditions described in **Article II** of the Development Agreement have either been satisfied or waived in accordance with the applicable provisions of **Article II** of the Development Agreement by the Bond Pricing Date.

8.2. Developer Default and City Remedies.

A. Developer shall be in default under this Agreement (“**Developer Default**”) if Developer fails to keep or perform any covenant or obligation herein contained on Developer’s part to be kept or performed, and Developer fails to remedy the same within thirty (30) days after the City has given Developer written notice specifying such failure and requesting that it be remedied; provided, however, that if any event of default shall be such that it cannot be corrected within such period, it shall not constitute an event of default if corrective action is instituted by Developer within such period and diligently pursued until the default is corrected.

B. In the event of a Developer Default, City shall be entitled to exercise either of the following as its exclusive remedy:

- i. terminate this Agreement for Cause in accordance with **Section 6.2**, in which case, except for the extension of Target Completion Dates which may be triggered under **Section 4.2(D)(i)**, and the rights under **Sections 4.6, 8.4** and **8.20** hereof, all of which shall survive such Termination, the rights and obligation of the Parties hereunder, shall terminate; or
- ii. without terminating this Agreement for Cause, to seek specific performance and injunctive or other equitable relief to enforce performance and observance by the Developer of any provision of this Agreement to be performed by the Developer.

8.3. City Default and the Developer Remedies.

A. The City shall be in default under this Agreement (“**City Default**”) if the City fails to keep or perform any covenant or obligation herein contained on City’s part to be kept or performed, and the City fails to remedy the same within thirty (30) days after Developer has given the City written notice specifying such failure and requesting that it be remedied; provided, however, that if any event of default shall be such that it cannot be corrected within such period, it shall not constitute an event of default if corrective action is instituted by the City within such period and diligently pursued until the default is corrected.

B. In the event of a City Default, Developer shall be entitled to exercise either of the following as its exclusive remedy:

- i. terminate this Agreement for Cause in accordance with **Section 6.2**, in which case, except for the extension of Target Completion Dates which may be triggered under **Section 4.2(D)(i)**, and the rights under **Sections 4.6, 8.4** and **8.20** hereof, all of which shall survive such Termination, the rights and obligation of the Parties hereunder, shall terminate; or
- ii. without terminating this Agreement for Cause, to seek specific performance and injunctive or other equitable relief to enforce performance and observance by the City of any provision of this Agreement to be performed by the City.

8.4. Mutual Waiver. Developer and the City each waives, releases and discharges the other from all claims or demands brought against the applicable Party by third parties with respect to any

claims for any losses, damages, liabilities or expenses (including attorneys' fees) incurred or sustained on account of injury to persons or damage to property or business arising out of the performance of this Agreement and the planning, design, development and construction of the Street Improvements, the Stormwater Improvements and the Private Development Site Improvement Work, regardless whether any such claim or demand may arise because of the fault or negligence of the other party or its subsidiaries, affiliates, officers, employees, directors, agents or independent contractors. Each policy of insurance maintained by the Parties applicable to the Project will contain a specific waiver of subrogation reflecting the above, except as prohibited by law. Notwithstanding anything to the contrary contained in this Agreement, neither party is liable to the other for consequential, speculative or punitive damages. The rights set forth in this **Section 8.4** shall survive the termination of this Agreement. Nothing in this **Section 8.4** limits the obligations of the City set forth in **Section 4.6**.

8.5. Attorneys' Fees. Notwithstanding any other provisions herein to the contrary, if any action or proceeding is brought by City or Developer to enforce either party's respective rights under this Agreement, the substantially prevailing party will be entitled to recover from the unsuccessful party therein, in addition to all other remedies, all costs incurred by the substantially prevailing party in such action or proceeding, including reasonable attorneys' fees.

8.6. Captions/Headings. Titles of articles and section references are used in this Agreement solely for the convenience of those examining it and are not to be resorted to as aids in its construction or interpretation.

8.8. Law Governing. This Agreement will be interpreted and construed in accordance with the laws of the state of Kansas.

8.9. Binding Effect; Assignment. This Agreement binds and inures to the benefit of the parties hereto and their respective permitted successors and assigns. Neither party may assign its interests, rights or obligations under this Agreement without the prior written approval of the other party, but City may make a collateral assignment to a lender without the approval of Developer.

8.10. Entire Agreement; Amendment; No Joint Venture. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and no other agreement prior to or contemporaneous with this Agreement relating to the subject matter hereof will be effective except as expressly set forth or incorporated herein. Any purported amendment or modification hereto will not be effective unless it is set forth in writing and executed by both parties hereto, or their respective successors or assigns. Nothing in this Agreement creates a joint venture or partnership between City and Developer, it being intended that Developer is acting as an independent contractor in connection with the performance of its obligations under this Agreement.

8.11. Time of Essence. Time is of the essence of this Agreement.

8.12. Written Notice. Unless otherwise expressly stated herein, all notices required under this Agreement will be in writing and will be deemed to have been duly given if delivered in person, by overnight courier or by registered or certified mail to the following addresses:

If to Developer: VanTrust Real Estate, LLC
4900 Main Street, Suite 400
Kansas City, Missouri 64112
Attention: David Harrison and Justin Duff

With a copy to: F. Chase Simmons, Esq.
Polsinelli, PC
900 W. 48th Place, Suite 900
Kansas City, Missouri 64112

If to City: City of Prairie Village
ATTN: City Administrator
City Hall
7700 Mission Road
Prairie Village, KS 66208

With a copy to: Catherine P. Logan, Esq.
Lathrop & Gage LLC
10851 Mastin
Suite 1000
Overland Park, KS 66210

or at such other address as the parties may hereafter designate by written notice to the other in accordance with this **Section 8.12**. Notices so delivered will be deemed given upon receipt, if delivered in person or by overnight courier, or three business days after deposit in the United States mail, if delivered by registered or certified mail.

8.13. Force Majeure. If either party is delayed or prevented from performing any act required in this Agreement (excluding, however, the payment of money) by reason of acts of God, strikes, lockouts, labor troubles, inability to procure materials, governmental laws or regulations, orders or directives of any legislative, administrative, or judicial body or any governmental department (provided that the City may not claim a *force majeure* delay resulting from the City's voluntary failure to timely perform its obligations hereunder), inability to obtain any governmental licenses, permissions or authorities (despite commercially reasonable pursuit of such licenses, permissions or authorities), war, terrorism, or other causes beyond that party's reasonable control, the performance of such act is excused for the period of the delay and the period of the performance of any such act will be extended for a period equivalent to the period of such delay.

8.14. Waiver and Extensions. Either City or Developer may at any time waive any inaccuracies in the representations made by the other party in this Agreement, waive compliance with any of the covenants, agreements, representations or warranties of the other party contained in this Agreement, waive any condition for its benefit, or waive or extend the time for performance of all or any portion of any of the obligations of the other party hereto. No such waiver is effective unless it is intentionally and specifically waived in a writing signed by the party granting such extension or waiver.

8.15. No Third Party Beneficiary. The parties hereto do not intend to confer any benefit

hereunder on any person, firm or entity other than the parties hereto.

8.17. Severability. If any term, covenant, condition, agreement, section or provision of this Agreement is deemed invalid or unenforceable by a court of competent and final jurisdiction, this Agreement will not terminate or be deemed void or voidable, but will continue in full force and effect, and stricken provision will be replaced with a like, but legally enforceable, provision which most nearly accomplishes the intention of the parties hereto, and if no such provision is available, the remainder of this Agreement will be enforced.

8.18. Incorporation of Exhibits. The Exhibits attached hereto and incorporated herein by reference are a part of this Agreement to the same extent as if fully set forth herein.

8.19. Applicable Laws and Requirements. The parties acknowledge and agree that the ability of the City to enter into and perform this Agreement is subject to the Applicable Laws and Requirements.

8.20. Non-liability of Officials, Employees and Agents of the City. No recourse shall be had for any claim based thereon or upon any representation, obligation, covenant or agreement contained in this Agreement against any past, present or future official, officer, employee or agent of the City, under any rule of law or equity, statute or constitution or by the enforcement of any assessment or penalty or otherwise, and all such liability of any such officials, officers, employees or agents as such is hereby expressly waived and released as a condition of and consideration for the execution of this Agreement. The rights set forth in this **Section 8.20** shall survive the termination of this Agreement.

8.21. Conduct of Parties. No conduct or course of action undertaken or performed by the Parties will have the effect of, or be deemed to have the effect of, modifying, altering or amending the terms, covenants and conditions of this Agreement. Failure of either Party to exercise any power or right given hereunder or to insist upon strict compliance with the term hereof will not be, nor be deemed to be, a waiver of such Party's right to demand exact compliance with the terms of this Agreement.

8.22. Survival. Except as otherwise expressly provided herein, the rights and obligations of the Parties hereunder shall not survive a Termination.

[Remainder of page intentionally left blank. Signature pages follow.]

IN WITNESS WHEREOF, the parties hereto have executed and delivered this Development Agreement to be effective as of the Effective Date.

CITY OF PRAIRIE VILLAGE, KANSAS

Laura Wassmer, Mayor

ATTEST:

Joyce Hagen Mundy, City Clerk

APPROVED AS TO FORM:

Catherine P. Logan, City Attorney

DEVELOPER:

VANTRUST REAL ESTATE, LLC,
a Delaware limited liability company

By: _____
Name: David M. Harrison
Title: President

EXHIBIT A
MILESTONE ACTIVITIES

- [to be supplied by March 21]

EXHIBIT B

TARGET COMPLETION DATES

Planned Neighborhood Units and related target units, square feet or sites (as referred to in Article VIII of the Development Agreement) and target dates for the 90% completion threshold (“**Target Completion Dates**”) from Article VIII “Unit Reduction Reallocation” and Exhibit I of Development Agreement:

| Planned Neighborhood Units | Target Completion Date as provided in Exhibit I of Development Agreement |
|---|--|
| APARTMENTS – Target: 280 units | All construction is complete and 90% threshold (252 units) is met through demonstration of certificates of occupancy on or before 4/30/2018 |
| INN – Target: 44 units | All construction is complete and 90% threshold (40 rooms) is met through demonstration of certificates of occupancy on or before 12/31/2017 |
| INN – Target 5,000 sq. ft. retail | All construction of shell space, but not any tenant improvements, is complete and 90% threshold (4,500 sq.ft.) is met through demonstration of certificates of occupancy on or before 12/31/2017 |
| SINGLE FAMILY HOMES SITES – Target: 53 sites ¹ | 90% threshold (48 sites) construction ready site completed on or before 12/31/2017 |
| TOWNHOMES – Target: 70 units | Construction-ready sites supporting 90% threshold (63 townhome units) complete on or before 12/31/2017 |

¹ With respect to the Single Family Site and the Townhomes Site, “completed” means that all horizontal improvements necessary to permit immediate construction of a Single Family Home or Townhome, respectively, are complete, in place and the site is immediately eligible for a building permit.

EXHIBIT C
APPROVED REIMBURSABLE EXPENSES
INCURRED PRIOR TO THE EFFECTIVE DATE



Council Committee of Whole Meeting Date: March 21, 2016

Meadowbrook Due Diligence Items

The Development Agreement between the City and MB-18 LLC requires approval by the Governing Body of multiple matters prior to the issuance of TIF Bonds and the simultaneous real estate closing pursuant to which bond proceeds will be paid the MB-18 LLC and MB-18 LLC deeds the Park Site property directly to Johnson County Parks and Recreation District.

The following due diligence items are included in the agenda packet for the March 21, 2016 Committee of the Whole Meeting:

1. Scope of “Pond Work”. To be approved by City, JCPRD and Developer. This has now been expanded to include SMAC Stormwater work as will ultimately be included in the bid packages approved by the Public Works Director for the Stormwater Work. Items depicting the Scope of Pond Work are attached. The costs for this work, now referred to as the “Stormwater Work” are being paid for by TIF Bonds Proceeds and SMAC funds. Because of the SMAC funds, the City will be the entity that contracts with a contractor for this work, which is included in the Public Infrastructure Improvement Agreement.
2. Scope of Initial Trail Work. To be approved by the City and JCPRD. This is the initial trail work which has been approved in the Park Master Plan. A depiction of the applicable page of the Park Master Plan, which has been approved by the City and JCPRD, is attached.
3. Title Commitment and Survey. The Title Commitment is attached and the survey is available in pdf format as well as large printed format at City Hall. Most of the items listed are routine public and utility easements, some of which will be removed when the Park Site is replatted. Except #27 lists a number of survey matters that were identified in 2010 as encroachments, which Parks will be required to resolve when it makes changes to any of the improvements currently located on the Property (or the encroachments which will be eliminated as improvements are removed).
4. Project Easements. The attached document designated “Easements Plan” was approved on March 16, 2016 by the JCPRD Board.

PREPARED BY

Katie Logan
City Attorney

March 17, 2016

Scope of Pond Work - "Stormwater Improvements" (P.1 of 2)

2:\Projects\182006\182006 Final Development Plans\Grading Plan.dwg (Last Date: 05-24-18) 10:54:28 AM 18-May-2018



| PROJECT NO. | ISSUE | By | Date | Revised | By | App. |
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GRADING PLAN - OVERALL
 MEADOWBROOK PARK
 PRAIRIE VILLAGE, KANSAS
 FINAL DEVELOPMENT PLANS

PEI
 PHILIPS ENGINEERING, INC.
 PLANNING
 ENGINEERING
 SURVEYING
 1229 H. W. Wheeler
 Olathe, Kansas 66061
 (913) 822-1110
 F: (913) 822-4658
 www.philipsengineering.com

Slope of PWD Work - "Stormwater Improvements" (P. 2 of 2)



Scope of Initial Trail work indicated in RED

MEADOWBROOK PARK MASTER PLAN



- TIF Improvements**
- Multi-purpose lawn
 - ADA parking improvements
 - Restroom
 - Trails: 2.5 miles, 3 Bridges, 10 Benches
 - Great Lawn
 - Native Plantings and Forays
 - Berm at Nail
 - Ponds: Sediment Removal, Earthwork, Grading, waterfall structure, bridge, soft edges
 - Maintenance Building: Sanitary, fuel tank, parking lot and entry gate

3 | TIF IMPROVEMENTS ILLUSTRATION

January 22, 2016



JOHNSON COUNTY
Park & Recreation
District



COMMITMENT FOR TITLE INSURANCE

ISSUED BY

First American Title Insurance Company

AGREEMENT TO ISSUE POLICY

We agree to issue a policy to you according to the terms of this Commitment. When we show the policy amount and your name as the proposed insured in Schedule A, this Commitment becomes effective as of the Commitment Date shown in Schedule A.

If the Requirements shown in this commitment have not been met within six months after the Commitment Date our obligation under this Commitment will end. Also, our obligation under this Commitment will end when the Policy is issued and then our obligation to you will be under the Policy.

Our obligation under this Commitment is limited by the following:

- The Provisions in Schedule A.
- The Requirements in Schedule B-I.
- The Exceptions in Schedule B-II.
- The Conditions on the other side of this page 1.

This Commitment is not valid without SCHEDULE A and Sections I and II of SCHEDULE B.

FIRST AMERICAN TITLE INSURANCE COMPANY has caused this Commitment to be signed by its authorized officers and the Commitment will become valid when countersigned by an authorized signatory as of Effective Date shown in Schedule A.

First American Title Insurance Company

Dennis J. Gilmore
President

Jeffrey S. Robinson
Secretary

This commitment is invalid unless the insuring provisions and Schedules A and B are attached.

Conditions

1. **DEFINITIONS**
(a) "Mortgage" means, deed of trust or other security instrument. (b) "Public Records" means title records that give constructive notice of matters affecting the title according to the state law where the land is located.
2. **LATER DEFECTS**
The Exceptions in Schedule B Section II may be amended to show any defects, liens or encumbrances that appear for the time in the public records or are created or attach between the Commitment Date and the date on which all of the Requirements (a) and (b) of Schedule B - Section I are met. We shall have no liability to you because of this amendment.
3. **EXISTING DEFECTS**
If any defects, liens or encumbrances existing at Commitment Date are not shown in Schedule B, we may amend Schedule B to show them. If we do amend Schedule B to show these defects, liens or encumbrances, we shall be liable to you according to Paragraph 4 below unless you knew of this information and did not tell us about it in writing.
4. **LIMITATION OF OUR LIABILITY**
Our only obligation is to issue to you the Policy referred to in this Commitment, when you have met its Requirements. If we have any liability to you for any loss you incur because of an error in this Commitment, our liability will be limited to your actual loss caused by your relying on this Commitment when you acted in good faith to:

comply with the Requirements shown in Schedule B - Section I

or

eliminate with our written consent any Exceptions shown in Schedule B - Section II.

We shall not be liable for more than the Policy Amount shown in Schedule A of this Commitment and our liability is subject to the terms of the Policy form to be issued to you.
5. **CLAIMS MUST BE BASED ON THIS COMMITMENT**
Any claim, whether or not based on negligence, which you may have against us concerning the title to the land must be based on this Commitment and is subject to its terms.



First American Title Insurance Company
National Commercial Services

7200 College Blvd., Overland Park, KS 66210
(913)451-4611 Phone - (913)451-8891 Fax

COMMITMENT FOR TITLE INSURANCE

Schedule A

1. Effective Date: January 04, 2016, at 8:00 AM
FIRST AMENDMENT
2. Policy or policies to be issued:
 - a. ALTA Owner's Policy (06.17.06) \$TBD
 Proposed Insured: Premium: \$TBD
 Johnson County Park and Recreation District
 - b. ALTA Loan Policy (06.17.06) \$TBD
 Proposed Insured: Premium: \$TBD
 To Be Determined
3. Title to the fee simple estate or interest in the land described or referred to in this Commitment is at the effective date hereof vested in:

 MB - 18, LLC, a Kansas limited liability company
4. The land referred to in this Commitment is described as follows:

**Legal Description attached hereto as Exhibit A
and by this reference incorporated herein.**

**If there are any questions concerning this commitment,
please contact Thomas Jensen at TJensen@firstam.com.**

COMMITMENT FOR TITLE INSURANCE

Schedule B - Section I (Requirements)

The following are the requirements to be complied with:

1. Pay the agreed amounts for the interest in the land and/or mortgage to be insured.
2. Pay us the premiums, fees and charges for the Policy.
3. Documents satisfactory to us creating the interest in the land and/or mortgage to be insured must be signed, delivered and recorded.
4. You must tell us in writing the name of anyone not referred to in this Commitment who will get an interest in the land or who will make a loan on the land. We may then make additional requirements or exceptions.
5. If there has been construction, improvements or repairs to or on the property in the last 12 months, or a portion or all of the loan proceeds will be used for such, then unrecorded mechanics lien coverage will not be furnished unless arrangements are made prior to closing. If the property is 1-4 family residential, a Mechanic's Lien Indemnity Agreement secured by a satisfactory Letter of Credit will need to be furnished to the company. If the property is not 1-4 family residential, either the aforesaid secured indemnity or satisfactory financial statements, indemnities, affidavits and possibly lien waivers, will need to be furnished to the company. Failure to notify the company in writing before closing will invalidate any mechanic's lien coverage given in the policy.
6. In order to delete Exceptions 1, 5 and 6 on Schedule B - II, the Company requires a properly completed and executed Owner's Affidavit in a form that is acceptable to the Company.
7. In regard to MB - 18, LLC, we require the following:
 - A) Furnish a copy of the Articles of Organization and the Operating Agreement.
 - B) Furnish a Certificate of Good Standing from the Kansas, Secretary of State's office.
 - C) Furnish a resolution of the members authorizing the proposed transaction.
 - D) The proposed transaction should be executed by all the members of the LLC unless provided otherwise in the operating agreement. If the members of the above referenced limited liability company are entities other than individuals, additional requirements will be made.

Upon review of these items we reserve the right to make further requirements.

8. In regard to City of Prairie Village, we require the following:

Furnish a proper resolution authorizing the proposed transaction and identifying the parties authorized to execute instruments necessary to close this transaction.

Upon review of these items we reserve the right to make further requirements.

This commitment is invalid unless the insuring provisions and Schedules A and B are attached.

9. In regard to Johnson County Park and Recreation District, we require the following:

Furnish a proper resolution authorizing the proposed transaction and identifying the parties authorized to execute instruments necessary to close this transaction.

Upon review of these items we reserve the right to make further requirements.

10. Partial Termination of UCC-1 Financing Statement naming Wells Fargo Bank, National Association as secured party and MB - 18, LLC, a Kansas limited liability company as debtor, filed March 02, 2011, recorded in Book 201103, Page 000815. (Includes other property)

An amendment to the financing statement was recorded November 25, 2013 in Book 201311, Page 006874 of Official Records.

11. Proof of payment of taxes shown at Exception No. 7 on Schedule B - Section II.

12. It is our understanding that only a portion of the premises in question is to be the subject of the proposed transaction.

Furnish a Survey prepared by a registered land surveyor dated no more than 90 days prior to the closing date of subject transaction and certified to the proposed insured(s) and First American Title Insurance Company, meeting the minimum standards for ALTA/ACSM surveys.

The survey must establish a satisfactory land description which precisely sets forth the location of the land's boundaries.

Upon receipt thereof the Company reserves the right to make additional requirements/exceptions as it may deem necessary.

In the event of a cancellation, there will be a minimum charge of \$450.00.

CLOSING INFORMATION NOTE: If the closing for the subject property is to be conducted by First American Title Insurance Company, we require all monies due to be in the form of a Cashier's Check or Wire Transfer. If the parties use a cashier's check in lieu of wired funds, it may take 24-48 hours to verify with the institution issuing the check that we have good funds. **We are unable to close until we receive this verification and THIS MAY DELAY CLOSING.**

The above applies to all closings unless other specific arrangements are made. Due to wide variances in banking practices and lack of control over funds "on the wire" we cannot accept financial responsibility for delays in the clearing of funds.

This commitment is invalid unless the insuring provisions and Schedules A and B are attached.

COMMITMENT FOR TITLE INSURANCE

Schedule B - Section II (Exceptions)

Schedule B of the policy or policies to be issued will contain the exceptions to the following matters unless the same are disposed of to the satisfaction of the Company.

1. Defects, liens, encumbrances, adverse claims, or other matters, if any, created, first appearing in the public records or attaching subsequent to the effective date hereof but prior to the date the proposed Insured acquires for value of record the estate or interest or mortgage thereon covered by this Commitment.
2. Rights or claims of parties in possession not shown by the public records.
3. Encroachments, overlaps, boundary disputes, shortage in area, or any other matters which would be disclosed by an accurate survey and inspection of the premises.
4. Easements or claims of easements not shown by the public records.
5. Any lien, or right to a lien for services, labor or material heretofore or hereafter furnished, imposed by law and not shown by the public records.
6. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public record. Proceedings by a public agency which may result in taxes or assessments, or notice of such proceedings, whether or not shown by the records of such agency or the public record.
7. Taxes and assessments for the year 2015 and subsequent years.

Taxes for the year 2015 in the amount of \$138.88 are HALF PAID. This amount includes the following installments for special assessments: NONE
TAX PARCEL NO. OF251233-1013

Taxes for the year 2015 in the amount of \$84,773.76 are HALF PAID. This amount includes the following installments for special assessments: PVCSTMWATER
TAX PARCEL NO. OF251233-2001

Taxes for the year 2015 in the amount of \$2,924.73 are HALF PAID. This amount includes the following installments for special assessments: PVCSTMWATER
TAX PARCEL NO. OF251233-2002

Taxes for the year 2015 in the amount of \$3,615.11 are HALF PAID. This amount includes the following installments for special assessments: PVCSTMWATER
TAX PARCEL NO. OF251233-2023

Taxes for the year 2015 in the amount of \$53,638.51 are HALF PAID. This amount includes the following installments for special assessments: PVCSTMWATER
TAX PARCEL NO. OF251233-2026

This commitment is invalid unless the insuring provisions and Schedules A and B are attached.

Taxes for the year 2015 in the amount of \$161.38 are HALF PAID. This amount includes the following installments for special assessments: PVCSTMWATER
TAX PARCEL NO. OP2300000B 0001 (Lot 1)

Taxes for the year 2015 in the amount of \$142.01 are HALF PAID. This amount includes the following installments for special assessments: PVCSTMWATER
TAX PARCEL NO. OP2300000B 0002 (Lot 2)

Taxes for the year 2015 in the amount of \$122.01 are HALF PAID. This amount includes the following installments for special assessments: PVCSTMWATER
TAX PARCEL NO. OP2300000B 0003 (Lot 3)

Taxes for the year 2015 in the amount of \$170.01 are HALF PAID. This amount includes the following installments for special assessments: PVCSTMWATER
TAX PARCEL NO. OP2300000B 0004 (Lot 4)

Taxes for the year 2015 in the amount of \$138.01 are HALF PAID. This amount includes the following installments for special assessments: PVCSTMWATER
TAX PARCEL NO. OP2300000B 0005 (Lot 5)

Taxes for the year 2015 in the amount of \$138.01 are HALF PAID. This amount includes the following installments for special assessments: PVCSTMWATER
TAX PARCEL NO. OP2300000B 0006 (Lot 6)

Taxes for the year 2015 in the amount of \$134.01 are HALF PAID. This amount includes the following installments for special assessments: PVCSTMWATER
TAX PARCEL NO. OP2300000B 0007 (Lot 7)

Taxes for the year 2015 in the amount of \$94.01 are HALF PAID. This amount includes the following installments for special assessments: NONE
TAX PARCEL NO. OP2300000B 0008 (Lot 8)

Taxes for the year 2015 in the amount of \$94.01 are HALF PAID. This amount includes the following installments for special assessments: NONE
TAX PARCEL NO. OP2300000B 0009 (Lot 9)

Taxes for the year 2015 in the amount of \$94.01 are HALF PAID. This amount includes the following installments for special assessments: NONE
TAX PARCEL NO. OP2300000B 0010 (Lot 10)

Taxes for the year 2015 in the amount of \$94.01 are HALF PAID. This amount includes the following installments for special assessments: NONE
TAX PARCEL NO. OP2300000B 0011 (Lot 11)

Taxes for the year 2015 in the amount of \$126.01 are HALF PAID. This amount includes the following installments for special assessments: PVCSTMWATER
TAX PARCEL NO. OP2300000B 0012 (Lot 12)

Taxes for the year 2015 in the amount of \$258.95 are HALF PAID. This amount includes the following installments for special assessments: PVCSTMWATER
TAX PARCEL NO. OP2300000B 000A1 (Lot A)

8. Easements, restrictions and setback lines as per plat, recorded in Plat Book 19, Page 15.

This commitment is invalid unless the insuring provisions and Schedules A and B are attached.

9. Easement granted to Kansas City Power & Light Company over a portion of the premises in question as set out in Condemnation Suit No. [22314](#), as more fully described therein.
10. An easement to Kansas City Power and Light Company in the document recorded March 13, 1933 in Misc. [Book 19, Page 490](#) of Official Records.

The above easement was more specifically defined and limited by a Partial Release of Easement filed in [Book 201009, Page 002656](#).
11. An easement to Kansas City Power and Light Company in the document recorded April 22, 1957 in Misc. [Book 87, Page 226](#) of Official Records.
12. An easement to The Gas Service Company in the document recorded July 29, 1957 as Document No. 538138 in Misc. [Book 89, Page 41](#) of Official Records.
13. An easement to Indian Creek Sewer Sub-District No. 2 in the document recorded as Document No. 551002 in Misc. [Book 94, Page 477](#) of Official Records.
14. An easement to The Board of County Commissioners in the document recorded February 17, 1961 as Document No. 617132 in Misc. [Book 117, Page 256](#) of Official Records.

Partial Disclaimer filed of record in [Book 952, Page 960](#).
15. An easement to Lateral Sewer District No. 19, Indian Creek Sewer Sub-District No. 2, Johnson County, Kansas in the document recorded as Document No. 983074 in [Book 966, Page 615](#) of Official Records.
16. An easement to Kansas City Power and Light Company in the document recorded May 15, 1974 as Document No. 985342 in [Book 971, Page 159](#) of Official Records.
17. An easement to Kansas City Power and Light Company in the document recorded October 22, 1974 as Document No. 1000656 in [Book 1000, Page 465](#) of Official Records.
18. An easement to Defense Plant Corporation in the document dated August 25, 1943 in Misc. [Book 28, Page 589](#) of Official Records.
19. An easement to Johnson County, Kansas in the document recorded as Document No. 398148 in Misc. [Book 44, Page 618](#) of Official Records.
20. Easement and Right-of-Way reserved in the Warranty Deed filed June 7, 1967 as Document No. 780025 in Deed [Book 617, Page 691](#), over a portion of the premises in question, as more fully described therein.
21. An easement to The City of Prairie Village in the document recorded July 9, 1986 as Document No. 1620152 in [Book 2377, Page 335](#) of Official Records.
22. Drainage Easement granted to The City of Prairie Village in the document recorded July 9, 1986 as Document No. 1620153 in [Book 2377, Page 337](#) of Official Records.
23. An easement to Lateral Sewer District No. 22, Indian Creek Sewer Sub-District No. 2 in the document recorded February 13, 1987 as Document No. 1678738 in [Book 2517, Page 141](#) of Official Records.

This commitment is invalid unless the insuring provisions and Schedules A and B are attached.

24. Storm Sewer Easement granted by the instrument filed February 13, 1987 as Document No. 1678735 in [Book 2517, Page 135](#), over a portion of the premises in question, as more fully described therein.
25. An easement to Lateral Sewer District No. 22 Indian Creek Sewer Sub-District No. 2 in the document recorded August 5, 1987 as Document No. 1730190 in [Book 2641, Page 861](#) of Official Records.
26. Terms and provisions of Resolution No. WD02-15 for and/or enlarging Consolidated Main Sewer District of Johnson County, Kansas filed February 26, 2002 as Document No. 3380017 in [Book 7667, Page 774](#).
27. The following matters disclosed by an ALTA/ACSM survey made by Phelps Engineering, Inc. on August 24, 2010, last revised January 26, 2011, designated Job No. 100380:
 - a. Any discrepancy between the actual boundaries of the land and the apparent boundaries indicated by fences;
 - b. Concrete pad over storm drainage easement in Misc. [Book 117, Page 256](#);
 - c. Concrete and rail road tie wall over KCP&L easement in Misc. [Book 87, Page 226](#);
 - d. Wood Bridges within KCP&L easement in Condemnation suit no: [22314](#);
 - e. Apparent sanitary encroachment;
 - f. Wood wall, tennis courts and Clubhouse Deck over sewer easement in Misc. [Book 94, Page 477](#);
 - g. Cart Path and Tees onto Roe Avenue Right-of-Way in Southeast Corner;
 - h. Sanitary Sewer south of Somerset Drive;
 - i. Curb Inlet North of Headwall along west property line;
 - j. Telephone Risers along south property line;
 - k. Light Pole along south property line; and
 - l. Various encroachments of fences and parking areas into zoning setback areas.
28. An easement to Kansas City Power & Light Company in the document recorded September 14, 2010 in [Book 201009, Page 005089](#) of Official Records.
29. Terms and Provisions as set forth in Water Facilities Easement, by and between Consolidated Fire District #2 of NE Johnson County and MB-18, LLC, a Kansas limited liability company, recorded in [Book 201311, Page 006919](#).
30. Permanent Drainage Easement to the City of Prairie Village, Kansas in the document recorded in [Book 201206, Page 000488](#) of Official Records.
31. Temporary Construction Easement to the City of Prairie Village, Kansas in the document recorded in [Book 201206, Page 000490](#) of Official Records.
32. Permanent Sidewalk and Utility Easement to the City of Prairie Village, Kansas in the document recorded in [Book 201206, Page 000492](#) of Official Records.
33. Permanent Public Right of Way Easement to the City of Prairie Village, Kansas in the document recorded in [Book 201206, Page 000493](#) of Official Records.
34. Terms and Provisions as set forth in Declaration of Restrictive Covenants and Right of First Offer/Refusal, by and between MB-18, LLC, a Kansas limited liability company and Consolidated Fire District #2 of NE Johnson County, recorded in [Book 201311, Page 006917](#).

This commitment is invalid unless the insuring provisions and Schedules A and B are attached.

35. Tenancy rights, either as month to month, or by virtue of written leases of persons in possession of any part of the subject property.

NOTE: If any requirements shown on Schedule B-Section I of this Commitment are not complied with, then the requirement or the matters constituting the requirement will be shown as an exception or exceptions on the Policy or Policies provided the Company elects to issue such Policy or Policies.

EXHIBIT A

ALL OF LOTS 1 THROUGH 12 AND ALL OF LOT A, EXCEPT THE SOUTH 10.00 FEET OF BLOCK B, MEADOWBROOK ACRES, A PLATTED SUBDIVISION OF LAND AND ALL THAT PART OF THE WEST HALF OF SECTION 33, TOWNSHIP 12 SOUTH, RANGE 25 EAST, IN THE CITY OF PRAIRIE VILLAGE, JOHNSON COUNTY, KANSAS, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF THE SOUTHWEST QUARTER OF SAID SECTION 33, THENCE S 2°06'14" E, ALONG THE WEST LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 33, A DISTANCE OF 43.50 FEET; THENCE N 87°34'46" E, A DISTANCE OF 30.00 FEET TO THE INTERSECTION OF THE SOUTHERLY RIGHT-OF-WAY LINE OF SOMERSET DRIVE AND THE EASTERLY RIGHT-OF-WAY LINE OF NALL AVENUE, BOTH AS NOW ESTABLISHED, SAID POINT ALSO BEING THE POINT OF BEGINNING; THENCE ALONG THE SOUTHERLY RIGHT-OF-WAY LINE OF SAID SOMERSET DRIVE, FOR THE FOLLOWING FIVE (5) COURSES; THENCE N 87°34'46" E, A DISTANCE OF 34.10 FEET; THENCE NORTHEASTERLY ON A CURVE TO THE LEFT, SAID CURVE BEING TANGENT TO THE LAST DESCRIBED COURSE AND HAVING A RADIUS OF 648.00 FEET, AN ARC DISTANCE OF 347.53 FEET; THENCE NORTHEASTERLY ON A CURVE TO THE RIGHT, SAID CURVE BEING TANGENT TO THE LAST DESCRIBED COURSE AND HAVING A RADIUS OF 552.00 FEET, AN ARC DISTANCE OF 89.09 FEET; THENCE N 66°05'54" E, A DISTANCE OF 122.60 FEET; THENCE NORTHEASTERLY ON A CURVE TO THE LEFT, SAID CURVE HAVING AN INITIAL TANGENT BEARING OF N 67°31'22" E AND A RADIUS OF 640.00 FEET, AN ARC DISTANCE OF 112.91 FEET TO A POINT ON THE WEST PLAT LINE OF WEST RIDING, 2ND PLAT, A PLATTED SUBDIVISION OF LAND IN THE CITY OF PRAIRIE VILLAGE, JOHNSON COUNTY, KANSAS; THENCE S 13°32'29" E (PLATTED S 11°43'23" E), ALONG THE WEST PLAT LINE OF SAID WEST RIDING, 2ND PLAT, A DISTANCE OF 183.42 FEET TO THE SOUTHWEST PLAT CORNER OF SAID WEST RIDING, 2ND PLAT; THENCE N 87°37'32" E (PLATTED N 89°26'38" E), ALONG THE SOUTH PLAT LINE OF SAID WEST RIDING, 2ND PLAT AND THE NORTH PLAT LINE OF SAID MEADOWBROOK ACRES AND IT'S EASTERLY EXTENSION, A DISTANCE OF 1904.29 FEET TO THE NORTHEAST CORNER OF LOT 1, SAID MEADOWBROOK ACRES, SAID NORTHEAST CORNER ALSO BEING 30.00 FEET WEST OF THE NORTHEAST CORNER OF THE SOUTHWEST QUARTER OF SAID SECTION 33; THENCE S 1°50'49" E, ALONG THE EAST LINE OF SAID LOTS 1 THROUGH 12 AND LOT A, BLOCK B, SAID EAST LINE BEING 30.00 FEET WEST OF AND PARALLEL WITH THE EAST LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 33, A DISTANCE OF 2612.75 FEET TO A POINT ON THE NORTH RIGHT-OF-WAY LINE OF 95TH STREET, AS NOW ESTABLISHED, SAID POINT BEING 40.00 FEET NORTH OF THE SOUTH LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 33; THENCE S 87°40'29" W, ALONG THE NORTH RIGHT-OF-WAY LINE OF SAID 95TH STREET AND BEING 40.00 FEET NORTH OF AND PARALLEL WITH THE SOUTH LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 33, A DISTANCE OF 590.23 FEET TO A POINT ON THE EAST LINE OF A DEED, AS RECORDED IN THE JOHNSON COUNTY REGISTER OF DEEDS OFFICE IN BOOK 201311 AT PAGE 006875; THENCE NORTHERLY, NORTHWESTERLY AND WESTERLY ALONG THE EAST, NORTHEAST AND NORTH LINES OF SAID DEED FOR THE FOLLOWING FIVE (5) COURSES; THENCE N 2°06'14" W, A DISTANCE OF 157.50 FEET; THENCE N 48°59'31" W, A DISTANCE OF 43.24 FEET; THENCE S 87°40'29" W, A DISTANCE OF 120.50 FEET; THENCE N 27°56'01" W, A DISTANCE OF 14.23 FEET; THENCE S 87°40'29" W, A DISTANCE OF 15.01 FEET TO THE NORTHEAST PLAT CORNER OF GREENVIEW PLACE, A PLATTED SUBDIVISION OF LAND IN THE CITY OF PRAIRIE VILLAGE, JOHNSON COUNTY, KANSAS; THENCE CONTINUING S 87°40'29" W (PLATTED S 89°47'09" W), ALONG THE NORTH PLAT LINE OF SAID GREENVIEW PLACE, A DISTANCE OF 490.00 FEET TO THE NORTHWEST PLAT CORNER OF SAID GREENVIEW PLACE, SAID NORTHWEST PLAT CORNER ALSO BEING A POINT ON THE EAST LINE OF A SURVEY OF IMPROVEMENTS AS RECORDED IN THE JOHNSON COUNTY REGISTER OF DEEDS OFFICE IN BOOK 1013 AT PAGE 383; THENCE N 2°06'14" W (SURVEYED N 0°00'00" E), A DISTANCE OF 161.30 FEET; THENCE N 22°14'50" E, A DISTANCE OF

40.28 FEET; THENCE N 67°41'14" W, A DISTANCE OF 62.00 FEET; THENCE S 22°14'50" W, A DISTANCE OF 15.00 FEET TO A POINT ON THE NORTHERLY LINE OF A DEED RECORDED IN THE JOHNSON COUNTY REGISTER OF DEEDS OFFICE IN BOOK 6242 AT PAGE 978; THENCE N 67°41'14" W (DEEDED N 65°35'00" W), ALONG THE NORTHERLY LINE OF SAID DEED, A DISTANCE OF 85.57 FEET; THENCE NORTHERLY ON A CURVE TO THE LEFT, SAID CURVE HAVING AN INITIAL TANGENT BEARING OF N 5°31'37" E AND A RADIUS OF 325.00 FEET, AN ARC DISTANCE OF 231.41 FEET; THENCE N 35°16'13" W, A DISTANCE OF 58.93 FEET; THENCE NORTHWESTERLY ON A CURVE TO THE RIGHT, SAID CURVE BEING TANGENT TO THE LAST DESCRIBED COURSE AND HAVING A RADIUS OF 291.00 FEET, AN ARC DISTANCE OF 137.75 FEET; THENCE NORTHERLY ON A CURVE TO THE LEFT, SAID CURVE BEING TANGENT TO THE LAST DESCRIBED COURSE AND HAVING A RADIUS OF 520.00 FEET, AN ARC DISTANCE OF 38.35 FEET; THENCE N 12°22'24" W, A DISTANCE OF 161.04 FEET; THENCE NORTHWESTERLY ON A CURVE TO THE LEFT, SAID CURVE BEING TANGENT TO THE LAST DESCRIBED COURSE AND HAVING A RADIUS OF 520.00 FEET, AN ARC DISTANCE OF 32.48 FEET; THENCE N 15°57'08" W, A DISTANCE OF 99.30 FEET; THENCE NORTHWESTERLY ON A CURVE TO THE LEFT, SAID CURVE BEING TANGENT TO THE LAST DESCRIBED COURSE AND HAVING A RADIUS OF 210.00 FEET, AN ARC DISTANCE OF 82.46 FEET; THENCE N 38°27'04" W, A DISTANCE OF 263.82 FEET; THENCE NORTHWESTERLY ON A CURVE TO THE LEFT, SAID CURVE BEING TANGENT TO THE LAST DESCRIBED COURSE AND HAVING A RADIUS OF 200.00 FEET, AN ARC DISTANCE OF 47.31 FEET; THENCE N 52°00'20" W, A DISTANCE OF 15.96 FEET; THENCE NORTHWESTERLY ON A CURVE TO THE RIGHT, SAID CURVE BEING TANGENT TO THE LAST DESCRIBED COURSE AND HAVING A RADIUS OF 160.00 FEET, AN ARC DISTANCE OF 56.83 FEET; THENCE NORTHEASTERLY ON A CURVE TO THE RIGHT, SAID CURVE HAVING AN INITIAL TANGENT BEARING OF N 61°12'26" E AND A RADIUS OF 267.47 FEET, AN ARC DISTANCE OF 55.09 FEET; THENCE EASTERLY ON A CURVE TO THE RIGHT, SAID CURVE BEING TANGENT TO THE LAST DESCRIBED COURSE AND HAVING A RADIUS OF 85.00 FEET, AN ARC DISTANCE OF 45.67 FEET; THENCE EASTERLY ON A CURVE TO THE LEFT, SAID CURVE BEING TANGENT TO THE LAST DESCRIBED COURSE AND HAVING A RADIUS OF 135.79 FEET, AN ARC DISTANCE OF 160.95 FEET; THENCE NORTHEASTERLY ON A CURVE TO THE RIGHT, SAID CURVE BEING TANGENT TO THE LAST DESCRIBED COURSE AND HAVING A RADIUS OF 70.00 FEET, AN ARC DISTANCE OF 51.19 FEET; THENCE EASTERLY ON A CURVE TO THE RIGHT, SAID CURVE BEING TANGENT TO THE LAST DESCRIBED COURSE AND HAVING A RADIUS OF 479.59 FEET, AN ARC DISTANCE OF 167.76 FEET; THENCE S 31°02'03" E, A DISTANCE OF 525.22 FEET; THENCE S 42°05'17" E, A DISTANCE OF 187.42 FEET; THENCE SOUTHEASTERLY ON A CURVE TO THE LEFT, SAID CURVE BEING TANGENT TO THE LAST DESCRIBED COURSE AND HAVING A RADIUS OF 210.00 FEET, AN ARC DISTANCE OF 175.61 FEET; THENCE N 90°00'00" E, A DISTANCE OF 58.60 FEET; THENCE EASTERLY ON A CURVE TO THE RIGHT, SAID CURVE BEING TANGENT TO THE LAST DESCRIBED COURSE AND HAVING A RADIUS OF 160.00 FEET, AN ARC DISTANCE OF 56.44 FEET; THENCE S 43°15'03" W, A DISTANCE OF 187.59 FEET; THENCE S 46°44'57" E, A DISTANCE OF 260.00 FEET; THENCE S 73°30'05" E, A DISTANCE OF 89.85 FEET; THENCE S 64°07'33" E, A DISTANCE OF 260.00 FEET; THENCE S 42°37'29" E, A DISTANCE OF 76.34 FEET; THENCE S 75°24'44" E, A DISTANCE OF 140.00 FEET; THENCE N 14°35'16" E, A DISTANCE OF 281.19 FEET; THENCE N 1°44'24" W, A DISTANCE OF 430.62 FEET; THENCE N 0°15'29" W, A DISTANCE OF 60.14 FEET; THENCE N 14°48'03" E, A DISTANCE OF 59.96 FEET; THENCE N 11°51'43" E, A DISTANCE OF 59.86 FEET; THENCE N 00°40'00" W, A DISTANCE OF 59.97 FEET; THENCE N 1°49'44" W, A DISTANCE OF 60.00 FEET; THENCE N 23°07'43" W, A DISTANCE OF 132.03 FEET; THENCE N 65°02'30" W, A DISTANCE OF 110.25 FEET; THENCE N 1°50'49" W, A DISTANCE OF 330.98 FEET; THENCE S 88°09'11" W, A DISTANCE OF 660.57 FEET; THENCE SOUTHERLY ON A CURVE TO THE LEFT, SAID CURVE HAVING AN INITIAL TANGENT BEARING OF S 33°40'41" W AND A RADIUS OF 160.00 FEET, AN ARC DISTANCE OF 99.20 FEET; THENCE S 1°50'49" E, A DISTANCE OF 62.07 FEET; THENCE S 88°09'11" W, A DISTANCE OF 95.15 FEET; THENCE WESTERLY ON A CURVE TO THE LEFT, SAID CURVE BEING TANGENT TO THE LAST DESCRIBED COURSE AND HAVING A RADIUS OF 562.89 FEET, AN ARC DISTANCE OF 84.71 FEET; THENCE WESTERLY ON A CURVE TO THE RIGHT, SAID CURVE BEING TANGENT TO THE LAST DESCRIBED COURSE AND HAVING A RADIUS OF 444.50 FEET, AN ARC DISTANCE OF 199.48 FEET; THENCE WESTERLY ON A CURVE TO THE LEFT, SAID CURVE BEING TANGENT TO THE LAST DESCRIBED COURSE AND HAVING A RADIUS OF 599.59 FEET, AN ARC DISTANCE OF 334.73 FEET; THENCE WESTERLY ON A CURVE TO THE RIGHT, SAID CURVE BEING TANGENT TO THE LAST DESCRIBED COURSE AND HAVING A RADIUS OF 70.00 FEET, AN ARC DISTANCE OF 34.52 FEET; THENCE WESTERLY ON A CURVE TO THE LEFT, SAID CURVE BEING TANGENT

TO THE LAST DESCRIBED COURSE AND HAVING A RADIUS OF 124.17 FEET, AN ARC DISTANCE OF 132.74 FEET; THENCE SOUTHWESTERLY ON A CURVE TO THE RIGHT, SAID CURVE BEING TANGENT TO THE LAST DESCRIBED COURSE AND HAVING A RADIUS OF 100.00 FEET, AN ARC DISTANCE OF 55.53 FEET; THENCE SOUTHWESTERLY ON A CURVE TO THE LEFT, SAID CURVE BEING TANGENT TO THE LAST DESCRIBED COURSE AND HAVING A RADIUS OF 387.47 FEET, AN ARC DISTANCE OF 175.65 FEET; THENCE SOUTHWESTERLY ON A CURVE TO THE RIGHT, SAID CURVE BEING TANGENT TO THE LAST DESCRIBED COURSE AND HAVING A RADIUS OF 180.27 FEET, AN ARC DISTANCE OF 88.04 FEET; THENCE S 74°05'30" W, A DISTANCE OF 185.25 FEET; THENCE WESTERLY ON A CURVE TO THE RIGHT, SAID CURVE BEING TANGENT TO THE LAST DESCRIBED COURSE AND HAVING A RADIUS OF 444.65 FEET, AN ARC DISTANCE OF 115.78 FEET; THENCE S 88°57'33" W, A DISTANCE OF 222.26 FEET; THENCE N 2°06'14" W, A DISTANCE OF 50.01 FEET; THENCE N 4°57'47" W, A DISTANCE OF 300.69 FEET TO A POINT ON THE EASTERLY RIGHT-OF-WAY LINE OF SAID NALL AVENUE; THENCE N 2°06'14" W, ALONG THE EASTERLY RIGHT-OF-WAY LINE OF SAID NALL AVENUE, A DISTANCE OF 711.37 FEET TO THE POINT OF BEGINNING, EXCEPT ANY PART USED OR DEDICATED FOR STREETS, ROADS OR PUBLIC RIGHTS OF WAY.

We Are Committed to Safeguarding Customer Information

In order to better serve your needs now and in the future, we may ask you to provide us with certain information. We understand that you may be concerned about what we will do with such information – particularly any personal or financial information. We agree that you have a right to know how we will utilize the personal information you provide to us. Therefore, together with our parent company, The First American Corporation, we have adopted this Privacy Policy to govern the use and handling of your personal information.

Applicability

This Privacy Policy governs our use of the information which you provide to us. It does not govern the manner in which we may use information we have obtained from any other source, such as information obtained from a public record or from another person or entity. First American has also adopted broader guidelines that govern our use of personal information regardless of its source. First American calls these guidelines its *Fair Information Values*, a copy of which can be found on our website at www.firstam.com.

Types of Information

Depending upon which of our services you are utilizing, the types of nonpublic personal information that we may collect include:

- Information we receive from you on applications, forms and in other communications to us, whether in writing, in person, by telephone or any other means;
- Information about your transactions with us, our affiliated companies, or others; and
- Information we receive from a consumer reporting agency.

Use of Information

We request information from you for our own legitimate business purposes and not for the benefit of any nonaffiliated party. Therefore, we will not release your information to nonaffiliated parties except: (1) as necessary for us to provide the product or service you have requested of us; or (2) as permitted by law. We may, however, store such information indefinitely, including the period after which any customer relationship has ceased. Such information may be used for any internal purpose, such as quality control efforts or customer analysis. We may also provide all of the types of nonpublic personal information listed above to one or more of our affiliated companies. Such affiliated companies include financial service providers, such as title insurers, property and casualty insurers, and trust and investment advisory companies, or companies involved in real estate services, such as appraisal companies, home warranty companies, and escrow companies. Furthermore, we may also provide all the information we collect, as described above, to companies that perform marketing services on our behalf, on behalf of our affiliated companies, or to other financial institutions with whom we or our affiliated companies have joint marketing agreements.

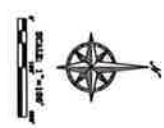
Former Customers

Even if you are no longer our customer, our Privacy Policy will continue to apply to you.

Confidentiality and Security

We will use our best efforts to ensure that no unauthorized parties have access to any of your information. We restrict access to nonpublic personal information about you to those individuals and entities who need to know that information to provide products or services to you. We will use our best efforts to train and oversee our employees and agents to ensure that your information will be handled responsibly and in accordance with this Privacy Policy and First American's *Fair Information Values*. We currently maintain physical, electronic, and procedural safeguards that comply with federal regulations to guard your nonpublic personal information.

- LEGEND**
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| C3.1 | PROJECT NO. | 15000 | DATE | 3-14-09 | BY | APR |
| | DRAWN | APR | CHECKED | APR | DATE | APR |
| | DESIGN | APR | APPROVED | APR | | |
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EASEMENTS PLAN - OVERALL
MEADOWSBROOK PARK APARTMENTS
PRAIRIE VILLAGE, KANSAS


PHILLIPS ENGINEERING, INC.
 12001 W. 151st Street
 Overland Park, Kansas 66204
 TEL: 913.666.1500
 FAX: 913.666.1501
 WWW: PHILLIPS-ENGINEERING.COM



PLANNING COMMISSION

Council Meeting Date: March 21, 2016
Consent Agenda

PC2015-119 Consider Final Plat for Mission Chateau

RECOMMENDATION

Authorize the Mayor to execute the Final Plat for Mission Chateau for acceptance of rights-of-way and easements subject to the conditions of approval required by the Planning Commission.

BACKGROUND

On August 17, 2015, the Governing Body approved a Special Use Permit for an adult senior facility at 8500 Mission. On March 1, 2016, the applicant presented the preliminary and final plat for approval by the Planning Commission. Both plats were approved subject to conditions (see PC Minutes of March 1, 2016).

The Planning Commission approved forwarding the Final Plat Mission Chateau to the Governing Body for its acceptance of rights-of-way and approved the Preliminary and Final Plat for Mission Chateau, 8500 Mission Road, subject to the following conditions:

1. The approval is conditioned on approval of the final development plans, or any changes to approved final development plans that do not correspond to the platted lot and easements shown on the proposed Final Plat shall require the submittal of a new Final Plat corresponding to those changes and meeting all of the conditions for project approval.
2. Final covenants be submitted for review by the city attorney and approved prior to recording the final plat.
3. That the recommended comment regarding maintenance of the drainage facilities in Common Areas be added prior to recording the final plat.
4. The platted Building Line on the northwest side of Lot 1 be removed from the common area, and located along the edge or the property line at of Lot 1 to achieve the 25' building line from the property line (i.e. the common area makes up the 25' setback.).
5. That the applicant submit the Final Plat to the County (surveying and engineering) after approval by the City.
6. The Final Plat be submitted to the Governing Body for acceptance of easements.
7. The property owner shall construct all the proposed improvements in accordance with the approved final development plans that were conditions of the Special Use Permit and Site Plan Approval.

ATTACHMENTS

Planning Commission Minutes of March 1, 2016 (Draft)
Proposed Plat

PREPARED BY

Joyce Hagen Mundy
City Clerk

Date: March 11, 2016

**EXCERPT of DRAFT
PLANNING COMMISSION MINUTES
March 1, 2016**

ROLL CALL

The Planning Commission of the City of Prairie Village met in regular session on Tuesday, March 1, 2016 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: James Breneman, Melissa Brown, Patrick Lenahan, Jonathan Birkel and Jeffrey Valentino.

The following persons were present in their advisory capacity to the Planning Commission: Chris Brewster, City Planning Consultant; Wes Jordan, Assistant City Administrator; Mitch Dringman, Building Official; Eric Mikkelson, Council Liaison and Joyce Hagen Mundy, Commission Secretary.

**PC2015-119 Request for Preliminary & Final Plat Approval - Mission Chateau
8500 Mission Road**

Chris Brewster stated the Planning Commission heard the application for a Special Use Permit, Site Plan approval and a Preliminary Plat at a Special Meeting on July 29, 2015. The Commission recommended approval of the Special Use Permit and Site Plan, subject to conditions, and the Council approved both recommendations on August 17, 2015. At that meeting, the Planning Commission declined to take action on the Preliminary Plat, and continued that to the September meeting. However no official action was taken on that plat. At that time, staff reviewed and created a staff report recommending approval of the preliminary plat, subject to 8 conditions. Despite the Planning Commission not taking official action on that plat, the development has progressed through further levels of design and engineering based on the SUP and Site Plan approvals, and a Final Plat has been prepared that addresses the comments in the original staff report and review of the Preliminary Plat. Therefore the applicant is requesting a combined approval of the Preliminary and Final Plat.

Since approval of the Special Use Permit and Site Plan by the Governing Body the applicant has advanced on planning and engineering based on those approvals and in furtherance of the previously submitted preliminary plat. They have submitted preliminary and final plat, and the following comments relate the submitted final plat to the recommended conditions for of the preliminary plat from Staff's July 7, 2015 review:

1. **That the applicant provide a 5-foot sidewalk on the west side of Mission Road.**
On the Final Plat, the applicant has indicated that a 40' deep easement along the west side of Mission Road for the location of the 5-foot sidewalk. The proposed

site plan in accompanying application shows the location of the sidewalk within that easement.

2. **That the applicant work with Public Works on the final design of the storm drainage system.**

Public Works has approved the Storm Drainage Report and will review all civil drawing including the drainage system when final construction documents are submitted.

3. **That the 25-foot platted rear setback line be dimensional on the northwest property line of Lot 1.**

Most of the edge is designated as “common area” and the platted lot line is proposed to be at the requested 25-foot setback. However, the plat shows a 20’ building line in the common area, which is not consistent with this condition, nor the notion that the common area will not have any structures. This will need to be revised and resubmitted before recording. The final development plan shows that the structure on Lot 1 is in compliance with this condition and is setback more than 25’ from the recommended platted rear setback.

4. **That the applicant prepare covenants to guarantee the maintenance of the common areas and utilities and submit it with the Final Plat.**

Draft covenants have been submitted with final site development and approvals to address this condition. Prior to recording the Final Plat, the final proposed covenants shall be submitted demonstrating that this condition is met, and reviewed and approved by the city attorney.

5. **That the applicant dedicate a pedestrian easement on the west side of Lot 2 to provide access to Somerset Drive and construct the sidewalk.**

On the Final Plat, a 10’ easement is shown at this location; the sidewalk will need to be constructed as shown on the final development plans.

6. **That the applicant protect and preserve as much existing vegetation as possible along the property lines.**

The perimeter of the property encompasses common areas and sidewalk easements and buffers. The plat preserves areas for the applicant to preserve as much existing vegetation as possible. The execution of this condition will be subject to permitting review, grading plans and the proposed new comments associated with the final landscape plan and covenants submitted as part of the preliminary development plan.

7. **That access control to two locations on Mission Road be indicated on the plat.**

Public Works has reviewed the Final Plat and the driveways and access controls are acceptable.

8. **That the driveways be constructed to City standards.**

Public Works will review final construction documents to ensure compliance with City standards.

The Subdivision Regulations also require the following additional information to be submitted with the Final Plat:

- A. Covenants - draft covenants are submitted with the final development plan. Final covenants (if changed from the draft) shall be reviewed by staff prior to recording to demonstrate that all conditions of the Special Use Permit, Site Plan and Plat approvals have been met.
- B. Proof of Ownership - submitted
- C. Review by County Surveyor - (The County Engineer will not review the Final Plat until it is approved by the City.)
- D. A Certificate showing all taxes and assessments have been paid - submitted.
- E. Construction Documents for streets, sidewalks and storm drainage - Construction documents will be submitted prior to final permits for site development and construction of improvements.

Chris Brewster advised the Planning Commission that there will be further platting of Lot 2 for the villas.

Tim Homburg stated the applicant acknowledged and accepted all of the recommended conditions of approval except for number seven. He felt that as this was a private street the bonding was not necessary. It was noted that this was a condition of the previous application which had a public street.

Wes Jordan responded that this may be a condition of public works. Mr. Homburg replied that public works will be involved. The private road will be built to city specifications. However, as a private street it will be maintained and plowed by the property owner. He added that they do not plan to build the street until all of the heavy equipment work necessary for construction is completed because of its impact on the road.

Mr. Jordan reported that he spoke with the Public Works Director and he did not have any objection to the removal of the bonding condition in number 7.

Jeffrey Valentino moved that the Planning Commission approve the Preliminary and Final Plat for Mission Chateau, 8500 Mission Road, subject to the following conditions:

1. The approval is conditioned on approval of the final development plans, or any changes to approved final development plans that do not correspond to the platted lot and easements shown on the proposed Final Plat shall require the submittal of a new Final Plat corresponding to those changes and meeting all of the conditions for project approval.
2. Final covenants be submitted for review by the city attorney and approved prior to recording the final plat.
3. That the recommended comment regarding maintenance of the drainage facilities in Common Areas be added prior to recording the final plat.
4. The platted Building Line on the northwest side of Lot 1 be removed from the common area, and located along the edge or the property line at of Lot 1 to achieve

Excerpt of Draft Planning Commission Minutes of March 1, 2016

the 25' building line from the property line (i.e. the common area makes up the 25' setback.).

5. That the applicant submit the Final Plat to the County (surveying and engineering) after approval by the City.
6. The Final Plat be submitted to the Governing Body for acceptance of easements.
7. The property owner shall construct all the proposed improvements in accordance with the approved final development plans that were conditions of the Special Use Permit and Site Plan Approval.

The motion was seconded by James Breneman and passed by a vote of 5 to 0.

MAYOR'S ANNOUNCEMENTS

Monday, March 21, 2016

Committee meetings scheduled for the next two weeks:

| | | |
|--------------------------------|------------|-----------|
| Environment/Recycle Committee | 03/23/2016 | 5:30 p.m. |
| VillageFest Committee | 03/24/2016 | 5:30 p.m. |
| Council Committee of the Whole | 04/04/2016 | 6:00 p.m. |
| City Council | 04/04/2016 | 7:30 p.m. |

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The Prairie Village Arts Council is pleased to present the Pat Jessee and Roberta Leaverton exhibit in the R. G. Endres Gallery during the month of March.

Recreation sales begin Friday, April 1st. Pool memberships purchased in April will be discounted by \$5 for each pass.

The 2016 annual Large Item Pick up has been scheduled. Items from homes on 75th Street and north of 75th Street will be collected on Saturday, April 9th. Items from homes south of 75th Street will be collected on Saturday, April 16th.

**INFORMATIONAL ITEMS
MARCH 21, 2016**

1. Park & Recreation Committee Minutes - January 13, 2016
2. JazzFest Committee Minutes - February 9, 2016
3. Prairie Village Arts Council - February 10, 2016
4. Mark Your Calendar

PARKS AND RECREATION COMMITTEE

January 13, 2016

6:30 PM

City Hall

Minutes

The Parks and Recreation Committee met at 6:30 PM at City Hall. In attendance: Ted Odell, Chair, Kevin Letourneau, Diane Mares, Carey Bickford, Dianne Pallanich, Lauren Wolf, Peggy Couch, and Matt Geary. Staff: Nolan Sunderman and Corey Hansen.

Mr. Odell called the meeting to order at 6:30 PM.

Public Participation

- There was no public participation.

Consent Agenda

- The minutes were unanimously approved from the November 11, 2015 meeting.

Reports

1. Public Works Report

Mr. Hansen discussed the recent Christmas tree drop-off and mulch available to residents. He also discussed the upcoming park improvements for Windsor Park, Porter Park, and Taliaferro Park.

2. Recreation Report

Mr. Sunderman discussed an upcoming program to celebrate National Parks & Recreation Month. He is working with the cities of Fairway, Leawood, Mission, Merriam, and Roeland Park to develop a northeast Johnson County park passport along with prizes. Mr. Sunderman also noted the advertisement of the lifeguard positions and that offer letters had been sent out to previous lifeguards to return in 2016. He is also working with the police department on cameras at the pool facility. A revised Village Voice Parks & Recreation insert is also nearing completion.

3. Chairperson's Report

Mr. Odell provided an update on recent discussions at the City Council meeting which have included the exterior grant program, legislative platform, street lighting, and approval of the recreation fees. Mr. Odell also provided an update on the Meadowbrook development/park.

New Business

- 1. Community Garden** – Mr. Tom O'Brien provided an update regarding the Community Garden. They provided over 600 lbs. of produce to area food pantries. They are full again for 2016 with a total of 43 plots. Currently, there is not a waiting

list and they have 10 new gardeners for 2016. Mr. O'Brien requested to replace the rabbit fence around the garden at Harmon Park due to deterioration. He requested they replace it with a 30" fence from the current 24" fence. The request was approved unanimously.

2. Prairie Village Chief of Police Tim Schwartzkopf introduced himself to the Committee.
3. JCPRD Agreements – Mr. Sunderman noted the minor change in the pool usage contract regarding the Master's program and the \$5 increase that occurred in 2015. The agreements were unanimously approved.
4. Super Pass Agreement/Swim Meet Letter of Understanding – Mr. Sunderman noted the change in the definition of non-resident eligibility from two years to one year. The agreements were approved unanimously.
5. Challenger Sports Contract for British Soccer – Mr. Sunderman introduced the contracts as presented noting the location will be back at Taliaferro Park. The agreements were approved unanimously.

Old Business

- There was no old business discussed.

Information Items

- March 9, 2016
 - Next Committee Meeting will be at 6:30 p.m. at City Hall in the Council Chambers.

Adjournment – The meeting was adjourned at 7:40 p.m.

JazzFest Committee Minutes February 9, 2016

Present: JD Kinney, Serena Schermoly, Lee Duong, Mike Polich, Jane Andrews, Dan Andersen, Brooke Morehead, Devin Scrogum, Al Guarino and Brian Peters.

Devin Scrogum and Al Guarino were introduced. The minutes of the January 7, 2016 meeting were approved with correction of misspelling of Lee Duong.

Food & Beverage

Dave Hassett sent the following report:

- He has the following four food trucks/Vendors holding the date for next year's festival
 - Little Italy (returning from 2015)
 - El Tenador (returning from 2015)
 - Blue Moose (returning from 2014)
 - Street Wings (new)
 - Polar Oasis (returning from 2015)
 - Butterfluff Popcorn (returning from 2015)
- He is looking into getting box lunches for the early stage crew, needs to know the number needed.
- VIP and Backstage food will be handled again by Prairie Fire Oven with a new menu items.
- He would like committee input on charging a vendor fee of \$125 instead of a percentage of sales.
- He is continuing to research the requirements for securing our own "temporary alcohol permit for the event from ABC.
- He plans to speak with Crawford Distributors in the next few weeks.

Budget

JD reported that he is in the process of compiling the 2016 budget. The primary changes will be the increased cost for a larger stage (\$10,000). Joyce sent out letters to previous sponsors/donors in January and they are beginning to come back. The current balance is \$20,105.82.

Al Guarino presented information on ways to more actively involve the retail community, both in promoting the event and participation. He reviewed several marketing techniques he and his wife have used in the past. Al agreed to do further research and present additional information for committee action at the next meeting. Joyce stated that First Washington has indicated that they will be donating \$5000 again on behalf of the shopping centers.

Brooke Morehead stated that she delivered a sponsorship packet to First National Bank and that they were interested in being an event sponsor. JD will follow up with them.

Marketing

Serena Schermoly reported that she is working on the ad for the Jazz in the Woods program. She also confirmed that the committee wants the Arts Council to participate in the 2016 event similar to last year. The committee was strongly supportive of their participation again, it was very well received by the patrons of the festival.

Operations

Dan reported that he has placed a hold order for the same amount of tents and tables for this year's festival. He recommended that the committee confirm table participation prior to the event so empty tables are not taking up spectator space. JD noted the YMCA and scouts were offered tables for their assistance with the event, but did not use them last year. It was suggested that perhaps tables could be offered to the churches who allow us to use their parking lots.

Volunteers

Lee Duong reported that she will be sending an e-mail to former volunteers asking them to "save the date" for the 2016 festival. Devin Scrogum stated that he would help with volunteers. Sct It was noted that the committee is starting the year with approximately \$18,000 in the account plus an additional \$10,000 budgeted by the City vs. \$8,000 in the account at the beginning of last year. This will give us the ability to sign contracts earlier. Probably returning expenditures will be the Jazz in the Woods ad, wine purchase from Jazz in the Woods, Pitch Ad, Kansas Public Radio and PV Post. Discussion was held on the need for a large stage vs. the additional cost it incurs. JD will use historical figures to estimate other operational costs. Brooke Morehead stated she would like to see a video board used at the festival.

Talent

Jane Andrews reported that Marilyn Maye has agreed to be the headliner. She spoke with Doc Severson's agent and he will be performing with the symphony in 2017 and needs to check if the contract has a "non-compete" clause. He also either brings in his own band "Trumpet Kings" or performs alone. Did not appear to be open to appearing with Marilyn.

Other performers that have verbally committed include the Kansas City Community College Vocal Jazz Group, Sons of Brasil, Chris Hazelton & Boogaloo 7" and Dan Thomas and the UMKC Conservatory jazz program with the specific act yet to be determined. Jane will prepare a schedule for the performance for the next meeting and will begin working on contracts. Joyce will send you the basic contract used in the past. Dan Andersen stated that in the past the performances have been 50 minutes with 20 minutes between sets and the headliner longer. It was the desire of the committee to end the festival by 10 p.m. or shortly thereafter. Brooke expressed some concern with having three community school ensembles and questioned the need for female vocalist. JD responded the community college groups would be considered at the "semi-professional" level; but noted the need for a strong lead-in to Marilyn.

Brooke suggested the committee reconsider partnering with a charity. JD stated that he was open to that especially now that we have a stronger financial base. He would like to see some reciprocal benefit from the partnership with participation in the event. Dan Andersen suggested supporting the school district program for homeless students. The funding of a scholarship was also discussed. The committee will continue discussion on this. JD stressed the charity needs to be the right fit.

The meeting was adjourned at 6:25 p.m.

Next Meeting

The next meeting will be Tuesday, March 8th at 5:30 p.m.

Prairie Village Arts Council Wednesday, February 10, 2016 5:30 pm Prairie Village City Hall - 7700
Mission Road Multi-Purpose Room

Meeting Minutes

The Prairie Village Arts Council met at 5:30 p.m. in the Multi-Purpose Room. Members present: Dan Andersen (chair), Serena Schermoly (vice chair), Julie Flanagan, Betsy Holliday, Melissa Brown, Wayne Wilkes, Shervin Razavian, and Stephen LeCerf. Also present were Albert Guarino and Sheila Myers (Council Liaison).

January Minutes - Motion to approve minutes as written was made by Julie and seconded by Serena. It was passed unanimously.

Future of the Arts - The participation up to this point and what could be done to increase student interest was discussed. Serena made a motion to move the deadline for submission till March 18th 2016. It was seconded by Julie and passed unanimously.

Budget 2016 - The draft budget discussed at the January meeting was presented. Shervin motioned to accept budget as presented. It was seconded by Julie and passed unanimously.

Adjournment - The meeting was adjourned at 6:15 with a motion by Serena and a second by Shervin. It passed unanimously.

Submitted by Dan Andersen

**Council Members
Mark Your Calendars
March 21, 2016**

March 2016

Pat Jessee and Roberta Leaverton exhibit in the R.G. Endres Gallery
March 21 City Council Meeting
March 22 State of the County Address 11:30 - 1:15 p.m. Ritz Charles Overland Park

April 2016

Future of the Arts exhibit in the R.G. Endres Gallery
April 1 Recreation memberships go on sale
April 4 City Council Meeting
April 5 General Election
April 8 Artist reception in the R. G. Endres Gallery 6:30 - 8:00 p.m.
April 9 Large Item Pickup for homes on and north of 75th Street
April 16 Large Item Pickup for homes south of 75th Street
April 18 City Council Meeting

May 2016

The Saturday Group in the R.G. Endres Gallery
May 1 Swim Team Registration begins for non-residents
May 2 City Council Meeting
May 13 Deadline to register for ALL Aquatics Teams
May 13 Artist reception in the R.G. Endres Gallery 6:30-7:30 p.m.
May 16 City Council Meeting
May 28 Pool Opens
May 30 City offices closed in observance of Memorial Day

June 2016

Jean Cook, Luke Severson and Sara Nguyen exhibit in the R.G. Endres Gallery
June 6 City Council Meeting
June 10 Artist reception in the R.G. Endres Gallery 6:30-7:30 p.m.
June 20 City Council Meeting