

**COUNCIL COMMITTEE OF THE WHOLE
Council Chambers
Monday, July 18, 2016
6:00 PM**

AGENDA

TED ODELL, COUNCIL PRESIDENT

AGENDA ITEMS FOR DISCUSSION

- *COU2016-43 Consider approval of a construction contract for the Drain16X - 2016 drainage repair program
Keith Bredehoeft

- COU2016-44 Consider approval of the purchase of the streetlight system from KCPL and LED lighting upgrades
Keith Bredehoeft

- COU2016-45 Consider approval of the agreement with KCPL for the purchase of the streetlight system for \$2,282,945.00
Keith Bredehoeft

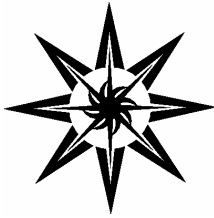
- *COU2016-46 Consider approval of Charter Ordinance #28 for the issuance of bonds for the purchase of the streetlight system from KCPL
Keith Bredehoeft

- *COU2016-47 Consider approval for the 2016 parks playset packages
Melissa Prenger

- Small cell discussion - Verizon
Wes Jordan

- 2017 budget discussion
Lisa Santa Maria

***Council Action Requested the same night**



PUBLIC WORKS DEPARTMENT

Council Committee Meeting Date: July 18, 2016

Council Meeting Date: July 18, 2016

CONSIDER CONSTRUCTION CONTRACT FOR THE DRAIN16X - 2016 DRAINAGE REPAIR PROGRAM

RECOMMENDATION

Move to authorize the Mayor to sign the construction contract with WCI, Inc. for the DRAIN16X-2016 DRAINAGE REPAIR PROGRAM for \$295,554.00.

BACKGROUND

This project includes replacement of the drainage inlet at 72nd and Nall and the reconstruction of the drainage channel between 82nd Street and 82nd Terrace just east of Roe Avenue.

On July 8, 2016, the City Clerk Office opened bids for the project. Three acceptable bids were received:

Linaweaver Construction, Inc.	\$320,954.00
WCI, Inc.	\$295,554.00
Kansas Heavy Construction	\$350,178.00
Engineer's Estimate	\$303,490.00

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

The contract will be awarded for \$295,554.

FUNDING SOURCES

Funding is available under the CIP project DRAIN16x.

RELATION TO VILLAGE VISION

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

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

ATTACHMENTS

1. Construction Agreement with WCI, Inc.

PREPARED BY

Melissa Prenger, Senior Project Manager

July 12, 2016

**CONSTRUCTION CONTRACT
FOR
PROJECT
PROJECT DRAIN16X-2016 STORM DRAINAGE REPAIR PROGRAM
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 STORM DRAINAGE REPAIR 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 Facie Violation of City Municipal Code 11-202.
- 7.9 No work shall be undertaken on Saturdays, Sundays and Holidays (Christmas, New Years, Martin Luther King's Birthday, President's Day, Memorial Day, Independence Day, Labor Day and Thanksgiving) without the express written approval of the City Project Manager. If it is necessary to perform proper care, maintenance, or protection of work already completed or of equipment used, or in the case of an emergency verbal permission may be obtained through the Project Manager.
- 7.10 Night work may be established by the Contractor, as a regular procedure, with the written permission of the City; such permission, however, may be revoked at any time by the City if the Contractor fails to maintain adequate equipment for the proper prosecution and control of all operations performed as part of the Work.

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

8. DELAYS AND EXTENSIONS OF TIME

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

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

9. ADVERSE WEATHER:

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

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

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

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

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

- The weather experienced at the Work site during the Contract period is more severe than the Adverse Weather anticipated for the Work location during any given month.
- The Unusually Severe Weather actually caused a delay to the completion of the Work.

- The delay must be beyond the control and without fault or negligence by the Contractor.

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

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

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

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

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

10. LIQUIDATED DAMAGES

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

11. PAYMENT PROCEDURE

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

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

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

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

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

12. COMPLETION AND FINAL PAYMENT

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

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

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

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

13. CLAIMS BY THE CONTRACTOR

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

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

14. CHANGES IN THE WORK

- 14.1 Changes in the Work within the general scope of this Contract, consisting of additions, deletions, revisions, or any combination thereof, may be ordered without invalidating this Contract, by Change Order or by Field Order.

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

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

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

- 15.3 Minimum Requirements Commercial General Liability Policy Limits -

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

Policy MUST include the following conditions:

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

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

Limits (Same as Commercial General Liability) -

Combined Single Limits, Bodily Injury and Property Damage - Each Accident:

Policy MUST include the following condition:

NAME CITY OF PRAIRIE VILLAGE AS "ADDITIONAL INSURED"

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

Limits -

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

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

Workers' Compensation: Statutory

Employer's Liability:

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

15.7 The City will only accept coverage from an insurance carrier who offers proof that it:

Is authorized to do business in the State of Kansas;
Carries a Best's policy holder rating of A- or better; and
Carries at least a Class VIII financial rating, or
Is a company mutually agreed upon by the City and Contractor.

15.8 Subcontractor's Insurance. If a part of the Agreement is to be sublet, the Contractor shall either:

- A. Cover all subcontractor's in its insurance policies, or
- B. Require each subcontractor not so covered to secure insurance which will protect subcontractor against all applicable hazards or risks of loss as and in the minimum amounts designated.

Whichever option is chosen, Contractor shall indemnify and hold harmless the City as to any and all damages, claims or losses, including attorney's fees, arising out of the acts or omissions of its Subcontractors.

15.9 Prior to commencing any work, Contractor shall provide City with certificates evidencing that (1) all Contractor's insurance obligations required by the contract documents are in full force and in effect and will remain in effect until Contractor has completed all of the work and has received final payment from City and (2) no insurance coverage will be canceled, renewal refused, or materially changed unless at least thirty (30) days prior written notice is given to City. Contractor's property insurance shall not lapse or be canceled if City occupies a portion of the work. Contractor shall provide City with the necessary endorsements from the insurance company prior to occupying a portion of the work.

15.10 Waiver of Subrogation. All insurance coverage required herein shall contain a waiver of subrogation in favor of the City. Contractor's insurance policies shall be endorsed to indicate that Contractor's insurance coverage is primary and any other insurance maintained by City is non-contributing as respects the work of Contractor.

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

15.12 Bonds and Other Performance Security. Contractor shall provide a Performance Bond, Maintenance Bond and a Statutory Bond in the amount of one hundred percent (100%) of the Contract Price to cover the entire scope of Work and any other specific performance security that may be indicated in this Contract. With each bond there shall be filed with the City one copy of "Power of Attorney" certified to include the date of the bonds.

16. INDEMNITY

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

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

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

17. SUCCESSORS AND ASSIGNS

- 17.1 The City and Contractor bind themselves, their successors, assigns and legal representatives to the other party hereto and to successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in this Contract.
- 17.2 The Contractor shall not assign or sublet the work, or any part thereof, without the previous written consent of the City, nor shall it assign, by power of attorney or otherwise, any of the money payable under this Contract unless by and with the like written consent of the City. In case the Contractor assigns all, or any part of any moneys due or to become due under this Contract, the instrument of assignment shall contain a clause substantially to the 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

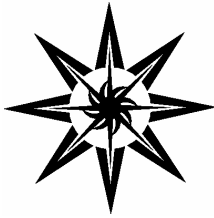
ATTEST:

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 WORKS DEPARTMENT

Council Committee Meeting Date: July 18, 2016

Council Meeting Date: August 1, 2016

CONSIDER PURCHASE OF STREETLIGHT SYSTEM FROM KCPL AND LED LIGHTING UPGRADES.

RECOMMENDATION

Approve the purchase of the streetlight system from KCPL and LED lighting upgrades.

BACKGROUND

Currently the street light system consists of 2,062 lights and is owned and maintained by KCPL. The City pays \$762,000 per year to KCPL to lease the streetlights. In recent years many cities in Johnson County including Overland Park, Leawood, Lenexa, Fairway, Mission, and Mission Hills have made the decision to purchase the streetlight systems from KCPL. These cities have used the funds budgeted for the lease to pay for the maintenance of the streetlights, the electricity, and to fund repairs and replacements of the system and have shown this to be much more cost effective as compared to continuing the lease.

Prairie Village current yearly cost of leased system- \$762,000

KCPL Proposed Purchase Price- \$2,282,945.00

The KCPL purchase price is based on the number of specific assets in our system and the cost for each item is based on a County wide rate and not based on specific condition or age. This is the same process applied to other cities that have recently purchased streetlights.

It is proposed to sell bonds to purchase the system and to pay the bonds off in 7 years. Attached is a cash flow analysis completed by Columbia Capital which yielded almost a 15% Rate of Return based on the assumptions included with the analysis. The analysis shows the cost advantage of purchasing the system.

This Columbia Capital analysis also includes upgrading all heads to LED immediately after purchase. The streetlight system already has 334 LED lights as a result of staff's effort to obtain a grant from MARC a few years ago. It is proposed to use the bond funds to upgrade the remaining 1736 to LED's after purchase. The LED heads will last longer than the existing heads, require significantly less maintenance, reduce the frequency of outages, and save on electricity costs. The LED upgrades would decrease the yearly electricity costs from \$94,000 to \$53,000 each for an estimated savings of \$41,000 per year. The

added cost for LED upgrades will increase the bond amount by \$750,000.

Total Bond for Streetlight purchase and LED upgrades-

Streetlight Purchase-	\$2,282,945.00
LED Upgrades-	\$750,000.00
Contingency for LED and install-	\$167,055.00
<u>TOTAL-</u>	<u>\$3,200,000</u>

Additional information if streetlights are purchased with LED upgrades-

- The City would pay KCPL for power usage based on the off peak flat rate for the streetlight. This is anticipated to be about \$53,000 per year.
- The City would be responsible for maintenance of the streetlight system. The City would contract for maintenance services as other cities have done and the repair process would be very similar to when KCPL owned. With LED heads it is expected the yearly basis maintenance cost will be about \$34.00 per pole for a total of \$70,108 per year.
- The City would budget for repair and replacement above basic maintenance. Budget for this would be \$200,000 per year but could be more if the City desired to replace the system sooner.
- Insurance will increase by about \$3,000 per year.
- The City will need to hire an underground utility location service to locate underground power lines for the streetlights. This is expected to be about \$7,200 per year.
- The City will need to install KCPL meters for power when streetlights are replaced on an entire street or when new streetlights are added. The cost for electricity, when metered, is expected to be similar to what it was before installing meters.
- No additional City staff is expected since the maintenance work will be contracted. The repair process will be similar to what we do with KCPL. There will be additional staff time in processing payments to contractors and spending time developing repair or replacement projects.

The Finance Committee met and discussed the purchase of the streetlight system and provided feedback on the information to prepare for the packet.

The purchase of the system using bond funds requires separate action on a charter ordinance(See related item).

FUNDING SOURCES

Funds to pay for repayment of bonds and other associated costs will come from the funds budgeted for the KCPL Lease in the City's operations budget.

ATTACHMENTS

Streetlight Purchase Analysis by Columbia Capital

PREPARED BY

Keith Bredehoeft, Public Works Director

July 12, 2016

Preliminary / Subject to Change

City of Prairie Village, Kansas

Streetlight Purchase Analysis

Underlying Assumptions

Streetlights Purchased:	2,062
Cost of Streetlights:	\$2,282,945
KCP&L Lease Payments:	Currently \$762,000 annually, projected to grow 3.5%
Electricity Cost:	Currently \$94,000 annually, projected to grow 3.0%, \$53,000 post LED upgrades per KCP&L
Pole Maintenance:	\$45 per pole annually
Locates:	10 per month at \$60 each
Insurance:	\$3,000 annually, projected to grow 3.0%
Repair and Replacement Cost:	\$200,000 per year, projected to grow 3.0%
LED Upgrade Schedule:	Upon purchase of the streetlights
Cost of LED Upgrades:	\$750,000
LED Energy Savings:	Approximately 40% reduction in electricity cost and 25% reduction in maintenance cost
Bond Financing:	Anticipated to be issued in the summer of 2016 with level debt service over 7 years, with total project proceeds consisting of the cost of the streetlights and LED upgrades (\$3,200,000)

City of Prairie Village, Kansas

Streetlight Purchase Cash Flow Analysis

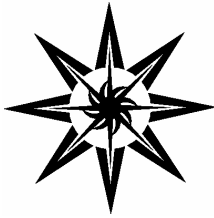
July 11, 2016 - Scenario 2

Preliminary / Subject to Change

Present Value Benefit \$11,689,423
Internal Rate of Return 11.0%
Upfront costs (\$3,200,000) reflected in IRR Cash Flows

Calendar Year	Present Value Factor (3%)	KCPL Lease Payments (Original Cost)	Cost of System	Cost of System	Total Cost	LED Upgrade	Cost of System	Savings / (Cost)	Present Value	Present Value Cumulative	IRR Cash Flows
			(Exclude Financing) (New Cost)	(Bond Financing) (New Cost)	of System (Total New Cost)	Savings (Cost Savings)	After Upgrades (Total New Cost)				
2016*	-	\$ 508,000	\$ 264,660	\$ 39,825	\$ 304,485	\$ -	\$ 304,485	0	\$ 203,515	\$ 203,515	(2,996,485)
2017	0.97	788,670	408,900	495,450	904,350	(62,621)	841,728	1	(53,058)	(51,513)	(53,058)
2018	0.94	816,273	421,167	496,950	918,117	(64,500)	853,617	2	(37,343)	(35,200)	(37,343)
2019	0.92	844,843	433,802	498,250	932,052	(66,435)	865,617	3	(20,774)	(19,011)	(20,774)
2020	0.89	874,413	446,816	498,225	945,041	(68,428)	876,613	4	(2,200)	(1,955)	(2,200)
2021	0.86	905,017	460,220	495,700	955,920	(70,481)	885,439	5	19,578	16,888	19,578
2022	0.84	936,693	474,027	496,675	970,702	(72,595)	898,106	6	38,586	32,315	38,586
2023	0.81	969,477	488,248	492,275	980,523	(74,773)	905,749	7	63,727	51,816	63,727
2024	0.79	1,003,408	502,895	-	502,895	(77,016)	425,879	8	577,530	455,907	577,530
2025	0.77	1,038,528	517,982	-	517,982	(79,327)	438,655	9	599,873	459,753	599,873
2026	0.74	1,074,876	533,521	-	533,521	(81,707)	451,815	10	623,062	463,616	623,062
2027	0.72	1,112,497	549,527	-	549,527	(84,158)	465,369	11	647,128	467,499	647,128
2028	0.70	1,151,434	566,013	-	566,013	(86,683)	479,330	12	672,104	471,400	672,104
2029	0.68	1,191,735	582,993	-	582,993	(89,283)	493,710	13	698,024	475,321	698,024
2030	0.66	1,233,445	600,483	-	600,483	(91,962)	508,521	14	724,924	479,260	724,924
2031	0.64	1,276,616	618,497	-	618,497	(94,721)	523,777	15	752,839	483,219	752,839
2032	0.62	1,321,297	637,052	-	637,052	(97,562)	539,490	16	781,807	487,196	781,807
2033	0.61	1,367,543	656,164	-	656,164	(100,489)	555,675	17	811,868	491,193	811,868
2034	0.59	1,415,407	675,849	-	675,849	(103,504)	572,345	18	843,062	495,210	843,062
2035	0.57	1,464,946	696,124	-	696,124	(106,609)	589,516	19	875,430	499,246	875,430
2036	0.55	1,516,219	717,008	-	717,008	(109,807)	607,201	20	909,018	503,301	909,018
2037	0.54	1,569,287	738,518	-	738,518	(113,101)	625,417	21	943,870	507,376	943,870
2038	0.52	1,624,212	760,674	-	760,674	(116,494)	644,180	22	980,032	511,471	980,032
2039	0.51	1,681,059	783,494	-	783,494	(119,989)	663,505	23	1,017,554	515,586	1,017,554
2040	0.49	1,739,896	806,999	-	806,999	(123,589)	683,410	24	1,056,486	519,721	1,056,486
2041	0.48	1,800,793	831,209	-	831,209	(127,296)	703,912	25	1,096,880	523,876	1,096,880
2042	0.46	1,863,820	856,145	-	856,145	(131,115)	725,030	26	1,138,791	528,051	1,138,791
2043	0.45	1,929,054	881,830	-	881,830	(135,049)	746,781	27	1,182,273	532,247	1,182,273
2044	0.44	1,996,571	908,284	-	908,284	(139,100)	769,184	28	1,227,387	536,462	1,227,387
2045	0.42	2,066,451	935,533	-	935,533	(143,273)	792,260	29	1,274,191	540,698	1,274,191
2046	0.41	2,138,777	963,599	-	963,599	(147,571)	816,027	30	1,322,749	544,955	1,322,749
		41,221,257	19,718,233	3,513,350	23,231,583	(2,979,240)	20,252,343		20,968,914	11,689,423	

*2016 cost data is pro-rated for the year assuming a September 1 purchase date



PUBLIC WORKS DEPARTMENT

Council Committee Meeting Date: July 18, 2016

Council Meeting Date: August 1, 2016

CONSIDER AGREEMENT WITH KCPL FOR THE PURCHASE STREETLIGHT SYSTEM.

RECOMMENDATION

Execute the agreement with KCPL for the purchase of the streetlight system for \$2,282,945.00.

BACKGROUND

Currently the street light system consists of 2,062 lights and is owned and maintained by KCPL and the City pays \$762,000 per year to KCPL for the streetlights. In recent years many cities in Johnson County including Overland Park, Leawood, Lenexa, Fairway, Mission, and Mission Hills have made the decision to purchase the streetlight systems from KCPL. These cities have used the funds budgeted for the lease to pay for the maintenance of the streetlights, the electricity, and to fund repairs and replacements of the system and have shown this to be much more cost effective as compared to continuing the lease.

Prairie Village current yearly cost of leased system- \$762,000

KCPL Proposed Purchase Price- \$2,282,945.00

The KCPL purchase price is based on the number of specific assets in our system and the cost for each item is based on a County wide rate and not based on specific condition or age. This is the same process applied to other cities that have recently purchased streetlights.

It is proposed to sell bonds to purchase the system and to pay them off in 7 years. Attached is a cash flow analysis completed by Columbia Capital which yielded almost a 15% Rate of Return based on the assumptions included with the analysis. The analysis clearly shows the cost advantage of purchasing the system.

See two related items on the agenda.

FUNDING SOURCES

Funds to pay for repayment of bonds and other associated costs will come from the funds budgeted for the KCPL Lease in the City's operations budget.

ATTACHMENTS

KCPL Streetlight Sale Agreement

PREPARED BY

Keith Bredehoeft, Public Works Director

July 12, 2016

STREETLIGHT SALE AGREEMENT

This Streetlight Sale Agreement (“Agreement”) is made this ____ day of December, 2016 by and between Kansas City Power & Light Company (“Company”), a Missouri Corporation and the City of Prairie Village, Kansas (“City”), a municipal corporation of the State of Kansas (jointly referred to as “Parties”).

1. DEFINITIONS

For the purpose of this Agreement, the following words and phrases shall have the meaning given in this Section 1. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. The words “shall” or “will” are mandatory and “may” is permissive. Words not defined in Section 1 shall be given their common and ordinary meaning.

1.1 “City” means the City of Prairie Village, a municipal corporation of the State of Kansas, and all of the territory within its boundaries as of the effective date of this Agreement.

1.2 “Company” means the Kansas City Power & Light Company, a Missouri corporation, but does not mean its parent company, or any of its affiliates and subsidiaries, or any other entity in which it has an ownership interest.

1.3 “Uncontrollable Forces” means severe weather, storms, acts of God, fire, civil or military authority, strikes or other labor disturbances, orders of courts or regulatory agencies, and other causes reasonably beyond the control of the party claiming to have been precluded from or delayed in performance under the Agreement.

1.4 “Agreement” means this written Streetlight Sale Agreement.

1.5 “Existing Streetlight System” means the luminaires, brackets, standards, and related mounting hardware and the conductor leading to the point of connection to the Company’s secondary distribution system. This point of connection is the streetlight wire connection to Company secondary wire on wooden utility pole-mounted lights, and/or the secondary wire connection for the first controller or first streetlight base for each individual and/or group of underground street lights. Beyond the point of connection, the City would own and be responsible for all maintenance of the lights and facilities. For purposes of this Agreement, the poles listed in **Exhibit A** to this Agreement, which is attached hereto and incorporated herein by reference, are specifically excluded from the Existing Streetlight System.

1.6 “Make-Ready Work” means all materials and labor required to be provided by the City prior to the Company installing energy meters and energizing circuits.

2. REGULATORY APPROVAL

The Company shall seek and pay for all regulatory approvals necessary for the full implementation of this Agreement. The City shall support such action by the Company. Neither the City nor the Company shall initiate any action before any regulatory or judicial body that is inconsistent with any provision of this Agreement.

3. PURCHASE OF COMPANY’S EXISTING STREETLIGHT SYSTEM

3.1 The Company represents and warrants that it has authority to transfer all existing interests in the Existing Streetlight System. The Company agrees to sell to the City, and the City agrees to purchase from the Company, the Company’s Existing Streetlight System within the City, consisting of 2,062 lights for the sum of Two Million Two Hundred Ninety Two Thousand Nine Hundred Forty Five dollars (\$2,292,945). Whereas the City has entered into a preliminary agreement and provided an initial deposit of \$10,000, this amount as per the preliminary agreement will be credited toward the purchase of the Existing Streetlight System. This brings the final total to Two Million Two Hundred Eighty Two Thousand Nine Hundred Forty Five dollars (\$2,282,945). The ownership of such Existing Streetlight System shall be transferred to the City upon the occurrence of all of the following events: (A) obtaining any and all necessary regulatory approvals; (B) obtaining the approval of the City council; (C) receipt of payment by Company from the City of the purchase price of the Existing Streetlight System; and (D) the transfer of relevant easements required under Section 6 of this Agreement.

3.2 Existing primary distribution poles, secondary distribution poles, electrical conduit and or conductor on the Company side of the point of connection shall not be conveyed or sold to the City.

3.3 The City agrees to utilize ‘qualified’ overhead distribution line contractor approved by the Company for working on Company property for installation, removal, and maintenance of streetlight facilities that remain attached to Company retained poles (Exhibit A).

3.4 The Company has and maintains the right to place and maintain equipment on City-owned streetlight poles.

4. METERING, INVENTORY, AND ENERGY USE

4.1 The Parties agree that City-owned facilities should be metered for billing accuracy. The City agrees to install meters on any and all unmetered streetlights when such streetlights are replaced by the City after execution of this Agreement.

It is understood that it shall be within the City's sole discretion to determine when a streetlight purchased under this Agreement needs to be replaced and the Company shall have no cause of action against the City for failure to replace a streetlight.

4.2 The Company may request a streetlight inventory verification to be performed once every two years, to be paid for by the City, for the purposes of verifying the status of the Existing Streetlight System. The party performing the verification shall be mutually agreed upon by the Company and the City. The scope of the streetlight inventory verification shall include visual inspection to verify the following attributes: streetlight quantities, attachments to the Company's poles, potential clearance issues, lamp wattage, and fixture type (HPS, MV, etc.)

4.3 City-owned streetlights will be billed in accordance with the Company's Tariff Schedule 70, Off-Peak Lighting Service. For all metered streetlights purchased under this Agreement, the City shall be billed based on actual energy use. For all unmetered streetlights, the City shall be billed on estimated energy usage calculated in accordance with Schedule 70. The Company agrees that no monthly service facilities charge as described under the Rate section of Schedule 70 will apply to the facilities sold under this Agreement.

4.4 On a monthly basis the City will provide the Company a report detailing any changes to the facilities. The Company will adjust its billing as appropriate. Additionally, the City shall notify the Company as soon as reasonably practicable regarding any changes made to the Existing Streetlight System that may affect energy consumption. Failure to notify the Company promptly in accordance with this Section 4.4 may result in estimated charges to the City for unbilled energy usage.

5. INDEMNIFICATION

5.1 The Company shall indemnify, defend and hold harmless the City from and against all damages, expenses (including, but not limited to reasonable attorney fees), obligations, costs, liabilities, losses, claims, actions or causes of actions whatsoever sustained by the City arising from or related to the Existing Streetlight System prior to the sale to the City to the extent that such damages, expenses, obligations, costs, liabilities, losses, claims, actions or causes of action are caused by the negligence of the Company, its employees or its agents.

5.2 To the extent permitted by Kansas law, specifically including the Kansas Cash Basis Law (Cash Basis Law - K.S.A. 10-1101 et seq.) and the Kansas Budget Law (Budget Law - K.S.A. 79-2925 et seq.), and subject to the immunity and maximum liability provisions of the Kansas Tort Claims Act (K.S.A. 75-6101, et seq.), The City shall indemnify, defend and hold harmless the Company from and against all damages, expenses (including, but not limited to reasonable

attorney fees), obligations, costs, liabilities, losses, claims, actions or causes of actions whatsoever sustained by the Company arising from or related to the Existing Streetlight System after the sale to the City to the extent that such damages, expenses, obligations, costs, liabilities, losses, claims, actions or causes of action are caused by negligence of the City, its employees or its agents.

6. EASEMENTS

6.1 The Company shall transfer through assignment, quitclaim or other device or instrument, as appropriate, to the City, at no cost to the City, easements and rights-of-way used solely for the Existing Streetlight System to be sold hereunder upon the transfer of the Existing Streetlight System to the City. The City shall pay the cost of recording all such related documents.

6.2 The Company shall grant to the City the right to jointly use easements and rights-of-way utilized for both the Existing Streetlight System and the Company's electric facilities, provided however that City shall be responsible for obtaining any and all rights, and any costs thereby incurred, so required with respect to the owner(s) of the fee interest of any such burdened real property.

7. TAXES

The City agrees to waive all taxes by the City on the transactions contemplated in this Agreement. This waiver includes but is not limited to sales, use, and franchise taxes or fees. In the event such taxes or fees are not waived for any reason, the City agrees to reimburse the Company for any such taxes or fees paid. The City agrees to provide to the Company, prior to the commencement of maintenance, an applicable sales/use tax exemption certificate and/or any other documentation necessary to establish the exemption from state and local sales or use taxes.

8. PERMITS AND FEES

Excavation permit fees and street closure fees set forth of the City's ordinances shall not be assessed against the Company for purposes of this Agreement.

9. NON-WAIVERS

Neither the City nor the Company shall be excused from complying with any of the terms and conditions of this Agreement by any failure of the other, or any of its officers, employees, or agents, upon any one or more occasions, to insist upon or to seek compliance with any such terms and conditions.

10. NOTICES

Unless otherwise specified herein, all notices from the Company to the City and from the City to the Company pursuant to or concerning this Agreement shall be in writing and shall be delivered as follows:

To Company: Kansas City Power & Light Company
 4400 E Front Street
 Kansas City, Missouri 64120
 Attn: Craig Parmeley
 Manager Standards Engineering

To City: City of Prairie Village, KS

 Attn:

12. WARRANTY

ALL EQUIPMENT, PARTS AND MATERIAL SOLD UNDER THIS AGREEMENT ARE SOLD “AS IS” AND “WITH ALL FAULTS.” NO WARRANTIES OF ANY TYPE WHETHER EXPRESSED OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ARE PROVIDED BY THE COMPANY.

13. APPLICABLE LAW

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. The parties further agree that if for any reason, any provision hereof is unenforceable, the remainder of this Agreement shall nonetheless remain binding and in effect.

14. NO PRIOR AGREEMENTS

This Agreement constitutes the entire Agreement between the Parties and supersedes all prior agreements, whether oral or written, covering the same subject matter.

15. AUTHORITY TO BIND

The Parties represent and acknowledge that this Agreement is given and executed voluntarily and that the person executing this Agreement below is doing so on their behalf with authority to bind the Party.

KANSAS CITY POWER & LIGHT COMPANY

By: _____

Name: Duane Anstaett

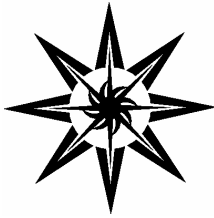
Title: Vice President – Delivery

CITY OF PRAIRIE VILLAGE, KANSAS

By: _____

Name: _____

Title: _____



PUBLIC WORKS DEPARTMENT

Council Committee Meeting Date: July 18, 2016

Council Meeting Date: July 18, 2016

CONSIDER APPROVAL OF CHARTER ORDINANCE #28 FOR THE ISSUANCE OF BONDS FOR THE PURCHASE STREETLIGHT SYSTEM FROM KCPL.

RECOMMENDATION

Approve Charter Ordinance #28 for the issuance of bonds for the purchase of the streetlight system from KCPL.

BACKGROUND

It is proposed that Prairie Village purchase the streetlight system located in street right of way and city property consisting of 2,062 streetlights from KCPL. Currently the streetlights are leased from KCPL. (See related agenda items)

Below is a summary of the total bond amount-

KCPL Streetlight Purchase	\$2,282,945.00
LED Upgrades for 1736 lights-	\$750,000.00
Contingency for LED and install-	\$167,055.00

TOTAL- \$3,200,000

Bond Council prepared the proposed Charter Ordinance #28. Charter Ordinance #28 repeals Charter Ordinance #25.

FUNDING SOURCES

Funds to pay for repayment of bonds and other associated costs will come from the funds budgeted for the KCPL Lease in the City's operations budget.

ATTACHMENTS

Proposed Charter Ordinance #28

PREPARED BY

Keith Bredehoeft, Public Works Director

July 12, 2016

**EXCERPT OF MINUTES OF A MEETING
OF THE GOVERNING BODY OF
THE CITY OF PRAIRIE VILLAGE, KANSAS
HELD ON _____, 2016**

The governing body met in regular session at the usual meeting place in the City, at 7:00 P.M., the following members being present and participating, to-wit:

Absent: _____

The Mayor declared that a quorum was present and called the meeting to order.

Thereupon, there was presented a Charter Ordinance entitled:

A CHARTER ORDINANCE EXEMPTING THE CITY OF PRAIRIE VILLAGE, KANSAS, FROM THE PROVISIONS OF K.S.A. 13-1024a AND PROVIDING SUBSTITUTE AND ADDITIONAL PROVISIONS ON THE SAME SUBJECT RELATING TO GENERAL IMPROVEMENTS AND THE ISSUANCE OF BONDS FOR THE PURPOSE OF PAYING FOR SAID IMPROVEMENTS; AND REPEALING CHARTER ORDINANCE NO. 25.

Thereupon Councilmember _____ moved that said Charter Ordinance be passed. The motion was seconded by Councilmember _____. Said Charter Ordinance was duly read and considered, and upon being put, the motion for the passage of said Charter Ordinance was carried by the vote of the governing body, the vote being as follows:

Yea:

_____.

Nay: _____

Thereupon, the Charter Ordinance having passed with more than a 2/3 vote of the governing body, the Mayor declared said Charter Ordinance duly passed and the Charter Ordinance was numbered Charter Ordinance No. _____ and was approved and signed by the Mayor and attested by the City Clerk.

(Other Proceedings)

[BALANCE OF THIS PAGE INTENTIONALLY LEFT BLANK]

CERTIFICATE

I hereby certify that the foregoing Excerpt of Minutes is a true and correct excerpt of the proceedings of the governing body of the City of Prairie Village, Kansas, held on the date stated therein, and that the official minutes of such proceedings are on file in my office.

(SEAL)

City Clerk

(Published in *The Legal Record* on _____, 2016, and _____, 2016)

CHARTER ORDINANCE NO. _____

A CHARTER ORDINANCE EXEMPTING THE CITY OF PRAIRIE VILLAGE, KANSAS, FROM THE PROVISIONS OF K.S.A. 13-1024a AND PROVIDING SUBSTITUTE AND ADDITIONAL PROVISIONS ON THE SAME SUBJECT RELATING TO GENERAL IMPROVEMENTS AND THE ISSUANCE OF BONDS FOR THE PURPOSE OF PAYING FOR SAID IMPROVEMENTS; AND REPEALING CHARTER ORDINANCE NO. 25.

WHEREAS, Article 12, Section 5 of the Constitution of the State of Kansas (the “Act”), provides that cities may exercise certain home rule powers, including passing charter ordinances which exempt such cities from non-uniform enactments of the Kansas Legislature; and

WHEREAS, the City of Prairie Village, Kansas (the “City”) is a city, as defined in the Act, duly created and organized, under the laws of the State of Kansas; and

WHEREAS, K.S.A. 13-1024a is part of an enactment of the Kansas Legislature (K.S.A. 13-1024a *et seq.*) relating to general improvements and the issuance of bonds for such purposes, which enactment is applicable to the City, but is not uniformly applicable to all cities within the State of Kansas; and

WHEREAS, the governing body of the City desires, by charter ordinance, to exempt the City from the provisions of K.S.A. 13-1024a, and to provide substitute and additional provisions therefor.

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

Section 1. Exemption – K.S.A. 13-1024a. The City by virtue of the powers vested in it by the Act, hereby elects to exempt itself from and hereby makes inapplicable to it the provisions of K.S.A. 13-1024a, and does hereby provide the following substitute and additional provisions in place thereof:

For the purpose of paying for any bridge, viaduct, street, sidewalk or pedestrian way improvement, airport, public building or structure, parking improvement, or other public utility or works, including any appurtenances related thereto and the land necessary therefor, for lands for public parks and recreation facilities, including golf courses, stadiums and community centers, and developing and making improvements to the same, within or without the city, for the establishment, development and construction of crematories, desiccating or reduction works, including any appurtenances related thereto and the land necessary therefor, within or without the city, or for the improvement, repair or extension of any **streetlights**, waterworks, sanitary sewer facilities, sewage treatment or disposal plant, sewerage system, storm water improvement, electric light plant, crematory, desiccating or reduction works or other public utility plant or works owned by the city, and for the purpose of rebuilding, adding to or extending to the same or acquiring land necessary therefor from time to time, as the necessities of the city may require, or for the acquisition of equipment, vehicles and other personal property to be

used in relation to any of the improvements authorized herein, the city may borrow money and issue its general obligation bonds and/or temporary notes for the same.

SECTION 3. Severability and Termination. If any provision or section of this Charter Ordinance is deemed or ruled unconstitutional or otherwise illegal or invalid by any court of competent jurisdiction, such illegality or invalidity shall not affect any other provision of this Charter Ordinance. In such instance, this Charter Ordinance shall be construed and enforced as if such illegal or invalid provision had not been contained herein.

SECTION 4. Repeal of Charter Ordinance 25. This Charter Ordinance shall supersede Charter Ordinance No. 25 and upon effectiveness of this Charter Ordinance, Charter Ordinance No. 25 is hereby repealed.

SECTION 5. Effective Date. This Charter Ordinance shall be published once a week for two consecutive weeks in the official City newspaper, and shall take effect sixty-one (61) days after final publication, unless a petition signed by a number of electors of the City equal to not less than ten percent (10%) of the number of electors who voted at the last preceding regular City election shall be filed in the office of the City Clerk demanding that this Charter Ordinance be submitted to a vote of the electors, in which event this Charter Ordinance shall take effect when approved by a majority of the electors voting at an election held for such purpose.

PASSED with at least a two-thirds (2/3) vote of the entire Governing Body of the City of Prairie Village, Kansas, on _____, 2016, and **APPROVED AND SIGNED** by the Mayor.

Laura Wassmer, Mayor

(SEAL)

ATTEST:

Joyce Hagen Mundy, City Clerk

CERTIFICATE

I, hereby certify that the above and foregoing is a true and correct copy of Charter Ordinance No. _____ of the City of Prairie Village, Kansas, adopted by the governing body on _____, 2016, as the same appears of record in my office.

DATED: September _____, 2012.

City Clerk

CERTIFICATE OF NO PROTEST

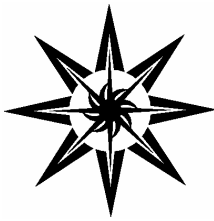
STATE OF KANSAS)
) ss:
COUNTY OF JOHNSON)

The undersigned, Clerk of the City of Prairie Village, Kansas (the “City”), does hereby certify that the governing body of the City duly passed Charter Ordinance No. ____, on _____, 2016, that said Charter Ordinance was published once a week for two consecutive weeks _____, 2016 and _____, 2016 in *The Legal Record*, the official City newspaper; that more than sixty (60) days have elapsed from the date of the last said publication; and that there has been no sufficient written protest filed in my office against said Charter Ordinance, as provided in Article 12, Section 5 of the Kansas Constitution.

WITNESS my hand and official seal on _____, 2016.

(Seal)

Clerk



PUBLIC WORKS DEPARTMENT

Council Committee Meeting Date: July 18, 2016

Council Meeting Date: July 18, 2016

CONSIDER APPROVAL FOR THE 2016 PARKS PLAYSET PACKAGES

RECOMMENDATION

Move to authorize the Mayor to sign the contract with Athco LLC and Fry Park and Playground for the 2016 Parks Playset Packages for a total of \$149,671.90.

BACKGROUND

The 2016 Parks Playset Packages includes new equipment at Taliaferro and Windsor Parks with a refreshed playset at Bennett Park. A public meeting was held on April 21, 2016 to show these designs along with a comparable option. The following play sets were chosen based on budget and play value:

Taliaferro Park: NetPlex 5-12 yrs and Smart Play Motion 2-5 yrs (Athco)



Windsor Park: Roundabout (Fry)



Bennett: Refresh (Athco)



The vendor agreement for Athco is \$103,750.00 and Fry Park and Playground is \$45,921.90.

FUNDING SOURCES

The funding is available in the 2016 CIP Parks Projects.

RELATION TO VILLAGE VISION

2. 1. *Enhancing Parks and Open Space*

CFS2.b. Enhance parks for active and passive recreation through capital improvements such as landscaping, tree and flower planting, shelters picnic facilities, athletic fields, etc.

ATTACHMENTS

1. Vendor Agreements

PREPARED BY

Melissa Prenger, Senior Project Manager

July 14, 2016



Lenexa, KS 66215
13500 W. 108TH St.
913-469-5600 or 1-800-255-1102
FAX (913) 469-8134
Email: athco@athcollc.com

PROPOSAL

TO: DOUG PICKERT, INDIGO DESIGN
MELISSA PRENGER, CITY OF PRAIRIE VILLAGE
PRAIRIE VILLAGE, KS

DATE: JULY 14, 2016

RE: BENNETT PARK

We are pleased to forward the following quotation. Our terms are net 30 days and all prices are subject to acceptance within 30 days.

State Sales tax Included **Not Included**

We propose to furnish and deliver FOB destination (freight included).

1 EACH – LANDSCAPE STRUCTURES #92572-1-2 WITH REVISIONS AS SHOWN ON ATTACHED DRAWING 92572-1-4 PLUS REMOVE THE NEW STEP AND THE 2 HALF-DECKS, REMOVE THE VERTICAL CLIMBER, REPLACE THE EXISTING MIRROR PANEL WITH A WIRE BARRIER. NEW DESIGN #92572-1-5

1 EACH - REPLACEMENT SLIDE HOOD ONLY FOR THE THE EXISTING DOUBLE POLY SLIDE OFF THE 32” DECK.

ALL THE ABOVE FOR THE SUM OF \$31,135.00
FOR INSTALLATION OF ABOVE ADD \$ INCLUDED

REMARKS: INSTALLATION ASSUMES NO ROCK AT FOOTING LOCATIONS.

INCLUDES REMOVAL OF EXISTING COMPONENTS AS REQUIRED.

- **Work for installations/repairs will be done as early as our schedule allows between the hours of 8 am- 4pm**

***** A 3% convenience fee will be added for all credit card transactions over \$1,000.*****

All proposals with labor (installation/repairs) are subject to Sales Tax unless a “Project Tax Exemption Certificate” is provided when placing the order.

This proposal accepted by:

Proposed by:

Name & Title

BRAD MOHR, GENERAL MANAGER



Lenexa, KS 66215
13500 W. 108TH St.
913-469-5600 or 1-800-255-1102
FAX (913) 469-8134
Email: athco@athcollc.com

PROPOSAL

**TO: DOUG PICKERT, INDIGO DESIGN
MELISSA PRENGER, CITY OF PRAIRIE VILLAGE
PRAIRIE VILLAGE, KS**

DATE: JULY 6, 2016

RE: TALIAFERRO PARK

We are pleased to forward the following quotation. Our terms are net 30 days and all prices are subject to acceptance within 30 days.
State Sales tax Included X **Not Included**
We propose to furnish and deliver FOB destination (freight included).

**1 EACH – LANDSCAPE STRUCTURES #92889-2-3 7-POST NETPLEX SYSTEM
1 EACH – LANDSCAPE STRUCTURES #3923 SMART PLAY MOTION**
..... **\$72,615.00**

~~**OR**~~

~~**1 EACH – LANDSCAPE STRUCTURES #92889-1-1 14-POST NETPLEX SYSTEM
1 EACH – LANDSCAPE STRUCTURES #3923 SMART PLAY MOTION**~~
..... ~~**\$74,590.00**~~

**ALL THE ABOVE FOR THE SUM OF \$ SEE ABOVE
FOR INSTALLATION OF ABOVE ADD \$ INCLUDED**

**REMARKS: INCLUDES REMOVAL OF EXISTING STRUCTURES AND POURED-IN-PLACE,
MOVING AND RE-SPREADING EXISTING MULCH AS REQUIRED FOR THE
REMOVAL AND FOR THE INSTALLATION OF THE NEW EQUIPMENT.**

INSTALLATION ASSUMES NO ROCK AT FOOTING LOCATIONS.

- **Work for installations/repairs will be done as early as our schedule allows
between the hours of 8 am- 4pm**

***** A 3% convenience fee will be added for all credit card transactions over \$1,000.*****

All proposals with labor (installation/repairs) are subject to Sales Tax unless a “Project Tax Exemption Certificate” is provided when placing the order.

This proposal accepted by:

Proposed by:

Name & Title

BRAD MOHR, GENERAL MANAGER



QUOTE

Fry & Associates, Inc.
 101 E 15th Ave, North Kansas City MO 64116
 t. 816-221-4825 f. 816-221-4831

Number FRYQ58794-B
Date Jul 15, 2016

End User	Ship To	Bill To
City of Prairie Village-Parks 3535 Somerset Drive Prairie Village, Kansas 66208 United States	City of Prairie Village-Parks 3535 Somerset Drive Prairie Village, Kansas 66208 United States	Indigo Design, Inc. Doug Pickert 8593 Timber Trails Drive De Soto, KS 66018 United States

Associates	P.O. Number	Ship Via	Terms
Ashley Trammell Steve Jones		Common	Cash In Advance / Prepay

Qty	Description	Unit Price	Ext. Price
	Windsor Park		
1	<i>Playmaker</i> Roundabout Variation Per Drawing: 16-2820E Post Color: Chestnut Component Color: Bottle Green Rotomold Plastic Color: Brownstone 2 Color Plastic Color: Grey/Beige/Grey Deck Color: Brown	\$25,611.60	\$25,611.60
1	<i>Install</i> Remove and Reinstall Mulch; Includes New Filter Fabric	\$1,800.00	\$1,800.00
1	<i>Install</i> Removal and Disposal of Existing Play Structures	\$3,500.00	\$3,500.00
1	<i>Install</i> Equipment Installation for Specified Roundabout Variation	\$12,585.30	\$12,585.30

SubTotal	\$43,496.90
Tax	\$0.00
Shipping	\$2,425.00
Total	\$45,921.90

Shipping Contact:
Email:

Phone:
Fax:

Quote Accepted By: _____ Date: _____

Pricing is CASH pricing. 3.5% will be added to the total for credit card transactions

CITY OF PRAIRIE VILLAGE PROPOSED 2017 OPERATING BUDGET

July 18, 2016



Agenda

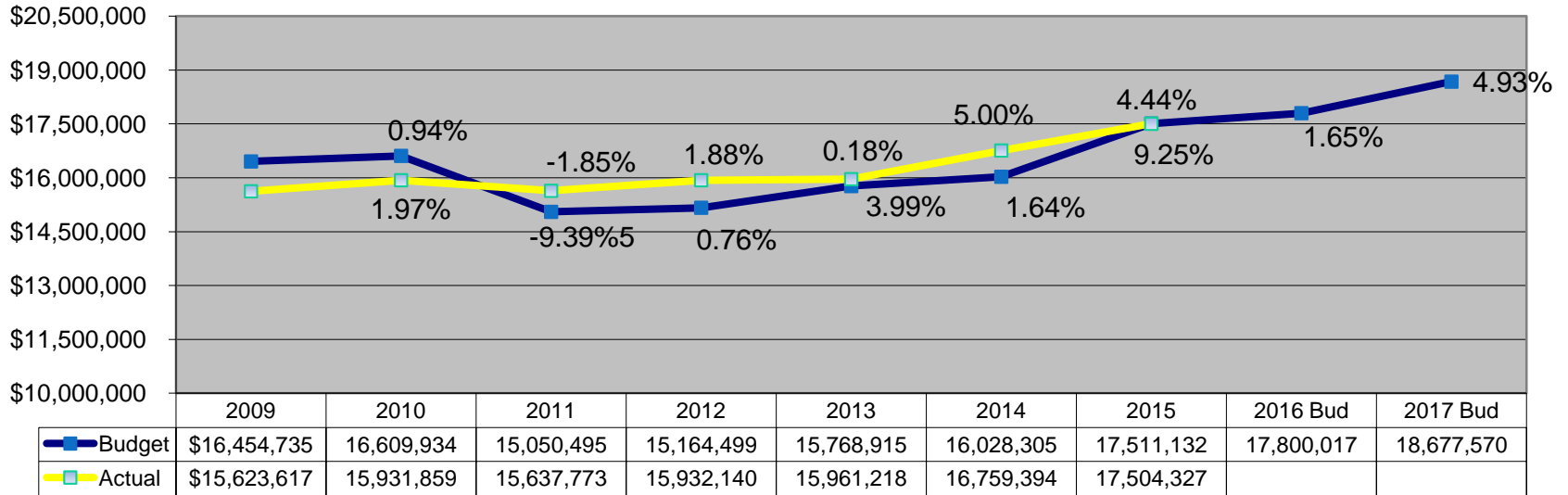
2

- General Fund Overview
- Personal Services Overview
- Capital Improvement Fund Overview
- Next Steps



General Fund Budget to Actual Revenues

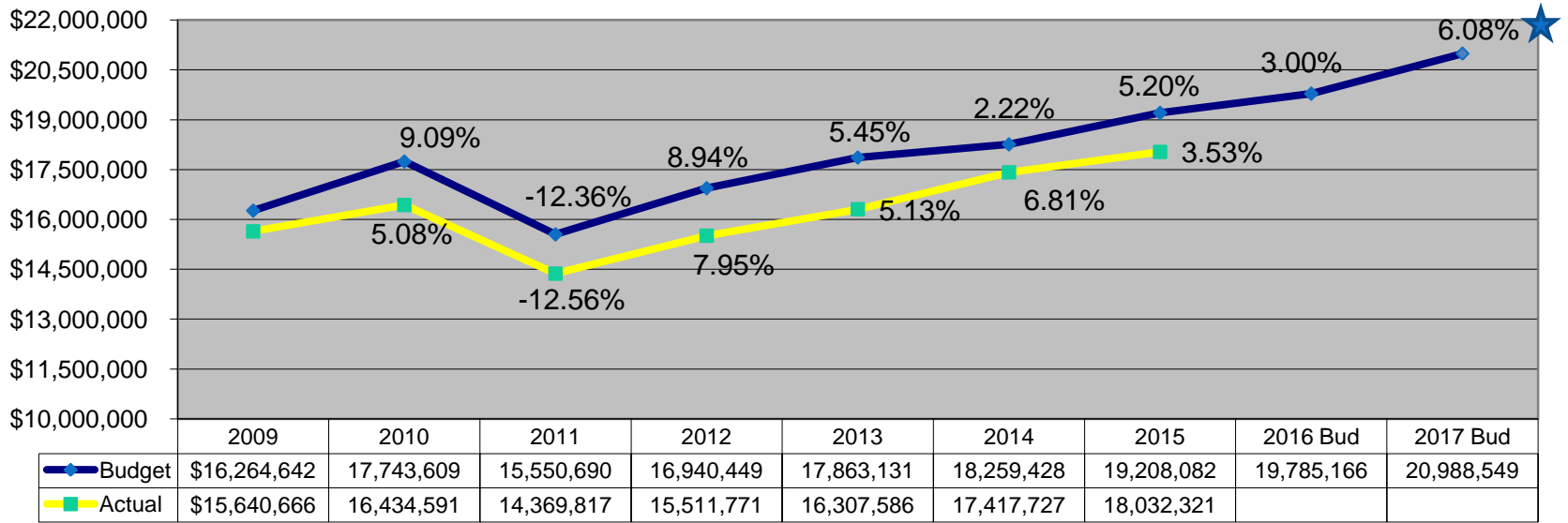
General Fund Revenue 2009 - 2017





General Fund Budget to Actual Expenditures

General Fund Expenditures 2009 - 2017



★ As a result of shift of mill levy from B& I.

Note: Includes transfers to CIP, B&I, Risk Management and Equipment Reserve.

Additional 2017 transfers of \$200,000 (Equipment Reserve) + \$480,696 (Bond & Interest) = \$680,696



2017 Budget Components

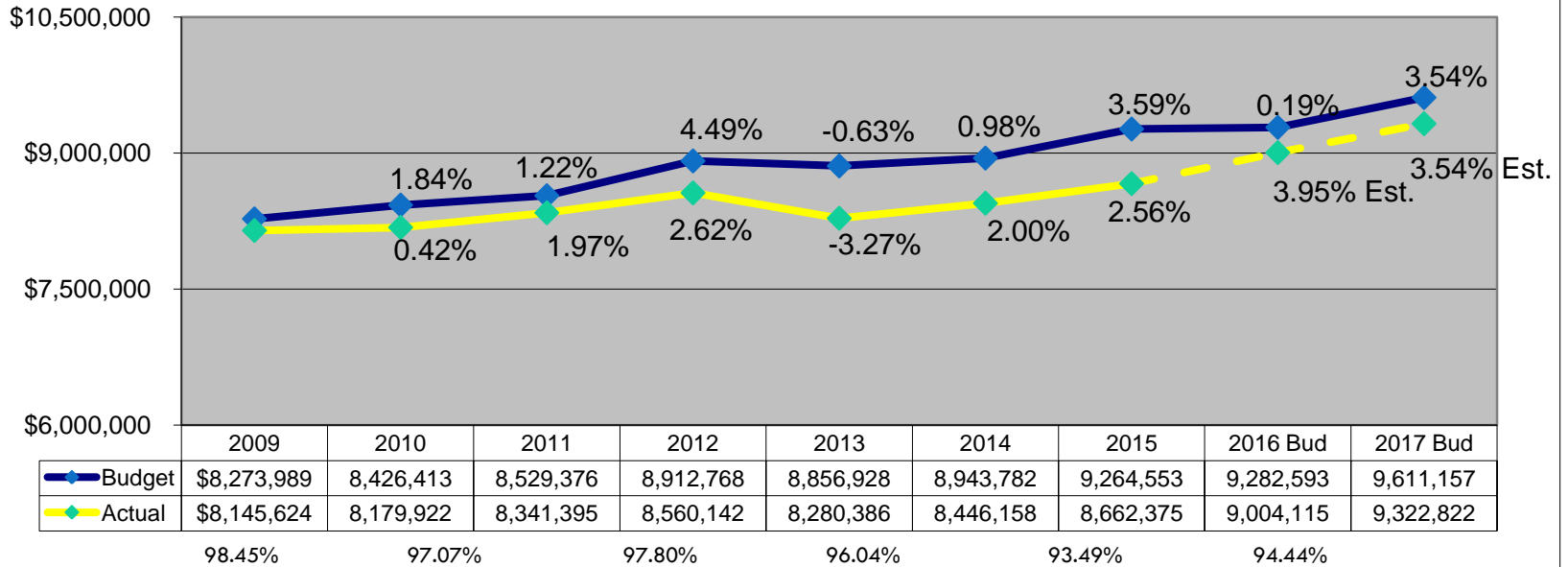
5

Most Significant Changes to 2017 Budget	Amount (\$)	% Growth over 2016 Budget	% of total 2017 General Fund Budget
Utilities (Street Lights and Traffic Signals)	+179,000	12.6%	1.11%
Health Insurance	+111,022	11%	0.69%
Regular Wages (includes new Building Inspector position shown below)	+107,206	1.77%	0.66%
Excluding the new FTE	+28,206	0.47%	0.17%
Police Pension	+100,000	22%	0.62%
KPERS	+40,320	11.73%	0.25%
Workers' Compensation	+31,536	21.4%	0.19%
Personal Services:			
Added full-time Building Inspector	+79,000	Permanent increase	
In 2016 we converted a PW Traffic Engineer from contract services to a full-time position (1 FTE) in personal services	+91,000	Permanent increase	



Personal Services – All Funds

Personal Services 2009 - 2017





2017 Personal Services

	Amount (\$)	% Growth over 2016 Budget	% of Total Growth in Personal Services
Regular Wages	6,152,569	1.77%	32.63%
Health Insurance	1,118,875	11.02%	33.79%
Police Pension	550,000	22.08%	30.28%
FICA	495,608	0.36%	0.54%
KPERS	384,071	11.73%	12.27%
Seasonal Salaries	314,696	<38.91%>	<6.62%>
Overtime	313,250	<3.32%>	<3.27%>
Supplemental Pension Plan	174,341	3.5%	1.80%
Dental Insurance	37,551	0.00%	0.00%
Unemployment , Life , Vision , Disability, Identity Insurance & Employee Assistance	70,196	<4.69%>	<1.41%>
TOTAL	9,611,157	3.54%	



3.25% Proposed Merit Pool

8

- 3.25% Merit Pool
 - ▣ Based on comparison to surrounding cities
 - ▣ Merit amount is based on an employee's scored evaluation
 - ▣ Funds are also used to adjust salaries for promotion(s)
 - ▣ Remain competitive to retain employees
 - ▣ Future salary expectations as a hiring strategy
 - ▣ Incremental increases to minimize falling behind comparable pay scales
 - ▣ Results in estimated regular wage increase of 1.77% due to added FTE, retirements, vacant positions and turnover



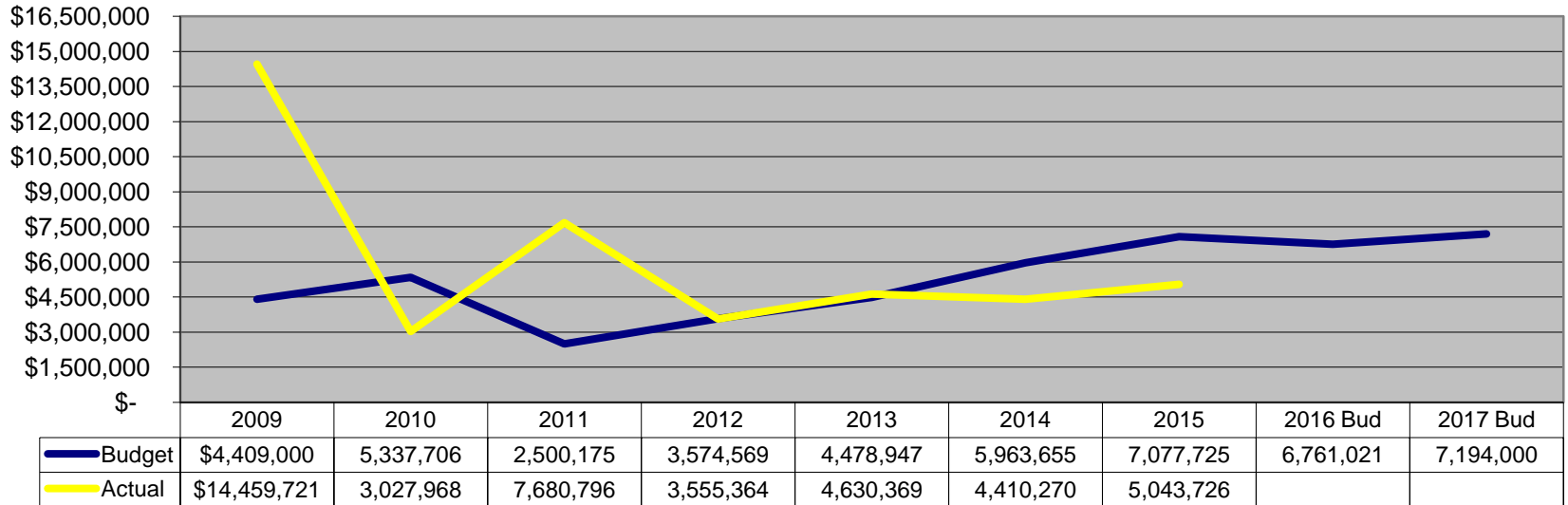
2017 Salary Pool (average = 3.56%)

	2017 Salary Pool	Notes
Edgerton	4%	
Fairway	3%	
Gardner	3.5%	
Johnson County	3%	
JoCo Sheriff	6%	
Lake Quivira	3%	
Lenexa	5%	5% salary pool (result of salary study), 3% merit pool
Merriam	3.8%	
Mission	3%	
Olathe	3.5%	
Overland Park	2.5%	Budget increase
Prairie Village	3.5%	Recommended
Roeland Park	3%	
Shawnee	3%	



Capital Infrastructure Fund Budget to Actual Revenues

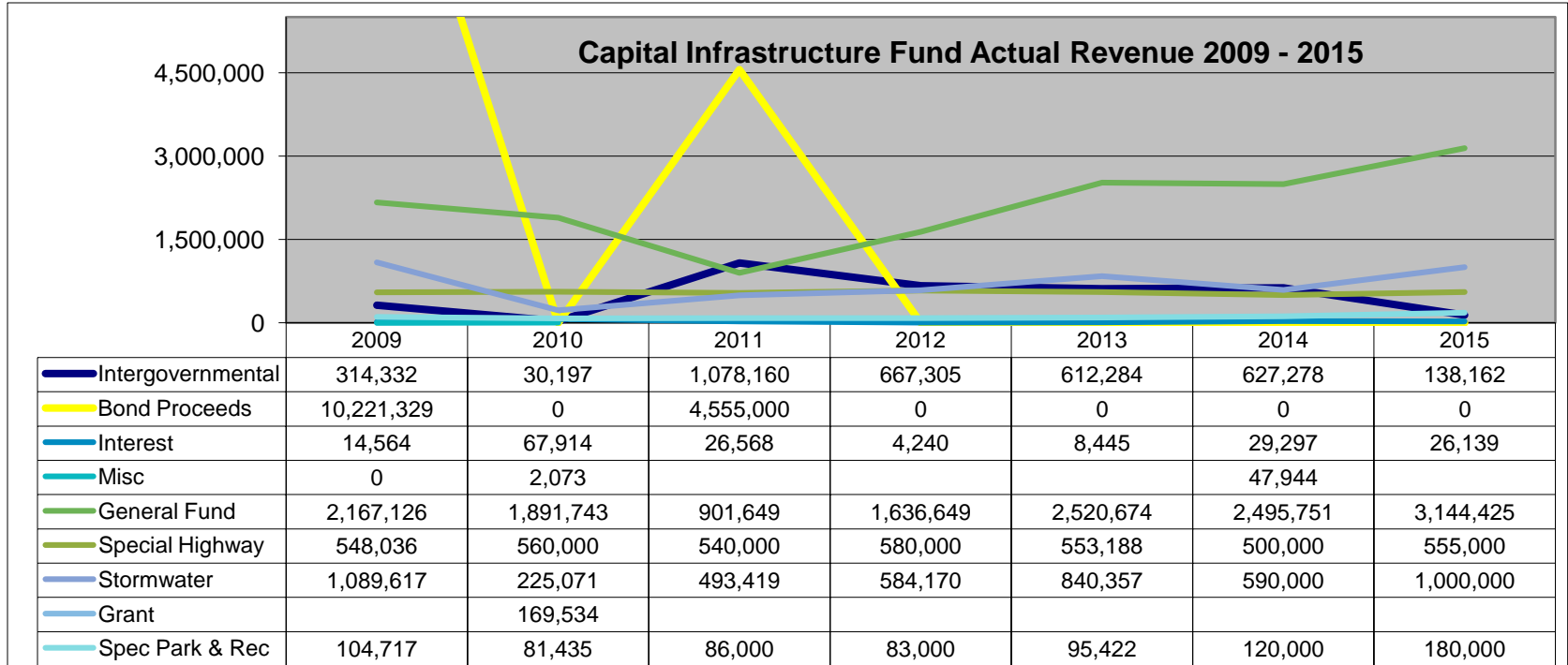
Capital Infrastructure Fund Revenue 2009 - 2017



Note: Bond Issue in 2009 and 2011



Capital Infrastructure Actual Revenues





Next Steps

12

- July 5th - Permission to publish 2017 budget
- July 12th - Budget published in Legal Record
- July 18th - Budget Discussion
 - Council poll – is recommend budget supported?
- August 1st - Budget hearing to adopt 2017 budget & approve associated resolution
- August 25th - Deadline to deliver adopted budget to county clerk

**COUNCIL MEETING AGENDA
CITY OF PRAIRIE VILLAGE
Council Chambers
Monday, July 18, 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 meeting minutes - July 5, 2016
- 2. Approve an exemption for the following Homes Associations from city-provided Solid Waste Collection Services for 2017: Countryside East Homes Association and Town & Country Homes Association
- 3. Approve the contract with ACMS Inc. for the 2016-2017 school year
- 4. Approve Ordinance No. 2351 approving the KU Kickoff Event at Corinth Square as a special event and authorizing the sale, consumption and possession of alcoholic liquor and cereal malt beverages within the boundaries of a barricaded public areas of the event
- 5. Authorize the Mayor to execute the Final Plat for Mission Chateau 2nd Plat - Replat of Lot 2 for acceptance of rights-of-way and easements subject to the conditions of approval required by the Planning Commission
- 6. Authorize the Mayor to execute the Final Plat for the Prairie Ridge Replat of Lots 2, 3, & 4 and part of 5 (Block 2, Block 22 & Block 23) subject to the conditions of approval required by the Planning Commission.

VII. **COMMITTEE REPORTS**

Council Committee of the Whole

- COU2016-43 Consider approval of a construction contract for the Drain16X - 2016 drainage repair program

- COU2016-46 Consider approval of Charter Ordinance #28 for the issuance of bonds for the purchase of the streetlight system from KCPL
- *COU2016-47 Consider approval for the 2016 parks playset packages

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

**CITY COUNCIL
CITY OF PRAIRIE VILLAGE
JULY 5, 2016**

The City Council of Prairie Village, Kansas, met in regular session on Tuesday, July 5, 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, Serena Schermoly, Steve Noll, Eric Mikkelson, Andrew Wang, Brooke Morehead, Sheila Myers, Dan Runion, Courtney McFadden and Terrence Gallagher.

Staff present was: Tim Schwartzkopf; Chief of Police; Keith Bredehoeft, Public Works Director; Quinn Bennion, City Administrator; Wes Jordan, Assistant City Administrator; Lisa Santa Maria, Finance Director and Joyce Hagen Mundy, City Clerk.

INTRODUCTION OF STUDENTS & SCOUTS

No students or scouts were in attendance.

PRESENTATION OF LIFESAVING AWARDS

Chief Tim Schwartzkopf reported on May 18th Corporal Joel Porter and Detective Pat Mahoney were dispatched to a possible heart attack in progress. Detective Mahoney, the first to arrive on the scene, began lifesaving measures. Corporal Porter arrived and both continued CPR until Med-Act and Consolidated Fire arrived. Prior to being transported the patient had regained a pulse and was breathing on his own. The

Police Department presented the Department's Lifesaving Award to Corporal Joel Porter and Detective Pat Mahoney.

PUBLIC PARTICIPATION

Emily Coleman, 445 South Chestnut, Olathe, Kansas, addressed the Council regarding the existing animal ordinances asking for a repeal of the prohibition of pit bulls residing in the City. She stated that she is a certified dog trainer and former Prairie Village resident. She and her husband are a foster family for pit bulls. They would have liked to live in Prairie Village, but were not welcome under Prairie Village's law. Mrs. Coleman believes that pit bulls can be safely housed and accommodated with training and shared a picture of her infant interacting with their pit bull.

Beau and Laura Jackson, 5418 Oakshire Lane, Fairway, Kansas, sought a home in Prairie Village when they relocated from Washington, D.C., but their realtor advised them they could not keep their adopted pit bull and instead chose a home in Fairway. Mrs. Jackson said it was unfortunate to punish a breed because of the actions of human beings and feels the existing ordinance is counterproductive.

Serena Schermoly asked the speakers how they heard about the Council discussing this issue. Mrs. Coleman responded she read it on Face book and the Jackson's were advised by their realtor. Eric Mikkelson asked whether they had insurance coverage. The Jacksons replied they have coverage with State Farm without any stipulations. Mrs. Coleman stated that some agencies do not cover pit bulls and some cover with stipulations.

Loring Leifer, 7301 Booth, stated that she worked with dog rescue and that the City should be concerned with protecting residents from dangerous animals and that it was not fair to ban a specific breed.

Public Participation was closed at 7:45 p.m.

CONSENT AGENDA

Dan Runion asked for removal of items number 4 and number 7 on the Consent Agenda. Eric Mikkelson asked for removal item number 3.

Mr. Runion asked if the action to assume a lower investment return for the Police Pension Plan was a recommendation from the actuarial. Steve Noll responded that the Pension Board has been discussing this for the past 18 months and asked the actuarial to do an analysis at the different rates and based on their analysis they supported the Board's recommendation. Mr. Runion asked if the information was taken from the 7 year return. Mr. Noll responded the actuarial performed the analysis the Board requested.

Mr. Runion expressed concern with the significant increases in expenditures that have occurred annually in items that constitute over 80% of the City's budget. He noted his calculations show the Capital Projects Fund and the General Fund constitute 22% and 60% of the proposed 2017 \$34.3M budget. The increases in those two funds from 2014 actual to proposed 2017 average 7.95% annually. From 2014 to 2017 the increase in the General Fund averages 5.45% annually and the Capital Projects Fund averages 16.16% annually. The increase in the total budget from 2014 actual to 2017 proposed averages 4.38% annually. Mr. Runion noted at this rate the city's annual budget in 2021 will exceed \$40M or a \$10M increase from the 2014 actual expenditures.

Quinn Bennion stressed that the proposed 2017 mill levy is the same as 2016 and has relatively flat at this level since 2012. He acknowledged that significant dollars have been transferred from the General Fund to the Capital Improvement Program for maintenance of the city's aging infrastructure and viewed this investment as a good thing for the City.

Mr. Bennion stressed to the Council that when making comparisons from past budgets it is better to compare actual expenditures from one year to actual expenditures of another year or budgeted expenditures vs. budgeted expenditures. The comparison of actual expenditures to budget will result in an inflated representation. This is because the city does not spend its total budgeted funds. He added that the 2017 proposed budget has already been reduced by staff to 97% of anticipated personnel expenditures. Mr. Runion noted that both actual and budgeted figures are represented in the budget document. Mr. Bennion pointed out that the city does not know what the 2017 actual expenditures will be, but he is confident they will be less than the 2017 budgeted expenditures.

Mr. Bennion reviewed a spreadsheet prepared by the Finance Director comparing past actual expenditures. He also reviewed actual expenditures in the Personal Services area. This area includes more than salary. It includes salary, overtime, workers compensation, insurance costs, KPERS and police pension costs. The increase Personal Services from 2016 budget to 2017 budget is 3.54%. The salary increase over that same period is 1.77%. The Personal Services budget increased are made up of 1/3 compensation; 1/3 insurance and 1/3 police pension. Mr. Runion stated going from 2014 to 2017 is a 4% increase and he feels that is too much. He is concerned with these

increases particularly in light of the state imposed property tax lid. He doesn't see justification for these increases.

Mr. Bennion responded that a true comparison of trends would be to look at actual expenditures for the past three years. These are -3.27 (2012 to 2013), 2.00% (2013 to 2014) and 2.56 (2014 to 2015). In his view, this is not a concerning trend. He also noted revenue is not reflected. The costs for the additional building inspector will be paid for with additional building permit revenue. Increased appraisals will cover proposed increases. The property tax lid does concern him as the city will not be able to capture the full appraised value of property within the city. There are some exceptions.

Finance Director Lisa Santa Maria noted that a large part of the Personal Services increase is a projected 11% increase in health insurance. Mr. Runion acknowledged that certain costs are controllable and others are not controllable. Mrs. Santa Maria also noted that \$83,000 was added to the budget by the Council at its last meeting to include a compensation study and council/mayor compensation.

Eric Mikkelson shared Mr. Runion's concern that this is not a sustainable trend. He is supportive of the large increase in the CIP as they are making up for previous years when funds were cut. He is less comfortable with the personal services expenditures, but ok pending the compensation survey results. He is totally uncomfortable with the 100% increase in pay for the Mayor and Council in 2017 for the first time in the city's history. He has spoken with residents who support the pay, but not pay set by the Council for itself. This he views as a total conflict of interest. How can the Council question a 3% increase for staff and give itself a 100% increase. He is not sure he can approve the proposed budget.

Jori Nelson clarified that a vote for the budget is not a vote approving council/mayor compensation. Mayor Wassmer confirmed that the funds are included in the 2017 budget; however, the Council would need to adopt an ordinance to implement the pay. Mrs. Nelson agreed with Mr. Mikkelson stating she is proud of the volunteer service history of Prairie Village Council and Mayor.

Brooke Morehead noted the amount is already available in the budget from funds that are no longer needed for election costs. She views the \$63,000 for compensation a very small part of the city's overall budget. Mrs. Morehead asked if the city has seen related population growth to merit the level of increases seen in city expenditures. Mayor Wassmer responded that the city population has grown over the past years although not significantly. Mrs. Morehead expressed concern with the on-going incremental increases and asked where this money is going.

Mayor Wassmer responded that with the exception of council compensation that was discussed at the last meeting, the rest of the proposed budget has been before the council and discussed since March. These concerns should have been voiced long before this evening. Mr. Runion replied concerns with personal services costs were voiced at the last meeting. Mr. Bennion stated the increase in personal services costs is not 4% and has not been 4% over the past years as indicated by Mr. Runion. Mr. Runion replied it is as he views the numbers. Mr. Bennion reminded Mr. Runion that for an accurate comparison actual must be compared to actual or budgeted to budgeted; not actual to budget. Mayor Wassmer added that in her 19 years on the Council, the City has never spent the entire budgeted amount. Mr. Bennion recommended for a budget comparison, compare 2014 budgeted to 2017 budgeted. Mr. Runion replied the

budgeted amount is going up annually and more than the rate of inflation. He doesn't understand why the increase is multiples of the rate of inflation.

Quinn Bennion replied that the staff was never given direction by the Council to prepare a budget with an increase at the rate of inflation. The staff direction and goal was to prepare a budget that would maintain the existing level of services without an increase in the mill levy.

Mr. Runion stated he didn't mean to suggest that the budget stay at the rate of inflation, but noted it is a benchmark to be considered. He has not seen any compelling evidence that employee compensation level is causing employee turnover and needs to be adjusted upward. Mr. Bennion reviewed the extensive budget process followed at staff level and items considered. He restated that the 3.25% merit pool does not guarantee every employee a 3.25% increase. The purpose of the compensation study that was approved at the last meeting is to evaluate the current salary ranges. Andrew Wang agreed in the large picture. He has questioned the merit pool every year. He noted the restrictions that will be placed on the city's revenue when the property tax lid goes into effect. He stated the Council needs to be critical of the study findings and apply them on a matrix that makes sense for Prairie Village as significant increases in expenditures may crash through the tax lid. Going forward it is going to be important to educate the public on the city's needs.

Steve Noll moved to authorize staff to publish the 2017 proposed budget as required by State Statutes. The motion was seconded by Sheila Myers.

Jori Nelson asked if employees paid for their insurance costs. Mr. Bennion responded it was dependent on the level of coverage they had and the health insurance

option they selected. Mrs. Santa Maria noted the budget only reflected the estimated increase in the city's portion of insurance costs.

Dan Runion asked for a review of the budget process. Mrs. Santa Maria replied that the process begins in March with significant changes being presented to the Council for direction. He and the Finance Director go through each line item with department heads. The budget is prepared to maintain a 25% fund balance and past direction has been to increase funding for Capital Projects whenever possible. Mr. Runion stated he didn't recall any specific direction given by the Council to staff.

Quinn Bennion noted the city is required by State Statute to publish its proposed budget at least 14 days prior to the public hearing on the budget which will be held at the August 1st meeting. It is at that meeting that the Council takes formal action on adopting the budget. Mr. Runion asked if changes could still be made to the proposed budget. Mr. Bennion replied the budget could be reduced; it cannot be increased from what is published.

The motion authorizing publication of the 2017 budget was voted on and passed by a vote of 10 to 1 with Mr. Mikkelson voting in opposition.

Mayor Wassmer asked Mr. Mikkelson for his comments on item number 3 that he removed. Mr. Mikkelson thanked Mayor Wassmer for issuing this proclamation and stated he removed the item to recognize Paul Temme, a Prairie Village resident. who had witnessed the shooting at the Jewish Community Center and has been actively involved in the issue. Unfortunately, Mr. Temme left during the earlier discussion. He appreciates the city doing what it can to address this issue.

Brooke Morehead moved the approval of the Consent Agenda items for July 5, 2016 as amended:

1. Approve the regular City Council meeting minutes of June 20, 2016
2. Approve Claims Ordinance #2943
3. Authorize the Mayor to execute a proclamation in recognition of the “Asking Saves Lives” public safety program
4. Removed
5. Approve the Interlocal Agreement with Johnson County for the final design of the 2016 Stormwater Management Advisory Council (SMAC) Meadowbrook Regional Detention Project
6. Approve Construction Change Order #1 (Final) with O’Donnell and Sons Construction for the 2016 Concrete Repair Program
7. Approve modifications to the Police Pension Plan including a new assumed investment return decrease from 7.75% to 7.5%

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

COMMITTEE REPORTS

Council Committee of the Whole

COU2016-42 Consider approval of Design Agreement with Affinis Corporation for the Design of the 2017 Mission Road Rehabilitation Project from 75th Street to 84th Terrace

On behalf of the Council Committee of the Whole, Acting Council President Brooke Morehead moved the City Council approve the Design Agreement with Affinis Corporation for the design of the 2017 Mission Road Rehabilitation Project from 75th Street to 84th Terrace in the amount of \$91,005.00. The motion was seconded by Ashley Weaver and passed unanimously.

Mayor’s Report

Mayor Wassmer commended the VillageFest Committee and all the staff involved with the 20th anniversary celebration. The event was a huge success, well attended and enjoyed by families throughout the city. She thanked Council members Weaver, Schermoly, Noll, Myers, Morehead and McFadden for their attendance. She also participated in the

Mission Chateau ground breaking that was well attended with residents anxious to see the project constructed. Mayor Wassmer attended the recent Home Builders Association luncheon where Wes Jordan and Mitch Dringman participated in a panel that presented the city's new design guidelines which were well received by the builders and also attended the BHC Rhodes Technology event.

STAFF REPORTS

Staff reports were presented at the earlier Council Committee of the Whole meeting.

OLD BUSINESS

Brooke Morehead asked if the new pool fee structure would be evaluated at the end of the season noting that she had received complaints from several families on the higher cost. Terrence Gallagher replied the Park & Recreation Committee reviews the fees and recreational programs at the end of each season. Quinn Bennion noted that the comments received by the City Clerk staff selling the memberships have generally been very positive. He noted that those with larger families saw an increase in fees while others saw a decrease in fees. Mr. Gallagher noted the increase was fifty cents per day.

Courtney McFadden reported on her attendance at the summer solstice cookout by the Prairie Village Community Gardeners. They are very appreciative of the ability to have garden space.

NEW BUSINESS

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

ANNOUNCEMENTS

Committee meetings scheduled for the next two weeks include:

PV Arts Council	07/06/2016	5:30 p.m.
JazzFest Committee	07/07/2016	5:30 p.m.
Board of Zoning Appeals	07/12/2016	6:30 p.m.
Planning Commission Meeting	07/12/2016	7:00 p.m.
Council Committee of the Whole	07/18/2016	6:00 p.m.
City Council	07/18/2016	7:30 p.m.

=====

The Prairie Village Arts Council is pleased to present the works of the Senior Arts Council in the R.G. Endres Gallery during the month of July. The artists' reception will be Friday, July 8th, from 6:30 to 7:30 p.m.

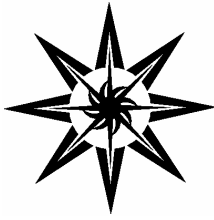
The pool is open. Plan to enjoy the second Moonlight Swim on Friday, July 8th from 8:30 p.m. to 10 p.m.

Prairie Village Swim Team will host the All City Swim Meet on Wednesday, July 13th. The pool will close at 3:30 p.m.

ADJOURNMENT

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

Joyce Hagen Mundy
City Clerk



CITY CLERK DEPARTMENT

Council Meeting Date: July 18, 2016
CONSENT AGENDA

Consider Homes Association Exemptions from Solid Waste Services

RECOMMENDATION

Staff recommends the City Council exempt the following Homes Associations from city-provided Solid Waste Collection Services for 2017: Countryside East Homes Association and Town & Country Homes Association.

BACKGROUND

The municipal code allows for homes associations to exempt from city-provided solid waste collection services provided they provide to their members an equal or higher level of service. These homes associations have contracted to provide their own service for the past several years and are charged an exemption fee of \$6.43 per household exempted.

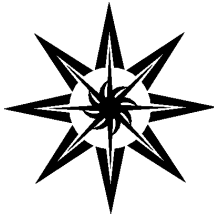
FINANCIAL IMPACT

The homes associations are assessed an exemption fee based on the number of households exempted.

PREPARED BY

Joyce Hagen Mundy
City Clerk

July 11, 2016



POLICE DEPARTMENT

Council Meeting Date: July 18, 2016

CONSENT AGENDA: Consider the School Crossing Guard Agreement with ALL CITY MANAGEMENT SERVICES (ACMS) INC.

RECOMMENDATION

Staff recommends approval of the contract with ACMS Inc. for the 2016-2017 school year.

BACKGROUND

The City has used a private company to contract school crossing guard services since 2014. At the conclusion of the 2015-2016 school year, Securitas informed the City that they would no longer be providing crossing guard services. ACMS had previously sent the City information on providing crossing guard services. A contract was obtained and reviewed meeting all of the City's requirements.

The only difference between the previous service contract and the proposed new one with ACMS is the rate of pay they will be compensating the crossing guards. ACMS compensates their crossing guards at a rate of \$19.62 an hour. This is a slight increase over the last contract with Securitas. The City has the option to renew this contract for five (5) additional one year contracts thereafter.

The City Attorney has reviewed and approved the document.

PREPARED BY

Capt. Byron Roberson
Patrol Commander
Date: July 08, 2016



AGREEMENT FOR CROSSING GUARD SERVICES

This AGREEMENT made and entered into this July ____, 2016 by and between City of Prairie Village hereinafter called the "City", and ALL CITY MANAGEMENT SERVICES, INC., hereinafter called the "Contractor";

WITNESSETH

The parties hereto have mutually covenanted and agreed as follows:

1. This Agreement is for a one school year period which commences no later than August 15, 2016 and ends on June 30, 2017 and for such term thereafter as the parties may agree upon.
2. The Contractor will provide seven (7) personnel equipped and trained in appropriate procedures for crossing pedestrians in marked crosswalks. Such personnel shall be herein referred to as a Crossing Guard. The Contractor is an independent Contractor and the Crossing Guards to be furnished by it shall at all times be its employees and not those of the City.
3. The City's representative in dealing with the Contractor shall be designated by Prairie Village Police Department.
4. If, at any time during the contract period, the City questions the meaning of any item of this Agreement, the City may contact the Contractor for interpretation of that item.
5. The City shall determine the locations where Crossing Guards shall be furnished by the Contractor. The Contractor shall provide at each designated location personnel properly trained as herein specified for the performance of duties as a Crossing Guard. The Contractor shall provide supervisory personnel to see that Crossing Guard activities are taking place at the required places and times, and in accordance with all items of this Agreement.
6. The Contractor shall maintain adequate reserve personnel to be able to furnish alternate Crossing Guards in the event that any person fails to report for work at the assigned time and location and agrees to provide immediate replacement.
7. In the performance of their duties the Contractor and all employees of the Contractor shall conduct themselves in accordance with the conditions of this Agreement and the laws and codes of the State of Kansas and the City of Prairie Village.
8. Persons provided by the Contractor as Crossing Guards shall be trained in the laws and codes of the State of Kansas and the City of Prairie Village pertaining to general pedestrian safety in school crossing areas.

9. Crossing Guard Services shall be provided by the Contractor at the designated locations on all days in which School is in session. The Contractor also agrees to maintain communication with the designated schools to maintain proper scheduling.
10. The Contractor shall provide all Crossing Guards with apparel by which they are readily visible and easily recognized as Crossing Guards. Such apparel shall be uniform for all persons performing the duties of Crossing Guards and shall be worn at all times while performing said duties. This apparel must be appropriate for weather conditions. The Contractor shall also provide all Crossing Guards with hand held Stop signs and any other safety equipment which may be necessary.
11. The Contractor shall at all times provide workers' compensation insurance covering its employees, and shall provide and maintain liability insurance for Crossing Guard activities. The Contractor will provide to the City a Certificate of Insurance naming the City and its officials, officers and employees as an additional insured. Such insurance shall include commercial general liability with a combined single limit of not less than \$2,000,000.00 per occurrence and in aggregate for property damage and bodily injury. Such insurance shall be primary with respect to any insurance maintained by the City and shall not call on the City's insurance contributions. Such insurance shall be endorsed for contractual liability and personal injury and shall include the City, its officers, agents and interest of the City. Such insurance shall not be canceled, reduced in coverage or limits or non-renewed except after thirty (30) days written notice has been given to the designee for the City of Prairie Village.
12. Contractor agrees to indemnify the City, its officers, employees and agents against, and will hold and save each of them harmless from, any and all actions, claims for damages to persons or property, penalties, obligations or liabilities that may be asserted or claimed by any person, firm, entity, corporation, political subdivision or other organization arising out of the intentional or negligent acts, errors, or omissions of Contractor, its agents, employees, subcontractors, or invitee, provided for herein.
 - a) Contractor will defend any action or actions filed in connection with any of said claims, damages, penalties, obligations or liabilities and will pay all costs and expenses including attorney's fees incurred in connection herewith.
 - b) Contractor will promptly pay any judgment rendered against the City, its officers, agents or employees for any such claims, damages, penalties, obligations or liabilities.
 - c) In the event the City, its officers, agents or employees is made a party to any action or proceeding filed or prosecuted against Contractor for such damages or other claims arising out of or in connection with the sole negligence of Contractor hereunder, Contractor agrees to pay City, its officers, agents, or employees, any and all costs and expenses incurred by the City, its officers agents or employees in such action or proceeding, including, but not limited to, reasonable attorney's fees.
13. Either party shall have the right to cancel this Agreement by giving sixty (60) days written notice to the other.
14. The Contractor shall not have the right to assign this Contract to any other person or firm except with the prior written consent of the City.

15. The City agrees to pay the Contractor for services rendered pursuant to this Agreement the sum Nineteen Dollars and Sixty-two Cents (**\$19.62**) per hour, per guard during year one of the contract period.

Contractor shall bill a minimum of 2.0 hours per guard, per school day. This pricing is based upon 2,520 billing hours per school year, unless contractor fails to perform service.

16. Payment is due within thirty (30) days of receipt of Contractor's properly prepared invoice.
17. The City shall have an option to renew this contract for five (5) additional one year terms. In the event this Agreement is extended beyond June 30, 2017; the compensation and terms for services shall be established by mutual consent of both parties.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

City of Prairie Village, KS

All City Management Services, Inc.

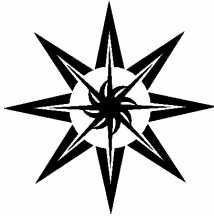
By _____
Signature

By _____
D. Farwell, Corporate Secretary

Print Name and Title

Date _____

Date _____



ADMINISTRATION

City Council Date: July 18, 2016
CONSENT AGENDA

Consider an Ordinance approving the KU Kickoff Event at Corinth Square as a Special Event and Authorizing the Sale, Consumption and Possession of Alcoholic Liquor and Cereal Malt Beverages within the Boundaries of a Barricaded Public Areas of the Event.

RECOMMENDATION:

Staff recommends that the City Council approve Ordinance No. 2351 approving the KU Kickoff Event at Corinth Square as a special event and authorizing the sale, consumption and possession of alcoholic liquor and cereal malt beverages within the boundaries of a barricaded public areas of the event.

SUGGESTED MOTION:

I move the City Council authorize the Mayor to execute Ordinance No. 2351 approving the KU Kickoff Event at Corinth Square as a special event and authorizing the sale, consumption and possession of alcoholic liquor and cereal malt beverages within the boundaries of a barricaded public areas of the event.

DISCUSSION:

Pursuant to KSA 41-719(a)(2) and KSA 41-2645, the Governing Body may approve special events and exempt public streets and sidewalks from the prohibition concerning drinking or consuming alcoholic liquor and cereal malt beverages on public streets and sidewalks.

The Corinth Square Merchants Association has requested that the City approve an ordinance identifying the KU Kickoff Event at Corinth Square on Friday, August 26, 2016 as a special event and authorizing the sale, consumption and possession of alcoholic liquor and cereal malt beverages within the boundaries of barricaded public areas at the event.

ATTACHMENTS:

Draft Ordinance No. 2351
Map

PREPARED BY:

Joyce Hagen Mundy
City Clerk

Date: July 12, 2016

ORDINANCE NO. 2351

AN ORDINANCE APPROVING THE KU KICKOFF EVENT AT CORINTH SQUARE AS A SPECIAL EVENT AND AUTHORIZING THE SALE, CONSUMPTION AND POSSESSION OF ALCOHOLIC LIQUOR AND CEREAL MALT BEVERAGES WITHIN THE BOUNDARIES OF BARRICADED PUBLIC AREAS AT SUCH EVENT

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

Section 1. Pursuant to KSA 41-719(a)(2) and KSA 41-2645, the Governing Body may approve special events and exempt public streets and sidewalks from the prohibitions concerning drinking or consuming alcoholic liquor and cereal malt beverages on public streets and sidewalks.

Section 2. In accordance with such authority, the City approves the KU Kickoff Event as a special event to be held at the Corinth Shopping Center on August 26, 2016.

Section 3. Authorization is given to barricade the area outlined on the attached Exhibit A during such event. A smaller area may be selected based on the size of the event, but the event boundary may not be expanded.

Section 4. Vendors holding the appropriate license from the State of Kansas to sell alcoholic liquor and cereal malt beverages may, in accordance with all applicable state laws and municipal ordinances, sell alcoholic liquor and cereal malt beverages in the area designated by the Division of Alcoholic Beverage Control within the barricaded area during the event.

Section 5. Vendors must be active business occupants in the Prairie Village Shopping Center at the time of the event and have the appropriate licenses from the City of Prairie Village.

Section 6. Event attendees may buy, possess and consume alcoholic liquor and cereal malt beverages within barricaded areas on August 26, 2016.

Section 7. This Ordinance shall take effect and be in force from and after its passage, approval and publication in the official newspaper of the City of Prairie Village, Kansas as provided by law.

PASSED AND APPROVED THIS 18th day of July, 2016.

Laura Wassmer, Mayor

ATTEST:

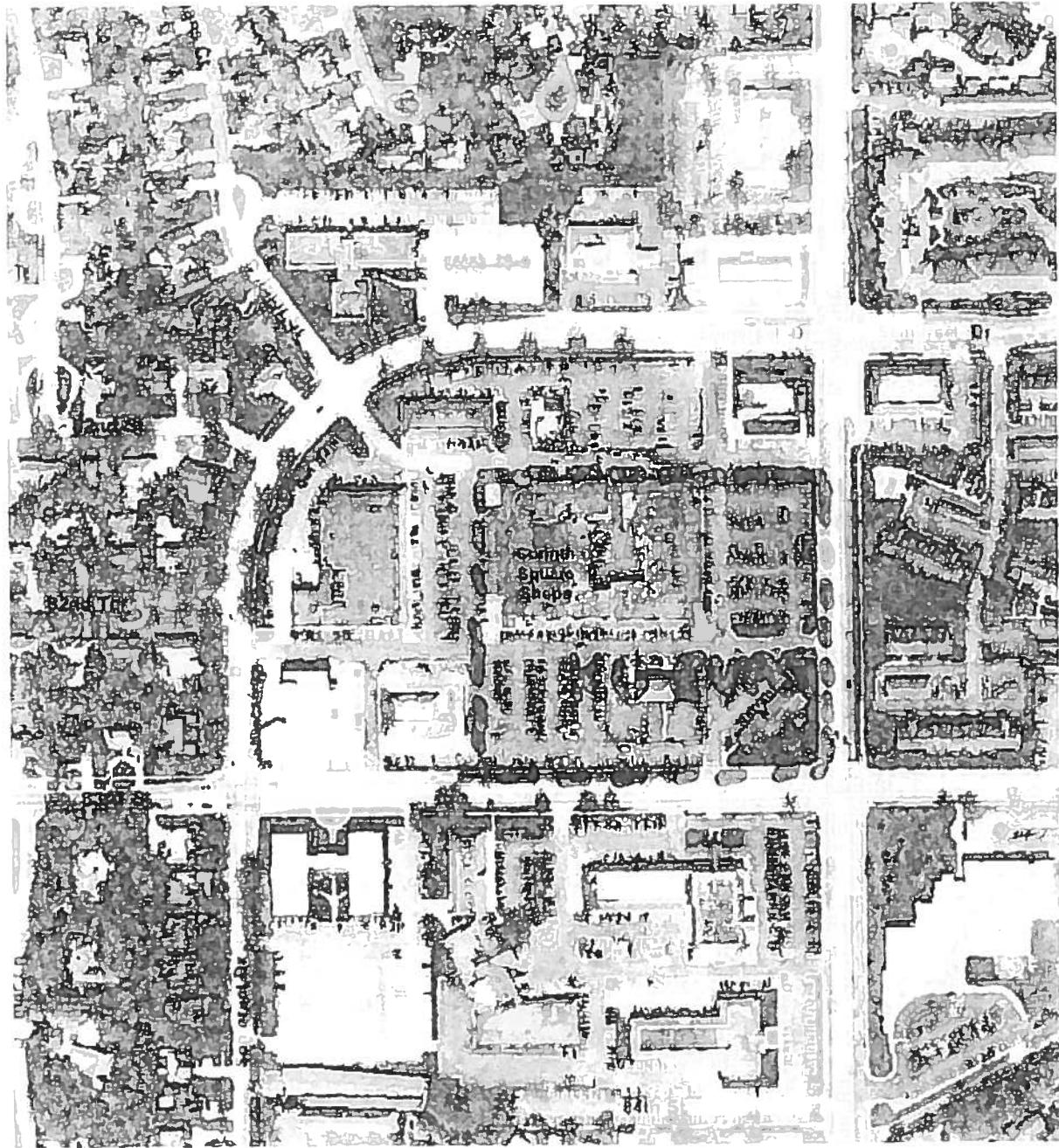
APPROVED AS TO FORM:

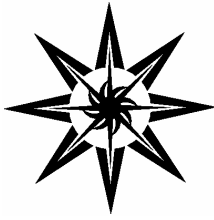
Joyce Hagen Mundy
City Clerk

Catherine P. Logan
City Attorney

Attachment A:

EXHIBIT A





PLANNING COMMISSION

Council Meeting Date: July 18, 2016
Consent Agenda

PC2016-119 Consider Final Plat for Mission Chateau - 2nd Plat

RECOMMENDATION

Authorize the Mayor to execute the Final Plat for Mission Chateau 2nd Plat - Replat of Lot 2 for acceptance of rights-of-way and easements subject to the conditions of approval required by the Planning Commission.

BACKGROUND

The Planning Commission approved a preliminary and final plat for Mission Chateau on March 1, 2016. At this time it was understood that Lot 2 would be replatted at a future date to facilitate the construction and sale of the villas, according to the final development plan. The final development plan was also approved by the Planning Commission on March 1, 2016 subject to conditions. Previously, 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.

The Planning Commission approved PC2016-119, the final plat for Mission Chateau - 2nd Plat - Replat of Lot 2 subject to the following conditions recommended by staff:

1. The approval is conditioned previously approved final development plan and conditions. Specifically as it relates to this plat:
 - a. Future buildings on proposed Lots 3 through 13 require approval of new plans by the Planning Commission demonstrating conformance with the approved Final Development Plan and Special Use Permit. [this is the continuation of condition 5.d. of the Final Development Plan approval, reflected in the March 1, 2016 staff report.]
 - b. All future construction shall be in conformance with the approved landscape plan (L1.00 Bid Set Vol.3 dated 4/29/2016).
 - c. A minimum 5-foot sidewalk along the west side of Mission Road correspond to the easement and be constructed in accordance with the approved final development plan and comply with the Prairie Village Trail Plan or CIP plan for Mission Road.
 - d. A sidewalk connection on the west side of proposed Lot 13 in the replat correspond to the easement and be constructed in accordance with the plan.

- e. Covenants demonstrating adequate maintenance of all common areas be approved in accordance with the final plans, and the plat shall not be recorded until those covenants are reviewed and endorsed by the City as addressing all conditions of the special use permit and final development plan.
2. That 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.
3. That the applicant submits the final plat to the County (surveying and engineering) after approval by the City.
4. The final plat be submitted to the Governing Body for acceptance of easements.
5. Prior to the recording of the final plat, it will be necessary for the property owner to either construct all the proposed improvements or provide a financial guarantee to the City that the proposed improvements will be constructed 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 July 12, 2016 (Draft)
Proposed Plat

PREPARED BY

Joyce Hagen Mundy
City Clerk

Date: August 13, 2016

Final Plat of MISSION CHATEAU 2ND PLAT

A Replat of Lot 2, MISSION CHATEAU,

a Subdivision in the Southeast Quarter of Section 28, Township 12 South, Range 25 East, of the 6th Principal Meridian in Prairie Village, Johnson County, Kansas

SUBDIVISION BOUNDARY DESCRIPTION

All of Lot 2, MISSION CHATEAU, a subdivision of land in the Southeast Quarter of Section 28, Township 12 South, Range 25 East in the city of Prairie Village, Johnson County, Kansas, the plat of said subdivision recorded as Instrument Number _____ in Book _____ at Page _____ in the Johnson County, Kansas Register of Deeds office, said Lot containing 370.367 square feet or 8.5025 acres.

PLAT DEDICATION

I, the undersigned representative for the proprietor of the above described Tract of the land have caused the same to be subdivided in the manner shown on the accompanying plat, which subdivision and plat shall hereinafter be known as "MISSION CHATEAU 2ND PLAT".

PUBLIC EASEMENT DEDICATIONS

GENERAL UTILITY EASEMENT: An easement to enter upon, locate, construct and maintain or authorize the location, construction, maintenance and use of electrical conduits, water, gas, and sewer pipes, poles, wires, drainage facilities, ducts, cables, and similar utility facilities upon, over and under those areas outlined and designated on this plat as "U/E" (Utility Easement) is hereby granted to the City of Prairie Village, Johnson County, Kansas.

SIDEWALK EASEMENT: An easement for the purpose of constructing, using, replacing, and maintaining a public sidewalk and appurtenant work, including the right to repair, maintain and replace the sidewalk, and for any reconstruction and future expansion of such facility, together with the right of ingress and egress, over and through the area designated as "SW/E" (Sidewalk Easement) on this plat is hereby granted to the City of Prairie Village, Johnson County, Kansas.

SANITARY SEWER EASEMENT: An easement to lay, construct, alter, repair, replace, and operate one or more sewer lines and all appurtenances convenient for the collection of sanitary sewage, over and through those areas designated as "Sanitary Sewer Easement" or "S/E" on this plat, together with the right of ingress and egress over and through adjoining land as may be reasonably necessary to access said easement and is hereby dedicated to the Consolidated Main Sewer District of Johnson County, Kansas or their assigns.

PUBLIC EASEMENT VACATIONS PURSUANT TO K.S.A. 12-512b

In lieu of the public easements dedicated by this plat and pursuant to K.S.A. 12-512b, all public reservations dedicated by the plat MISSION CHATEAU and lying within Lot 2 are hereby vacated. All public easements that were dedicated by said MISSION CHATEAU and lying within Lot 2 are re-dedicated by this plat, therefore no further reference to easements dedicated by the plat of said MISSION CHATEAU and lying within Lot 2 need be made.

BUILDING SETBACK LINES

Building setback lines (denoted hereon as "B/L") are hereby established as shown on the accompanying plat and no buildings shall be constructed between this line and the street Right-of-Way lines or Lot lines to which said Building setback lines are adjacent.

ACCESS RESTRICTION TO MISSION ROAD

Direct access to Mission Road is hereby restricted to those areas designated on this plat as "ALLOWED ACCESS".

APPROVALS

This plat of MISSION CHATEAU has been submitted to and approved by the Planning Commission for the City of Prairie Village, Johnson County, Kansas, this _____ day of _____, 2016.

Planning Commission
Prairie Village, Johnson County, Kansas

Nancy Wallerstein, Chairman

Laura Wassmer, Mayor

Joyce Hagen Mundy, Secretary

Joyce Hagen Mundy, City Clerk

MAINTENANCE OF TRACTS B, C, D, E AND F

Tracts B, C, D, E and F shall be owned and maintained by MVS, LLC, a Missouri limited liability company and shall be subject to the terms and conditions of the Mission Chateau Declaration of Covenants Conditions and Restrictions filed as Document Number _____ in Book _____ at Page _____.

CONSENT AND AGREEMENT

The undersigned proprietors of the above described land hereby consent and agree that the Board of County Commissioners of Johnson County, Kansas, shall have the power to release such land proposed to be dedicated for public ways and thoroughfares, or parts thereof, for public use, from the lien and effect of any special assessments, and that the amount of the unpaid special assessments on such land dedicated shall become and remain a lien on the remainder of this land fronting or abutting on such dedicated public ways or thoroughfares.

EXECUTION

IN TESTIMONY WHEREOF: MVS, LLC, a Missouri Limited Liability Company, has by the authority of its Manager caused this instrument to be executed by its Managing Member this _____ day of _____, 2016.

MVS, LLC

Joseph Tutera, Managing Member

ACKNOWLEDGMENT

STATE OF
COUNTY OF _____

On this _____ day of _____, 2016, before me appeared Joseph Tutera, and affirmed before me that he is a Managing Member of MVS, LLC, a Missouri limited liability company, and that this instrument was signed on behalf of said company by authority of its Manager, and said Joseph Tutera acknowledged said instrument to be a free act and deed of said company.

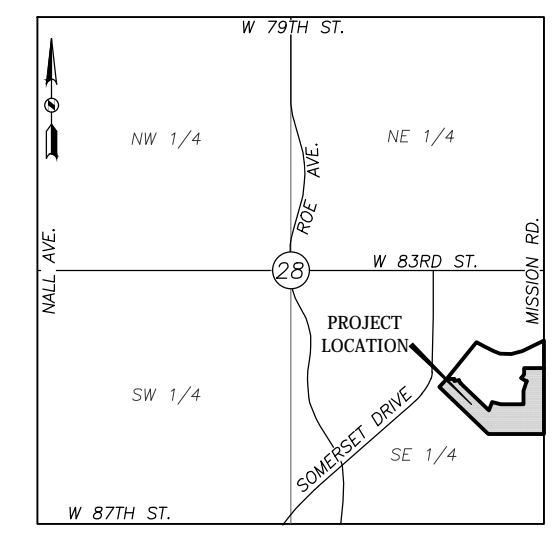
IN WITNESS THEREOF: I have hereunto set my hand and affixed by official seal at my office in said county, the day and year last above written.

My commission expires: _____

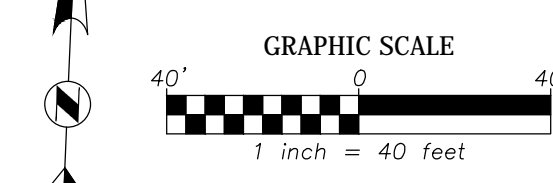
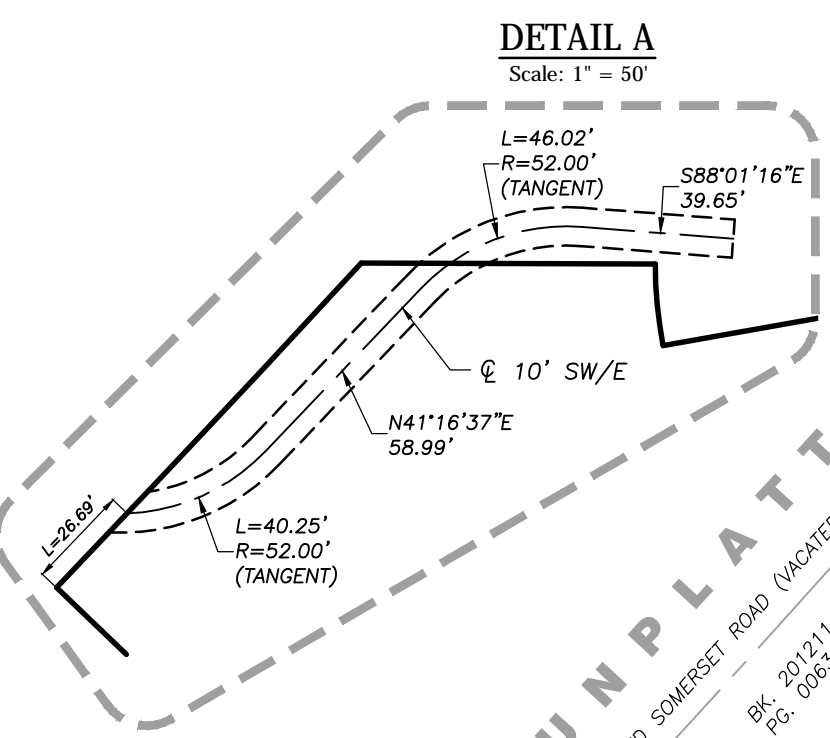
Notary Public

Line	Bearing	Length
L1	N87°33'55"E	30.06'
L2	N87°33'55"E	18.67'
L3	N87°32'54"E	33.19'
L4	S87°32'54"W	26.41'

Curve	Arc Length	Radius	Chord Bearing	Delta Δ
C2	2.28'	200.00'	N87°52'30"E	0°39'12"
C1	3.02'	150.00'	N88°08'31"E	1°09'11"



SECTION MAP
SECTION 28-T12S-R25E
(NOT TO SCALE)



- ### LEGEND
- Set Survey Monument (1/2" Reinforcing Rod w/cap: KS CLS 175) unless otherwise noted
 - Found Survey Monument
 - Found Survey Monument in Box
 - U/E Utility Easement Dedicated by this Plat
 - S/E Sanitary Sewer Easement Dedicated by this Plat
 - SW/E Sidewalk Easement Dedicated by this Plat
 - A/E Private Access Easement Dedicated by this Plat
 - B/L Building Setback Line established by this Plat
 - R/W Right-of-Way
 - (M) Monumented
 - (P) Platted
 - (CM) Calculated from Found Monuments
 - (CR) Calculated from Record
 - BK. Book
 - VOL. Volume
 - PG. Page
 - ESMT. Easement
 - SQ. FT. Square Feet

FLOOD STATEMENT

This property lies within Flood Zone "X" (unshaded) (Areas determined to be outside the 0.2% annual chance floodplain), as shown on the JOHNSON COUNTY, KANSAS, AND INCORPORATED AREAS Flood Insurance Rate Map (F.I.R.M.).

Map Number: 20091C0039G
Panel No: 39 of 161
Map Revised: August 3, 2009

NOTE: This statement is provided for informational purposes only and shall in no way constitute a basis for a flood certificate. No field work was performed to establish the boundaries of this zone. The information was derived by scaling the subject property on the above referenced map.

GENERAL NOTES

- Basis of Bearings: South 02° 26' 05" East along the East line of Lot 2, MISSION CHATEAU, as determined by Global Positioning System observations and referenced to the Kansas State Plane Coordinate System, North Zone (NAD83).
- Current Deed of Record and Parcel data: Bk. 201109, Pg. 003294; Johnson County Parcel ID: _____; Address: _____ Mission Road.

OWNER & DEVELOPER
MVS, LLC
Attn: Joe Tutera
7611 State Line Road, Apt. 301
Kansas City, MO 64114

SURVEYOR
BHC RHODES
901 N. 8th Street, Suite 100
Kansas City, Kansas 66101
Phone No.: 913-317-5300
Fax No.: 913-317-2677

SURVEYOR'S CERTIFICATION
THIS IS TO CERTIFY that on the "Field Date" shown in the title block of this document, this survey was made by me or under my direct supervision and that said survey was executed in accordance with the "KANSAS MINIMUM STANDARDS" for boundary surveys pursuant to K.S.A. 74-7037.

(See Title Block for date, seal and signature)
BHC RHODES, KS CLS-175
Mark A. Gabert, LS-1389

TOWN AND COUNTRY ESTATES (LOTS 113 TO 118)

BHC RHODES
Civil Engineering • Surveying • Utilities
901 N. 8th Street, Suite 100
Kansas City, Kansas 66101
P. (913) 371-5300 F. (913) 371-2677
BHC RHODES is a trademark of BHC Rhodes & Company, P.A.

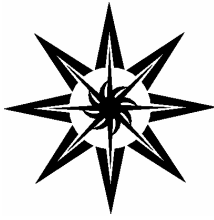
MVS, LLC
7611 State Line Road, Apt 301
Kansas City, Missouri
64114

Client: _____

Project: Final Plat of MISSION CHATEAU 2ND PLAT
a Replat of Part of Lot 2,
MISSION CHATEAU
SE 1/4, Sec. 28, Twp. 12 S, Rng. 25 E
Prairie Village, Johnson County, Kansas

Rev.	Date	Description
1	4/27/2016	Converted Easement to Tracts B and C.
2	5/11/2016	Added/created Tracts D, E and F
3	5/24/2016	Revised Tract F per client instructions

Drawn By: PJS/JDS/DD
Project No: 021390
Field Date: 4/6/2015
Issue Date: 06/10/2016
Sheet: 1 OF 1



PLANNING COMMISSION

Council Meeting Date: July 18, 2016
Consent Agenda

PC2016-120 Consider Replat of Prairie Ridge Lots 2, 3, & 4

RECOMMENDATION

Authorize the Mayor to execute the Final Plat for the Prairie Ridge Replat of Lots 2, 3, & 4 and part of 5 (Block 2, Block 22 & Block 23) subject to the conditions of approval required by the Planning Commission.

BACKGROUND

On July 11, 2016, the Planning Commission considered the replat of Lots 2, 3, 4 and part of 5 of Block 2, Block 22 & Block 23 of Prairie Ridge subdivision. This property was originally platted in 1953 as part of a larger subdivision. The application includes 3 lots on the southwest corner of Rosewood and 77th Street. Each lot includes a single family dwelling and some additional accessory structures. They date from around the original date of the plat with the exception of some minor additions and modifications. This proposal is to replat the 3 lots into 5 lots for redevelopment as single-family structures.

The proposed lots all exceed the minimum standards for the R-1B zoning district. Three lots are approximately 70' x 209', and two are approximately 70' x 109'. The corner location and configuration of adjacent lots on the block result in two of the lots (proposed Lot 5 and Lot 3, respectively) are slightly larger than that due to the shape.

The Planning Commission approved PC2016-120 for the Prairie Ridge Replat of Lots 2, 3, & 4 and part of 5 (Block 2, Block 22 & Block 23), and recommended the Governing Body for acceptance of easements, subject to the following conditions:

1. The Final Plat is submitted to the Governing Body for acceptance of easements.
2. That the applicant submits the Final Plat to the County (surveying and engineering) after approval by the City.
3. Prior to recording the Final Plat, it will be necessary for the property owner to vacation the existing sanitary sewer easement on proposed lot 4 and grant a new easement to Johnson County Wastewater meeting their requirements to serve any existing or future needs associated with that easement.
4. That the applicant remove the designated 7 foot side setbacks shown on the plat prior to recording and let the applicable zoning standards control.

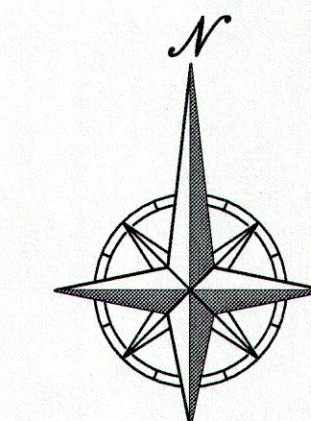
ATTACHMENTS

Planning Commission Minutes of July 12, 2016 (Draft)
Proposed Plat

PREPARED BY

Joyce Hagen Mundy
City Clerk/Planning Commission Secretary

DATE: July 12, 2016



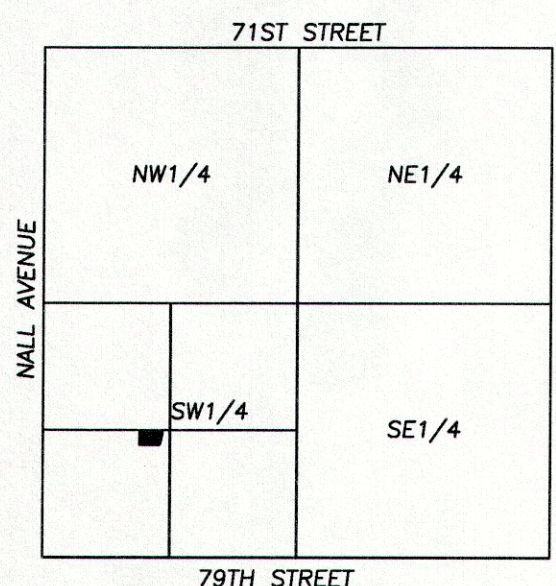
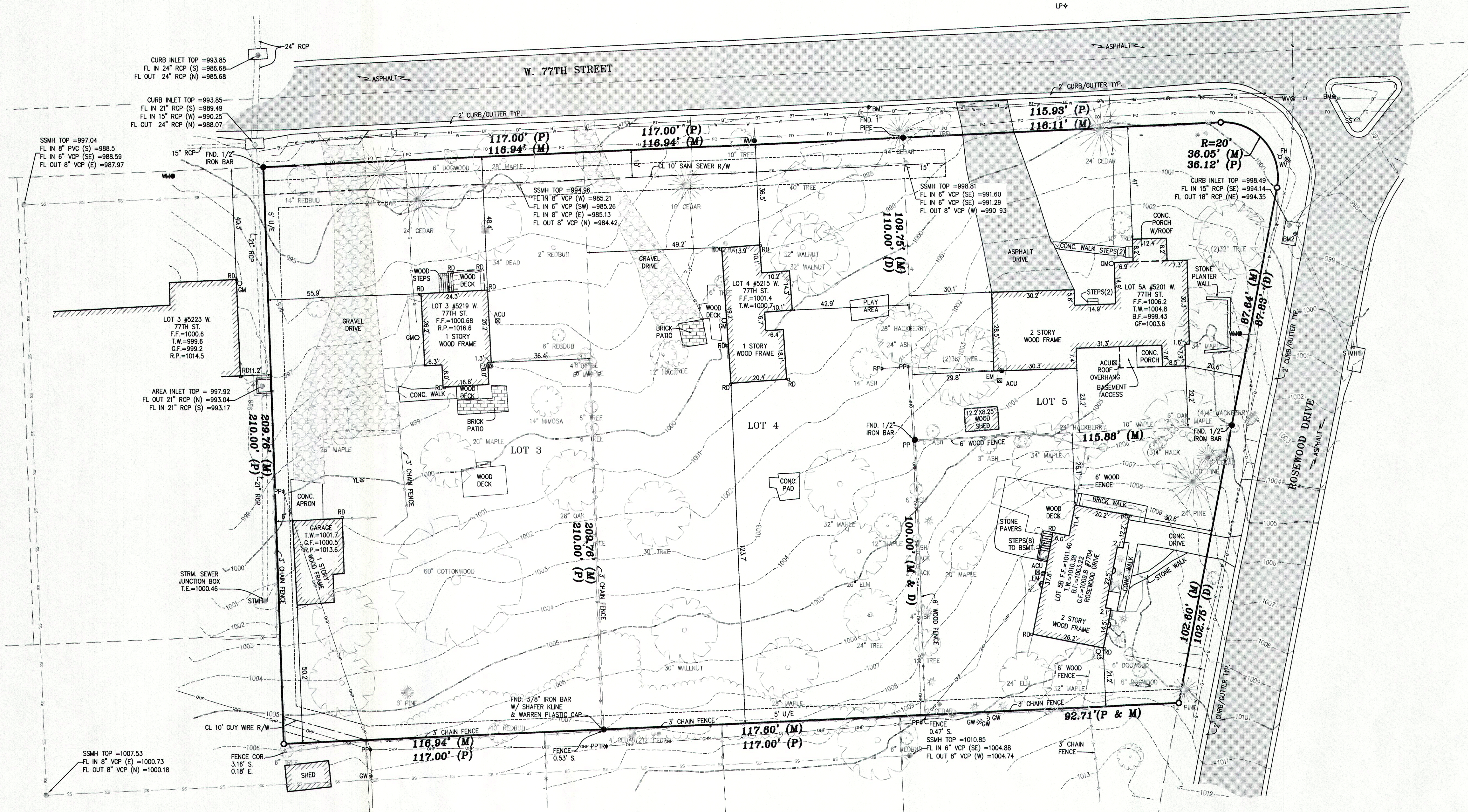
SCALE: 1"=20'
0' 20' 40'

BEARING BASIS:
KANSAS STATE PLANE 1983
NORTH ZONE # 1501

PREPARED FOR:
CENTRIC HOMES
MATT GOOD
1814 MAIN STREET
KANSAS CITY, MO 64108

LEGEND

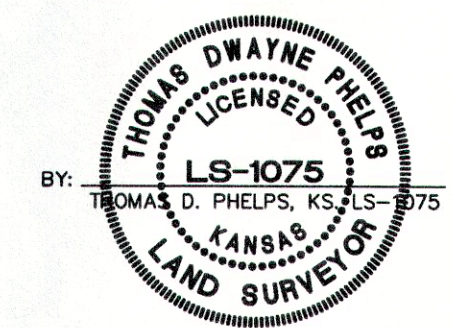
- FOUND SURVEY MONUMENT (ORIGIN UNKNOWN UNLESS DESCRIBED)
- SET 1/2"x24" REBAR WITH "PHELPS GLS-82" PLASTIC CAP
- ACU ☒ AIR CONDITIONING UNIT
- BM# ⊕ BENCHMARK
- EM ⊕ ELECTRIC METER
- FD ⊕ FIRE HYDRANT
- GM ⊕ GAS METER
- GW ⊕ GUY WIRE
- LP ⊕ LIGHT POLE
- PP ⊕ POWER POLE
- PPTR ⊕ POWER POLE WITH TRANSFORMER(S)
- RD ⊕ ROOF DRAIN
- SS ⊕ STREET SIGN
- SSMH ⊕ SANITARY SEWER MANHOLE
- STMH ⊕ STORM SEWER MANHOLE
- WM ⊕ WATER METER
- WV ⊕ WATER VALVE
- YL ⊕ YARD LIGHT
- ☼ BUSH
- ☪ CEDAR OR EVERGREEN TREE
- DECIDUOUS TREE
- T.W. = TOP OF WALL
- G.F. = GARAGE FLOOR
- B.F. = BASEMENT FLOOR
- F.F. = FINISH FLOOR
- U/E = UTILITY EASEMENT
- (P) = PLATTED
- (D) = DEEDED
- (M) = MEASURED
- BT --- BURIED TELEPHONE LINE
- FO --- FIBER OPTIC LINE
- W --- WATER LINE
- G --- GAS LINE
- BE --- BURIED ELECTRIC LINE
- OHP --- OVERHEAD POWER LINE
- PL --- PROPERTY LINE
- SSS --- SANITARY SEWER LINE
- FL --- FENCE LINE
- TL --- TREE LINE



SCALE: 1"=2000'
VICINITY MAP
SEC. 21-12-25

CERTIFICATION:

I, THOMAS DWAYNE PHELPS, HEREBY CERTIFY THAT I OR SOMEONE UNDER MY DIRECT SUPERVISION HAVE MADE A SURVEY OF THE ABOVE DESCRIBED TRACT OF LAND AND THE RESULTS OF SAID SURVEY ARE CORRECTLY REPRESENTED ON THIS PLAN.



TITLE NOTE:

NO TITLE INFORMATION PROVIDED AND OR PERFORMED BY PHELPS ENGINEERING, INC.

UTILITY NOTE:

UTILITIES SHOWN HEREON ARE SHOWN FROM FIELD LOCATES BY THE UTILITY COMPANIES OR THEIR RESPECTIVE REPRESENTATIVES AND MAPPING PROVIDED BY THE UTILITY COMPANIES AND NOT THE RESULT OF AN ACTUAL DIG. PEI DOES NOT GUARANTEE THAT ALL UTILITIES ARE SHOWN HEREON.

BEFORE DIGGING, CONTACT THE KANSAS ONE CALL SYSTEM AT 1 800 DIG-SAFE OR 811 FOR UTILITY LOCATES.
BEFORE DIGGING, CONTACT THE MISSOURI ONE CALL SYSTEM AT 1 800 DIG-RITE OR 811 FOR UTILITY LOCATES.

SURVEY NOTES:

- OWNER OF LOTS 3 AND 4 IS CCG PROPERTIES, LLC 5940 REEDS ROAD MISSION, KS 66202
- OWNER OF LOT 5B IS AARON DUBIN 7704 ROSEWOOD PRAIRIE VILLAGE, KS 66208
- OWNER OF LOT 5A IS JENNIFER A. WILLEFORD 5201 W. 77TH STREET PRAIRIE VILLAGE, KS 66208

BENCHMARK:

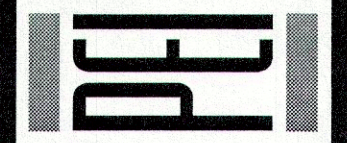
NOTE: VERTICAL DATUM: NAVD 88 BASED ON JCWN BM# 872 ELEV.=954.70 (SW COR. 75TH ST. & NALL AVE.)

- SET "C" CUT IN TOP OF CURB APPROX. 32' WEST OF DRIVEWAY FOR LOT 5A
ELEVATION = 997.06'
- SET "C" CUT IN TOP OF CURB INLET ON WEST SIDE OF ROSEWOOD DRIVE IN FRONT OF LOT 5A
ELEVATION = 998.54'

DESCRIPTION:

LOTS 3, 4, & 5, BLOCK 23, PRAIRIE RIDGE, A SUBDIVISION IN THE CITY OF PRAIRIE VILLAGE JOHNSON COUNTY, KANSAS

PHELPS ENGINEERING, INC.
1220 N. Winchester
Olathe, Kansas 66061
(913) 393-1155
Fax: (913) 393-1166
www.phelpsengineering.com



EXISTING CONDITIONS SURVEY
LOTS 3, 4, 5A, & 5B, BLOCK 23
PRAIRIE RIDGE
PRAIRIE VILLAGE, JOHNSON COUNTY, KANSAS

PROJECT NO.	DATE	NO.	DATE	BY	APP.	REVISIONS:
151211	1/25/15					

PLANNING COMMISSION MINUTES
July 12, 2016

ROLL CALL

The Planning Commission of the City of Prairie Village met in regular session on Tuesday, July 12, 2016 in the Municipal Building Multi-Purpose Room at 7700 Mission Road. Chairman Nancy Wallerstein called the meeting to order at 7:00 with the following members present: Gregory Wolf, Melissa Brown, James Breneman, Jonathan Birkel, and Jeffrey Valentino.

The following persons were present in their advisory capacity to the Planning Commission: Chris Brewster, City Planning Consultant; Mitch Dringman, Building Official and Joyce Hagen Mundy, Commission Secretary.

APPROVAL OF MINUTES

Jeffrey Valentino moved for the approval of the minutes of the Planning Commission for June 7, 2016 as submitted. The motion was seconded by Gregory Wolf and passed by a vote of 5 to 1 with James Breneman abstaining.

PUBLIC HEARINGS

There were no Public Hearings scheduled before the Planning Commission.

Chairman Nancy Wallerstein asked to reverse the order of applications due to a conflict of interest by a Commissioner on PC2016-119.

NON PUBLIC HEARINGS

**PC2016-120 Request for Preliminary & Final Plat Approval -
For Replat of Prairie Ridge Lots 3, 4, & 5, Block 23
5201 West 77th Street**

Harold Phelps, with Phelps Engineering and Matt Good, property owner, review their application for the replating of three 3 lots on the southwest corner of Rosewood and 77th Street. This property was originally platted in 1953. Each lot includes a single family dwelling and some additional accessory structures. They date from around the original date of the plat with the exception of some minor additions and modifications. This proposal is to replat the 3 lots into 5 lots for redevelopment as single-family structures.

James Breneman noted lot 4 shows a sanitary sewer easement extending from the north to south lot line. Matt Good replied this interrupts the buildable area for this lot and they are working with Johnson County Wastewater. A new easement will be dedicated to Johnson County Wastewater providing a connection to the lot immediately to the south of Lots 4 and 5 by a separate instrument.

DRAFT PLANNING COMMISSION MINUTES - JULY 12, 2016

Nancy Wallerstein asked if this application falls under the existing regulations or the new regulations. Mr. Brewster responded that the approval of the plat falls under the existing regulations; however, the homes when constructed will fall under the new regulations.

Chris Brewster noted the property is zoned R-1B which has a required minimum lot size of 60' x 100'. In addition the Prairie Village subdivision regulations provide that the Planning Commission consider the average size of all lots within 300' of a proposed subdivision as part of the lot size standards, along with other similar criteria regarding the size, pattern and configuration of lots.

The proposed lots all exceed the minimum standards for the R-1B zoning district. Three lots are approximately 70' x 209, and two are approximately 70' x 109'. The corner location and configuration of adjacent lots on the block result in two of the lots (proposed Lot 5 and Lot 3, respectively) being slightly larger than that due to the shape.

The area has many different configurations of lots due to the street network and pattern of blocks. However, the proposed lots are consistent with the sizes and patterns of lots within 300' of the proposed subdivisions:

- The typical lot pattern to the south and east is 65' - 72' x 125'. Deviations from this pattern are primary due to irregular block shapes or internal corners.
- The typical pattern to the north and west is 75' - 85' x 140'. A few lots are smaller than this, and several are significantly larger (6 lots in the 12,000 to 25,000 square foot range). The larger lots are primarily due to the large block and unusually deep lots immediately to the north across 77th street.

The proposed lots show all applicable setbacks for the R-1B district indicating the buildable area. In addition - and due to some pending considerations for setbacks in the R-1B zoning district at the time of pre-application meetings and discussions, 7' building lines are shown on the side setbacks. However, the City Council ultimately approved amendments that amount to the following for these lots:

- 6' side setbacks;
- Minimum of 20% of frontage between each sides (so 14' minimum total - i.e. it could be 6' on one side and correspondingly 8' on the other); and
- Minimum 12' between adjacent structures
- And 15' on street sides of corner lots, or ½ the depth of any front yard on any adjacent lot which faces the same street.

This affects the proposed lot in two ways:

1. The displayed building lines could be reduced to 6' on any one side, provided the other side is increased to 8';
2. The street side setback is shown as 15' along Rosewood. This meets the corner side setback in either case since the adjacent building facing Rosewood is setback approximately 25' from the street.

Public Works has reviewed this plat and has no issues with respect to utilities, infrastructure or drainage.

DRAFT PLANNING COMMISSION MINUTES - JULY 12, 2016

Harold Phelps stated that they will remove the 7' side yard designations currently on the plat prior to recording the plat with the county.

Jeffrey Valentino suggested that condition 4 be added to the staff recommendation that "the applicant remove the designated setbacks shown on the plat prior to recording and let the zoning standards control established setbacks.

Mr. Brewster advised that the proposed replat of Prairie Ridge lots 3, 4 and 5 into 5 lots meets all of the standards of the City's zoning ordinance for R-1B district and the requirements for a Final Plat in the subdivision regulations.

Gregory Wolf moved the Planning Commission approve PC2016-120, the Prairie Ridge Replat of Lots 2, 3, & 4 and part of 5 (Block 2, Block 22 & Block 23), and recommended the Governing Body for acceptance of easements, subject to the following conditions:

1. The Final Plat be submitted to the Governing Body for acceptance of easements.
2. That the applicant submit the Final Plat to the County (surveying and engineering) after approval by the City.
3. Prior to recording the Final Plat, it will be necessary for the property owner to vacation the existing sanitary sewer easement on proposed lot 4 and grant a new easement to Johnson County Wastewater meeting their requirements to serve any existing or future needs associated with that easement.
4. That the applicant remove the designated 7 foot side setbacks shown on the plat prior to recording and let the applicable zoning standards control.

The motion was seconded by James Breneman and passed unanimously.

**PC2016-119 Request for Preliminary & Final Plat Approval -
Mission Chateau - 2nd Plat
8500 Mission Road**

Melissa Brown recused herself from the meeting due to a professional conflict of interest on this application and left.

Wil Anderson, with BHC Rhodes, presented the proposed Mission Chateau - 2nd Plat which replats Lot 2 on the original plat into 13 individual lots for the villas.

Nancy Wallerstein asked if the plat reflected the change made by the Planning Commission on the driveway for Lot 3. Mr. Breneman noted it was Lot 5. Mr. Brewster responded that change was addressed in the final development plan which the Commission approved. He noted that each of the individual lots will return to the Commission for site plan approval.

Mr. Brewster reviewed the history of this application noting that the Planning Commission approved a preliminary and final pat for Mission Chateau on March 1, 2016. At that time it was understood that Lot 2 would be replatted at a future date to facilitate the construction and sale of the villas, according to the final development plan.

DRAFT PLANNING COMMISSION MINUTES - JULY 12, 2016

The final development plan was also approved by the Planning Commission on March 1, 2016 subject to conditions. Previously, 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.

Nancy Wallerstein questioned the width of the proposed sidewalk at 5' asking if it would be widened to accommodate connection to the city's trail system. Mr. Anderson replied that they are currently working with Public Works on the details of the sidewalk. Mr. Breneman noted that there is a 40' sidewalk easement designated on the plat. Mrs. Wallerstein expressed hesitation approving a five foot sidewalk and asked if this could be addressed through the landscape plan. Mr. Brewster noted their landscape engineer has been working with the applicant primarily on the trees and plantings. Mrs. Wallerstein stated she would be more comfortable with the wording be changed to read "a minimum of a 5-foot sidewalk". This would allow for potential future expansion to meet trail guidelines.

Rick Jones, with NSP&J, stated that if the city requires an 8-foot wide sidewalk/trail constructed. It will be constructed. Mike Allen with NSP&J noted the width of the sidewalk will impact the proposed bridge on the site.

Jeffrey Valentino supported Mrs. Wallerstein's proposed change to provide flexibility to address possible expansion in width. Mr. Allen noted that they are currently working with Public Works on curb cuts and will do as directed by them.

Chris Brewster stated that since approval of the final plat and final development plan the applicant has advanced on planning and engineering based on those approvals, and is preparing Lot 2 for the construction of the villas. They have submitted and replat of Lot 2, and the following comments relate to the recommended conditions for approval of the preliminary plat from Staff's July 7, 2015 review, and approved final plat from March 1, 2016:

1. **That the applicant provide a 5-foot sidewalk on the west side of Mission Road.**
On the replat, the applicant has indicated that a 40' deep easement along the west side of Mission Road for the location of the 5-foot sidewalk.
2. **That the applicant work with Public Works on the final design of the storm drainage system.**
Public Works has reviewed the previously approved final plat and the proposed drainage system, and the replat is consistent with the approved final plat.
3. **That the 25-foot platted rear setback line be dimensional on the northwest property line of Lot 1.**
[Not affected by the replat.]

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 preliminary review and approvals to address this condition. These covenants may change or be updated prior to final submittals for development plans and construction. Prior to recording the Final Plat or replat, the final proposed covenants shall be submitted demonstrating that this condition is met.

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 replat, a 10' easement is shown at this location (proposed Lot 13 on the replat); the sidewalk will need to be constructed as proposed through in the final plans and site development permits.

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

A final landscape plan was approved by staff in May preserving trees along Mission Road and the property boundaries. All construction will need to occur according to the approved landscape plan.

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

Public Works reviewed the previously approved final plat and the driveways and access controls are in accordance with the final plat.

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

Public Works reviewed the previously approved final plat and the driveways and access controls are in accordance with the final plat; construction and specifications for the driveway will occur through subsequent permits to ensure City standards are met.

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

Public Works reviewed the previously approved final plat and the driveways and access controls are in accordance with the final plat.

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

Public Works reviewed the previously approved final plat and the driveways and access controls are in accordance with the final plat; construction and specifications for the driveway will occur through subsequent permits to ensure City standards are met.

Chris Brewster noted that the Subdivision Regulations also require the following additional information to be submitted with the Final Plat:

- A. Covenants - draft covenants submitted; final proposed covenants need to be submitted 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

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- 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.

Staff advised that the proposed Final Plat for Mission Chateau 2nd Plat - Replat of Lot 2 is coordinated with the approved Special Use Permit and Final Development Plan and may be approved with the following exceptions which will need to be conditions of approval of the Final Plat:

1. The approval is conditioned previously approved final development plan and conditions. Specifically as it relates to this plat:
 - a. Future buildings on proposed Lots 3 through 13 require approval of new plans by the Planning Commission demonstrating conformance with the approved Final Development Plan and Special Use Permit. [this is the continuation of condition 5.d. of the Final Development Plan approval, reflected in the March 1, 2016 staff report.]
 - b. All future construction shall be in conformance with the approved landscape plan (L1.00 Bid Set Vol.3 dated 4/29/2016).
 - c. A sidewalk along the west side of mission road correspond to the easement and be constructed in accordance with the approved final development plan.
 - d. A sidewalk connection on the west side of proposed Lot 13 in the replat correspond to the easement and be constructed in accordance with the plan.
 - e. Covenants demonstrating adequate maintenance of all common areas be approved in accordance with the final plans, and the plat shall not be recorded until those covenants are reviewed and endorsed by the City as addressing all conditions of the special use permit and final development plan.
2. That 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.
3. That the applicant submit the final plat to the County (surveying and engineering) after approval by the City.
4. The final plat be submitted to the Governing Body for acceptance of easements.
5. Prior to the recording of the final plat, it will be necessary for the property owner to either construct all the proposed improvements or provide a financial guarantee to the City that the proposed improvements will be constructed in accordance with the approved final development plans that were conditions of the special use permit and site plan approval.

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James Breneman moved the Planning Commission approve PC2016-119, the preliminary and final plat for Mission Chateau - 2nd Plat subject to the following conditions recommended by staff:

1. The approval is conditioned previously approved final development plan and conditions. Specifically as it relates to this plat:
 - a. Future buildings on proposed Lots 3 through 13 require approval of new plans by the Planning Commission demonstrating conformance with the approved Final Development Plan and Special Use Permit. [this is the continuation of condition 5.d. of the Final Development Plan approval, reflected in the March 1, 2016 staff report.]
 - b. All future construction shall be in conformance with the approved landscape plan (L1.00 Bid Set Vol.3 dated 4/29/2016).
 - c. A minimum 5-foot sidewalk along the west side of Mission Road correspond to the easement and be constructed in accordance with the approved final development plan and comply with the Prairie Village Trail Plan or CIP plan for Mission Road.
 - d. A sidewalk connection on the west side of proposed Lot 13 in the replat correspond to the easement and be constructed in accordance with the plan.
 - e. Covenants demonstrating adequate maintenance of all common areas be approved in accordance with the final plans, and the plat shall not be recorded until those covenants are reviewed and endorsed by the City as addressing all conditions of the special use permit and final development plan.
2. That 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.
3. That the applicant submit the final plat to the County (surveying and engineering) after approval by the City.
4. The final plat be submitted to the Governing Body for acceptance of easements.
5. Prior to the recording of the final plat, it will be necessary for the property owner to either construct all the proposed improvements or provide a financial guarantee to the City that the proposed improvements will be constructed 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 Gregory Wolf and passed by a vote of 5 to 0.

OTHER BUSINESS

The Planning Commission members were reminded of the joint Planning Commission/City Council presentation on new wireless technology on Monday, August 18th at 6 p.m. in the Council Chambers.

The August Planning Commission meeting, Tuesday, August 2nd, will include two applications for residential building line modifications.

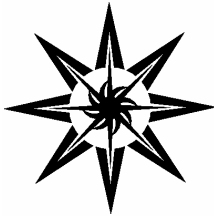
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Planning Commission members requested printed copies of the revised code and recommended that the city's website and Village Voice feature information reviewing the new changes adopted.

ADJOURNMENT

With no further business to come before the Commission, Chairman Nancy Wallerstein adjourned the meeting at 7:45 p.m.

Nancy Wallerstein
Chairman



PUBLIC WORKS DEPARTMENT

Council Committee Meeting Date: July 18, 2016

Council Meeting Date: July 18, 2016

CONSIDER CONSTRUCTION CONTRACT FOR THE DRAIN16X - 2016 DRAINAGE REPAIR PROGRAM

RECOMMENDATION

Move to authorize the Mayor to sign the construction contract with WCI, Inc. for the DRAIN16X-2016 DRAINAGE REPAIR PROGRAM for \$295,554.00.

BACKGROUND

This project includes replacement of the drainage inlet at 72nd and Nall and the reconstruction of the drainage channel between 82nd Street and 82nd Terrace just east of Roe Avenue.

On July 8, 2016, the City Clerk Office opened bids for the project. Three acceptable bids were received:

Linaweaver Construction, Inc.	\$320,954.00
WCI, Inc.	\$295,554.00
Kansas Heavy Construction	\$350,178.00
Engineer's Estimate	\$303,490.00

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

The contract will be awarded for \$295,554.

FUNDING SOURCES

Funding is available under the CIP project DRAIN16x.

RELATION TO VILLAGE VISION

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

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

ATTACHMENTS

1. Construction Agreement with WCI, Inc.

PREPARED BY

Melissa Prenger, Senior Project Manager

July 12, 2016

**CONSTRUCTION CONTRACT
FOR
PROJECT

PROJECT DRAIN16X-2016 STORM DRAINAGE REPAIR PROGRAM

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 STORM DRAINAGE REPAIR 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 Facie Violation of City Municipal Code 11-202.
- 7.9 No work shall be undertaken on Saturdays, Sundays and Holidays (Christmas, New Years, Martin Luther King's Birthday, President's Day, Memorial Day, Independence Day, Labor Day and Thanksgiving) without the express written approval of the City Project Manager. If it is necessary to perform proper care, maintenance, or protection of work already completed or of equipment used, or in the case of an emergency verbal permission may be obtained through the Project Manager.
- 7.10 Night work may be established by the Contractor, as a regular procedure, with the written permission of the City; such permission, however, may be revoked at any time by the City if the Contractor fails to maintain adequate equipment for the proper prosecution and control of all operations performed as part of the Work.

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

8. DELAYS AND EXTENSIONS OF TIME

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

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

9. ADVERSE WEATHER:

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

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

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

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

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

- The weather experienced at the Work site during the Contract period is more severe than the Adverse Weather anticipated for the Work location during any given month.
- The Unusually Severe Weather actually caused a delay to the completion of the Work.

- The delay must be beyond the control and without fault or negligence by the Contractor.

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

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

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

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

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

10. LIQUIDATED DAMAGES

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

11. PAYMENT PROCEDURE

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

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

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

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

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

12. COMPLETION AND FINAL PAYMENT

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

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

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

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

13. CLAIMS BY THE CONTRACTOR

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

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

14. CHANGES IN THE WORK

- 14.1 Changes in the Work within the general scope of this Contract, consisting of additions, deletions, revisions, or any combination thereof, may be ordered without invalidating this Contract, by Change Order or by Field Order.

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

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

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

- 15.3 Minimum Requirements Commercial General Liability Policy Limits -

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

Policy MUST include the following conditions:

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

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

Limits (Same as Commercial General Liability) -

Combined Single Limits, Bodily Injury and Property Damage - Each Accident:

Policy MUST include the following condition:

NAME CITY OF PRAIRIE VILLAGE AS "ADDITIONAL INSURED"

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

Limits -

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

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

Workers' Compensation: Statutory

Employer's Liability:

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

15.7 The City will only accept coverage from an insurance carrier who offers proof that it:

Is authorized to do business in the State of Kansas;
Carries a Best's policy holder rating of A- or better; and
Carries at least a Class VIII financial rating, or
Is a company mutually agreed upon by the City and Contractor.

15.8 Subcontractor's Insurance. If a part of the Agreement is to be sublet, the Contractor shall either:

- A. Cover all subcontractor's in its insurance policies, or
- B. Require each subcontractor not so covered to secure insurance which will protect subcontractor against all applicable hazards or risks of loss as and in the minimum amounts designated.

Whichever option is chosen, Contractor shall indemnify and hold harmless the City as to any and all damages, claims or losses, including attorney's fees, arising out of the acts or omissions of its Subcontractors.

15.9 Prior to commencing any work, Contractor shall provide City with certificates evidencing that (1) all Contractor's insurance obligations required by the contract documents are in full force and in effect and will remain in effect until Contractor has completed all of the work and has received final payment from City and (2) no insurance coverage will be canceled, renewal refused, or materially changed unless at least thirty (30) days prior written notice is given to City. Contractor's property insurance shall not lapse or be canceled if City occupies a portion of the work. Contractor shall provide City with the necessary endorsements from the insurance company prior to occupying a portion of the work.

15.10 Waiver of Subrogation. All insurance coverage required herein shall contain a waiver of subrogation in favor of the City. Contractor's insurance policies shall be endorsed to indicate that Contractor's insurance coverage is primary and any other insurance maintained by City is non-contributing as respects the work of Contractor.

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

15.12 Bonds and Other Performance Security. Contractor shall provide a Performance Bond, Maintenance Bond and a Statutory Bond in the amount of one hundred percent (100%) of the Contract Price to cover the entire scope of Work and any other specific performance security that may be indicated in this Contract. With each bond there shall be filed with the City one copy of "Power of Attorney" certified to include the date of the bonds.

16. INDEMNITY

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

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

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

17. SUCCESSORS AND ASSIGNS

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

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

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

18. NON-DISCRIMINATION LAWS

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

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

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

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

21. RIGHT OF CITY TO TERMINATE

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

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

22. MISCELLANEOUS:

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

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

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

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

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

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

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

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

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

CITY OF PRAIRIE VILLAGE

(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

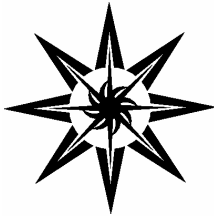
ATTEST:

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 WORKS DEPARTMENT

Council Committee Meeting Date: July 18, 2016

Council Meeting Date: July 18, 2016

CONSIDER APPROVAL OF CHARTER ORDINANCE #28 FOR THE ISSUANCE OF BONDS FOR THE PURCHASE STREETLIGHT SYSTEM FROM KCPL.

RECOMMENDATION

Approve Charter Ordinance #28 for the issuance of bonds for the purchase of the streetlight system from KCPL.

BACKGROUND

It is proposed that Prairie Village purchase the streetlight system located in street right of way and city property consisting of 2,062 streetlights from KCPL. Currently the streetlights are leased from KCPL. (See related agenda items)

Below is a summary of the total bond amount-

KCPL Streetlight Purchase	\$2,282,945.00
LED Upgrades for 1736 lights-	\$750,000.00
Contingency for LED and install-	\$167,055.00

TOTAL- \$3,200,000

Bond Council prepared the proposed Charter Ordinance #28. Charter Ordinance #28 repeals Charter Ordinance #25.

FUNDING SOURCES

Funds to pay for repayment of bonds and other associated costs will come from the funds budgeted for the KCPL Lease in the City's operations budget.

ATTACHMENTS

Proposed Charter Ordinance #28

PREPARED BY

Keith Bredehoeft, Public Works Director

July 12, 2016

**EXCERPT OF MINUTES OF A MEETING
OF THE GOVERNING BODY OF
THE CITY OF PRAIRIE VILLAGE, KANSAS
HELD ON _____, 2016**

The governing body met in regular session at the usual meeting place in the City, at 7:00 P.M., the following members being present and participating, to-wit:

Absent: _____

The Mayor declared that a quorum was present and called the meeting to order.

Thereupon, there was presented a Charter Ordinance entitled:

A CHARTER ORDINANCE EXEMPTING THE CITY OF PRAIRIE VILLAGE, KANSAS, FROM THE PROVISIONS OF K.S.A. 13-1024a AND PROVIDING SUBSTITUTE AND ADDITIONAL PROVISIONS ON THE SAME SUBJECT RELATING TO GENERAL IMPROVEMENTS AND THE ISSUANCE OF BONDS FOR THE PURPOSE OF PAYING FOR SAID IMPROVEMENTS; AND REPEALING CHARTER ORDINANCE NO. 25.

Thereupon Councilmember _____ moved that said Charter Ordinance be passed. The motion was seconded by Councilmember _____. Said Charter Ordinance was duly read and considered, and upon being put, the motion for the passage of said Charter Ordinance was carried by the vote of the governing body, the vote being as follows:

Yea:

_____.

Nay: _____

Thereupon, the Charter Ordinance having passed with more than a 2/3 vote of the governing body, the Mayor declared said Charter Ordinance duly passed and the Charter Ordinance was numbered Charter Ordinance No. _____ and was approved and signed by the Mayor and attested by the City Clerk.

(Other Proceedings)

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CERTIFICATE

I hereby certify that the foregoing Excerpt of Minutes is a true and correct excerpt of the proceedings of the governing body of the City of Prairie Village, Kansas, held on the date stated therein, and that the official minutes of such proceedings are on file in my office.

(SEAL)

City Clerk

(Published in *The Legal Record* on _____, 2016, and _____, 2016)

CHARTER ORDINANCE NO. _____

A CHARTER ORDINANCE EXEMPTING THE CITY OF PRAIRIE VILLAGE, KANSAS, FROM THE PROVISIONS OF K.S.A. 13-1024a AND PROVIDING SUBSTITUTE AND ADDITIONAL PROVISIONS ON THE SAME SUBJECT RELATING TO GENERAL IMPROVEMENTS AND THE ISSUANCE OF BONDS FOR THE PURPOSE OF PAYING FOR SAID IMPROVEMENTS; AND REPEALING CHARTER ORDINANCE NO. 25.

WHEREAS, Article 12, Section 5 of the Constitution of the State of Kansas (the “Act”), provides that cities may exercise certain home rule powers, including passing charter ordinances which exempt such cities from non-uniform enactments of the Kansas Legislature; and

WHEREAS, the City of Prairie Village, Kansas (the “City”) is a city, as defined in the Act, duly created and organized, under the laws of the State of Kansas; and

WHEREAS, K.S.A. 13-1024a is part of an enactment of the Kansas Legislature (K.S.A. 13-1024a *et seq.*) relating to general improvements and the issuance of bonds for such purposes, which enactment is applicable to the City, but is not uniformly applicable to all cities within the State of Kansas; and

WHEREAS, the governing body of the City desires, by charter ordinance, to exempt the City from the provisions of K.S.A. 13-1024a, and to provide substitute and additional provisions therefor.

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

Section 1. Exemption – K.S.A. 13-1024a. The City by virtue of the powers vested in it by the Act, hereby elects to exempt itself from and hereby makes inapplicable to it the provisions of K.S.A. 13-1024a, and does hereby provide the following substitute and additional provisions in place thereof:

For the purpose of paying for any bridge, viaduct, street, sidewalk or pedestrian way improvement, airport, public building or structure, parking improvement, or other public utility or works, including any appurtenances related thereto and the land necessary therefor, for lands for public parks and recreation facilities, including golf courses, stadiums and community centers, and developing and making improvements to the same, within or without the city, for the establishment, development and construction of crematories, desiccating or reduction works, including any appurtenances related thereto and the land necessary therefor, within or without the city, or for the improvement, repair or extension of any **streetlights**, waterworks, sanitary sewer facilities, sewage treatment or disposal plant, sewerage system, storm water improvement, electric light plant, crematory, desiccating or reduction works or other public utility plant or works owned by the city, and for the purpose of rebuilding, adding to or extending to the same or acquiring land necessary therefor from time to time, as the necessities of the city may require, or for the acquisition of equipment, vehicles and other personal property to be

used in relation to any of the improvements authorized herein, the city may borrow money and issue its general obligation bonds and/or temporary notes for the same.

SECTION 3. Severability and Termination. If any provision or section of this Charter Ordinance is deemed or ruled unconstitutional or otherwise illegal or invalid by any court of competent jurisdiction, such illegality or invalidity shall not affect any other provision of this Charter Ordinance. In such instance, this Charter Ordinance shall be construed and enforced as if such illegal or invalid provision had not been contained herein.

SECTION 4. Repeal of Charter Ordinance 25. This Charter Ordinance shall supersede Charter Ordinance No. 25 and upon effectiveness of this Charter Ordinance, Charter Ordinance No. 25 is hereby repealed.

SECTION 5. Effective Date. This Charter Ordinance shall be published once a week for two consecutive weeks in the official City newspaper, and shall take effect sixty-one (61) days after final publication, unless a petition signed by a number of electors of the City equal to not less than ten percent (10%) of the number of electors who voted at the last preceding regular City election shall be filed in the office of the City Clerk demanding that this Charter Ordinance be submitted to a vote of the electors, in which event this Charter Ordinance shall take effect when approved by a majority of the electors voting at an election held for such purpose.

PASSED with at least a two-thirds (2/3) vote of the entire Governing Body of the City of Prairie Village, Kansas, on _____, 2016, and **APPROVED AND SIGNED** by the Mayor.

Laura Wassmer, Mayor

(SEAL)

ATTEST:

Joyce Hagen Mundy, City Clerk

CERTIFICATE

I, hereby certify that the above and foregoing is a true and correct copy of Charter Ordinance No. _____ of the City of Prairie Village, Kansas, adopted by the governing body on _____, 2016, as the same appears of record in my office.

DATED: September _____, 2012.

City Clerk

CERTIFICATE OF NO PROTEST

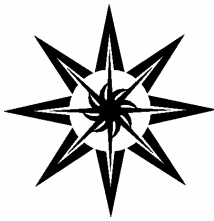
STATE OF KANSAS)
) ss:
COUNTY OF JOHNSON)

The undersigned, Clerk of the City of Prairie Village, Kansas (the “City”), does hereby certify that the governing body of the City duly passed Charter Ordinance No. ____, on _____, 2016, that said Charter Ordinance was published once a week for two consecutive weeks _____, 2016 and _____, 2016 in *The Legal Record*, the official City newspaper; that more than sixty (60) days have elapsed from the date of the last said publication; and that there has been no sufficient written protest filed in my office against said Charter Ordinance, as provided in Article 12, Section 5 of the Kansas Constitution.

WITNESS my hand and official seal on _____, 2016.

(Seal)

Clerk



PUBLIC WORKS DEPARTMENT

Council Committee Meeting Date: July 18, 2016

Council Meeting Date: July 18, 2016

CONSIDER APPROVAL FOR THE 2016 PARKS PLAYSET PACKAGES

RECOMMENDATION

Move to authorize the Mayor to sign the contract with Athco LLC and Fry Park and Playground for the 2016 Parks Playset Packages for a total of \$149,671.90.

BACKGROUND

The 2016 Parks Playset Packages includes new equipment at Taliaferro and Windsor Parks with a refreshed playset at Bennett Park. A public meeting was held on April 21, 2016 to show these designs along with a comparable option. The following play sets were chosen based on budget and play value:

Taliaferro Park: NetPlex 5-12 yrs and Smart Play Motion 2-5 yrs (Athco)



Windsor Park: Roundabout (Fry)



Bennett: Refresh (Athco)



The vendor agreement for Athco is \$103,750.00 and Fry Park and Playground is \$45,921.90.

FUNDING SOURCES

The funding is available in the 2016 CIP Parks Projects.

RELATION TO VILLAGE VISION

2. 1. *Enhancing Parks and Open Space*

CFS2.b. Enhance parks for active and passive recreation through capital improvements such as landscaping, tree and flower planting, shelters picnic facilities, athletic fields, etc.

ATTACHMENTS

1. Vendor Agreements

PREPARED BY

Melissa Prenger, Senior Project Manager

July 14, 2016



Lenexa, KS 66215
13500 W. 108TH St.
913-469-5600 or 1-800-255-1102
FAX (913) 469-8134
Email: athco@athcollc.com

PROPOSAL

**TO: DOUG PICKERT, INDIGO DESIGN
MELISSA PRENGER, CITY OF PRAIRIE VILLAGE
PRAIRIE VILLAGE, KS**

DATE: JULY 14, 2016

RE: BENNETT PARK

We are pleased to forward the following quotation. Our terms are net 30 days and all prices are subject to acceptance within 30 days.

State Sales tax Included **Not Included**

We propose to furnish and deliver FOB destination (freight included).

1 EACH – LANDSCAPE STRUCTURES #92572-1-2 WITH REVISIONS AS SHOWN ON ATTACHED DRAWING 92572-1-4 PLUS REMOVE THE NEW STEP AND THE 2 HALF-DECKS, REMOVE THE VERTICAL CLIMBER, REPLACE THE EXISTING MIRROR PANEL WITH A WIRE BARRIER. NEW DESIGN #92572-1-5

1 EACH - REPLACEMENT SLIDE HOOD ONLY FOR THE THE EXISTING DOUBLE POLY SLIDE OFF THE 32” DECK.

**ALL THE ABOVE FOR THE SUM OF \$31,135.00
FOR INSTALLATION OF ABOVE ADD \$ INCLUDED**

REMARKS: INSTALLATION ASSUMES NO ROCK AT FOOTING LOCATIONS.

INCLUDES REMOVAL OF EXISTING COMPONENTS AS REQUIRED.

- **Work for installations/repairs will be done as early as our schedule allows between the hours of 8 am- 4pm**

***** A 3% convenience fee will be added for all credit card transactions over \$1,000.*****

All proposals with labor (installation/repairs) are subject to Sales Tax unless a “Project Tax Exemption Certificate” is provided when placing the order.

This proposal accepted by:

Proposed by:

Name & Title

BRAD MOHR, GENERAL MANAGER



Lenexa, KS 66215
13500 W. 108TH St.
913-469-5600 or 1-800-255-1102
FAX (913) 469-8134
Email: athco@athcollc.com

PROPOSAL

**TO: DOUG PICKERT, INDIGO DESIGN
MELISSA PRENGER, CITY OF PRAIRIE VILLAGE
PRAIRIE VILLAGE, KS**

DATE: JULY 6, 2016

RE: TALIAFERRO PARK

We are pleased to forward the following quotation. Our terms are net 30 days and all prices are subject to acceptance within 30 days.
State Sales tax Included X **Not Included**
We propose to furnish and deliver FOB destination (freight included).

**1 EACH – LANDSCAPE STRUCTURES #92889-2-3 7-POST NETPLEX SYSTEM
1 EACH – LANDSCAPE STRUCTURES #3923 SMART PLAY MOTION**
..... **\$72,615.00**

~~**OR**~~

~~**1 EACH – LANDSCAPE STRUCTURES #92889-1-1 14-POST NETPLEX SYSTEM
1 EACH – LANDSCAPE STRUCTURES #3923 SMART PLAY MOTION**~~
..... ~~**\$74,590.00**~~

**ALL THE ABOVE FOR THE SUM OF \$ SEE ABOVE
FOR INSTALLATION OF ABOVE ADD \$ INCLUDED**

**REMARKS: INCLUDES REMOVAL OF EXISTING STRUCTURES AND POURED-IN-PLACE,
MOVING AND RE-SPREADING EXISTING MULCH AS REQUIRED FOR THE
REMOVAL AND FOR THE INSTALLATION OF THE NEW EQUIPMENT.**

INSTALLATION ASSUMES NO ROCK AT FOOTING LOCATIONS.

- **Work for installations/repairs will be done as early as our schedule allows
between the hours of 8 am- 4pm**

***** A 3% convenience fee will be added for all credit card transactions over \$1,000.*****

All proposals with labor (installation/repairs) are subject to Sales Tax unless a “Project Tax Exemption Certificate” is provided when placing the order.

This proposal accepted by:

Proposed by:

Name & Title

BRAD MOHR, GENERAL MANAGER



QUOTE

Fry & Associates, Inc.
 101 E 15th Ave, North Kansas City MO 64116
 t. 816-221-4825 f. 816-221-4831

Number FRYQ58794-B
Date Jul 15, 2016

End User	Ship To	Bill To
City of Prairie Village-Parks 3535 Somerset Drive Prairie Village, Kansas 66208 United States	City of Prairie Village-Parks 3535 Somerset Drive Prairie Village, Kansas 66208 United States	Indigo Design, Inc. Doug Pickert 8593 Timber Trails Drive De Soto, KS 66018 United States

Associates	P.O. Number	Ship Via	Terms
Ashley Trammell Steve Jones		Common	Cash In Advance / Prepay

Qty	Description	Unit Price	Ext. Price
	Windsor Park		
1	<i>Playmaker</i> Roundabout Variation Per Drawing: 16-2820E Post Color: Chestnut Component Color: Bottle Green Rotomold Plastic Color: Brownstone 2 Color Plastic Color: Grey/Beige/Grey Deck Color: Brown	\$25,611.60	\$25,611.60
1	<i>Install</i> Remove and Reinstall Mulch; Includes New Filter Fabric	\$1,800.00	\$1,800.00
1	<i>Install</i> Removal and Disposal of Existing Play Structures	\$3,500.00	\$3,500.00
1	<i>Install</i> Equipment Installation for Specified Roundabout Variation	\$12,585.30	\$12,585.30

SubTotal	\$43,496.90
Tax	\$0.00
Shipping	\$2,425.00
Total	\$45,921.90

Shipping Contact:
Email:

Phone:
Fax:

Quote Accepted By: _____ Date: _____

Pricing is CASH pricing. 3.5% will be added to the total for credit card transactions

MAYOR'S ANNOUNCEMENTS

Monday, July 18, 2016

Committee meetings scheduled for the next two weeks:

Prairie Village Arts Council	07/27/2016	5:30 p.m.
Environment/Recycle Committee	07/27/2016	5:30 p.m.
VillageFest Committee	07/28/2016	5:30 p.m.
Council Committee of the Whole	08/01/2016	6:00 p.m.
City Council (Tuesday)	08/01/2016	7:30 p.m.

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The Prairie Village Arts Council is pleased to present the works of the Senior Arts Council in the R.G. Endres Gallery during the month of July.

INFORMATIONAL ITEMS
July 18, 2016

1. Planning Commission Minutes - June 7, 2016
2. Board of Zoning Appeals Minutes - June 7, 2016
3. Prairie Village Arts Council Minutes - May 11, 2016
4. JazzFest Committee Minutes - June 15, 2016
5. Council Committee of the Whole - July 5, 2016
6. Mark Your Calendar

PLANNING COMMISSION MINUTES
June 7, 2016

ROLL CALL

The Planning Commission of the City of Prairie Village met in regular session on Tuesday, June 7, 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: Gregory Wolf, 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; Serena Schermoly, Council Liaison and Joyce Hagen Mundy, Commission Secretary.

Chairman Nancy Wallerstein welcomed the Commission's new Council Liaison Serena Schermoly.

APPROVAL OF MINUTES

Patrick Lenahan moved for the approval of the minutes of the Planning Commission for May 3, 2016 as submitted. The motion was seconded by Jeffrey Valentino and passed by a vote of 5 to 1 with Gregory Wolf abstaining.

Chairman Wallerstein asked the Commission for approval to amend the agenda and consider the Non-Public Hearing item before the scheduled public hearing.

NON PUBLIC HEARINGS

**PC2016-118 Request for Site Plan Approval
6701 Nall Avenue**

Bob Treanor, 15506 S. Kenwood St., addressed the Commission on behalf of Nall Avenue Baptist Church located at 6701 Nall Avenue. The church is seeking to replace an aging existing monument sign located at the corner of 67th and Nall. The proposal is for two monument signs, one located on the east side of the west entrance off of 67th street and a second one at a central location between its north and south entrances on Nall. The building has an existing wall sign associated with its primary entrance on Nall.

Chris Brewster noted that all monument signs come before the Planning Commission for approval. This site is a 3.56 acre corner location with 4 driveway entrances - 2 from each street frontage. The lot includes approximately 350 feet of frontage on Nall and approximately 450 feet of frontage along 67th Street. The building facilities include a main hall for services, associated classrooms and meeting rooms, event space, an outdoor playground and accessory parking. The property is zoned R-1A.

The sign ordinance allows churches, schools, and community buildings in residential districts up to 2 signs identifying the premises - which may be either wall mounted or monument signs. [19.48.020.A.] The applicant is requesting approval of the monument sign design and an exception to the limitation on 2 signs to allow the proposed monument signs on each frontage at locations shown on the site plan (to replace existing sign at the corner), and to keep the existing wall sign.

Section 19.48.015.M requires that all monument signs meet the following applicable standards:

- 5' height limit - each proposed monument sign meets this limit, except that the portion of the structure associated with the Nall Avenue sign containing the flag pole has a base of 6' high for an approximately 2' 4" x 2' 4" portion of the structure. It technically is not part of the sign structure although it shares the same base.
- 20 square feet limit for the sign - each sign is safely below this size limit. The sign area for monument signs is measure by the surface of the sign panel. The proposed signs are ovals. The resulting area of a rectangle entirely enclosing the ovals is less than 20 square feet; therefore excluding areas of that rectangle that would not include parts of the oval surface puts each sign safely below the 20 square foot limit.
- Be located at least 3' from the property line or 12 feet from the back of curb - the site plan is not scaled exactly, but the proposed locations appear to meet each of these standards, and are in a location with enough space to where they could be adjusted to safely meet this requirement.
- Permanent building materials similar to or complementary to buildings on the site. The proposed signs have a brick base matching the primary brick on the building and a stone cap complementing some of the accent materials and colors of the building. The proposed surface of the sign panel is plexiglass on an aluminum pedestal.
- Signs are to be located in a landscape setback area or have a 3' minimum landscape setback around the base. Both locations are in a landscape setback area.
- Monument signs in the residential districts may be illuminated provided the source of the illumination shall not be visible from off the premises. The internal cabinet illumination proposed for each sign meets this requirement.

Each of the proposed signs meets the standards for monument signs generally, as well as those for monument signs in residential districts. Staff recommends approval of the proposed monument sign design.

Jeffrey Valentino confirmed the existing façade sign contains non-illuminated free standing letters.

Gregory Wolf moved the Planning Commission approve PC2016-118 granting an exception to allow an increase in the total number of signs on the site from two to three and approving the proposed monument signs as submitted subject to the following conditions: 1) that the location of the monument sign be verified to be at least three feet

from the property line and at least 12 feet from the back of the curb; and 2) that the location include at least a three foot landscape buffer around the edge, or where such a buffer is not present at the location that a landscape plan for low ornamental plantings in the landscape area are to be submitted and approved by staff. The motion was seconded by Melissa Brown and passed unanimously.

PUBLIC HEARINGS

PC2016-04 Consideration of Revisions to the Prairie Village Zoning Regulations

Chapter 19.02, Section 19.02.100 "Building Height"

Chapter 19.06, Section 19.06.020 "Height"

Chapter 19.06, Section 19.06.030 "Side Yard - R-1a)"

Chapter 19.08, Section 19.08.015 "Height - R-1b)"

Chapter 19.08, Section 19.08.025 "Side Yard - R-1b)"

Chapter 19.44, Section 19.44.015 "Height"

Chapter 19.44, Section 19.44.030 "Building Elevations"

Chris Brewster stated Prairie Village has been experiencing increasing amounts of investment and infill development in residential neighborhoods. Some of these projects involve tearing down older homes and replacing them with new and larger homes, raising questions and concern regarding the ability of the current zoning standards (R-1B and R-1A zoning districts) to guide new development.

The City conducted public official work sessions, stakeholder focus groups, and public open houses over the last 8 months to discuss and determine a direction on amendments to the R-1A and R-1B zoning districts. Through these discussions, consensus on some of the concepts considered was not evident and a clear direction could not be determined. However on others, there was apparent consensus.

The proposed amendments address three main areas:

1. *Height:* Reducing the overall building height by (a) altering how building height is measured; and (b) changing the maximum height in R-1B from 35 feet to 29 feet.
2. *First Floor Elevation:* Amending sections of the code that apply to the first floor elevations new residential buildings, so that a generally applicable standard for building placement based on the site and grade can apply regardless of where the elevation of the prior existing home is.
3. *Side Setbacks:* Amending the side setbacks from the existing 4 feet (R-1B) and 5 feet (R-1A), with additional building separation requirements dependent on adjacent buildings, to 10% of the lot width on each side regardless of where adjacent structures may be.

The City's Comprehensive Plan adopted in 2007 specifically addresses this issue as follows:

- *Community Character:* Provide and attractive, friendly and safe community with a unique village identity appealing to people of all ages.

- *Housing*: Encourage neighborhoods with unique character, strong property values and quality housing options for families and individuals of a variety of ages and incomes.
- *Land Resources*: Encourage a high quality natural and man-made environment that preserves community character, creates identity and sense of place, and provides opportunities for renewal and redevelopment, including vibrant mixed-use centers.

Several specific policies and action items under these goals further identify the values of the community in this regard. Strategies identified include updating development regulations to better balance the need for new investment with maintaining the character and identity that have made Prairie Village's neighborhoods attractive and valuable.

Mr. Brewster noted in the land use element of the comprehensive plan associated with these goals - the Conceptual Development Framework - identifies the neighborhoods for Conservation and Improvement. This includes a majority of the City's land area which is currently zoned either R-1A or R-1B. In general the plan establishes similar policies and desired outcomes for the "Neighborhood Conservation" and "Neighborhood Improvement" areas. The key difference is the anticipated amount of reinvestment activity based on age and existing conditions in the Neighborhood Improvement areas.

Mr. Brewster stated in August of 2015, staff was directed to follow up on the comprehensive plan policies and action strategies, and begin a process to explore options to amend development standards affecting Prairie Village neighborhoods. In addressing that directive the following actions were taken:

- *September 17, 2015*, Staff Memo to the Mayor and City Council on Residential Infill Development
- *October 1, 2015*, Developer Discussion # 1 - focus group with developers on preliminary issues and analysis.
- *November 20, 2015*, Developer Discussion # 2 - focus group with developers on potential strategies
- *November 2015 - February 2016*, Drafting Committee Work Sessions - several meetings with a smaller group of Planning Commissioners, architects and developers to review and discuss drafts of potential amendments.
- *October 19, 2015 and February 1, 2016*, City Council Status Updates,
- *February 18, February 22, and March 2 2016*, Neighborhood Open Houses - open public forum to review and comment on the Discussion Draft of the proposed amendments.
- *April 4, 2016*, Council Review and Direction - [date of Wes' meeting and update]
- *April - May 2016*, Drafting Committee Work Sessions - several meetings with smaller focus group to draft proposed amendments.
- *June 7, 2016*, Planning Commission Public Hearing

The result of the analysis and the public process was the recommendation of a “two-tiered” approach to the issues regarding development and investment in Prairie Village Neighborhoods:

Tier 1 - Address basic zoning standards that are either out of scale with lots in neighborhoods, or which are creating the most difficulties through the development review process (i.e. height, side setback, and standards for first floor elevation of new residential structures).

Tier 2 - Revisit design, scale and massing issues through a broader discussion with continued involvement of stakeholders that were introduced to these issues in the public open houses.

Tier 1 amendments are the subject of the proposed amendments and were summarized by Mr. Brewster as follows:

1. Height:

Currently height on pitched roofs is measured to the mean height of a pitched roof structure. This is typically done in zoning ordinances to accommodate the different scale and mass that results from different pitches of roofs. However, in Prairie Village’s context, it can result in buildings significantly out of scale with existing development. The maximum height measured from the grade to the mean of pitched roofs can be up to 35 feet, and consequently the overall height of some buildings could be significantly higher than 35 feet, possibly upwards of 42 to 45 feet. Through staff’s review and analysis houses were identified that have been built to the extent of what the current zoning allows. Many homes that have caused concern in neighborhoods are well within what is allowed by current standards. The response to this situation is to change how height is measured in R-1A and R-1B so that it is measured from the top of foundation to the highest point (or “peak”) of the roof structure (instead of from grade to the mean of pitched roof).

Currently the height limit in R-1A and R-1B is 35 feet. This is more than sufficient to accommodate a 2.5 story dwelling, particularly when considered in conjunction with current height measurement. The R-1B lots are the smallest residential lots, allowing lots as small as 60 feet by 100 feet, with most typically 65 feet by 120 feet. Existing homes originally built on these lots are typically 1-story, 1.5-story, or 2-story with the appearance of 1.5-story elements on the front elevations. Through staff’s analysis it was determined that most new homes built, including many of the exemplary examples of recent builds, are within (or could be easily modified to be within) 29 feet from top of foundation to the high point on the roof structure. The response to this situation is to change the overall height to 29 feet in R-1B and leave the R-1A height at 35 feet with the proposed change as to how height is measured.

2. Building Elevations:

Currently new residential structures are required to be set at the same first floor elevation or lower than the original structure. This appears to be an attempt to reduce the scale of new homes in relation to the existing and adjacent homes. However, in

addressing only the first floor elevation, these standards do not adequately address this issue. With the noted issues on overall building height, a new structure built at the elevation of a current home could still be substantially higher and out of scale with existing homes while meeting this standard.

Further, since many existing homes are built at grade (some “slab on grade”), which produces drainage problems, many new homes are forced into a discretionary review process for an exception. This process does not have specific criteria to guide applicants, staff or decision makers. Often the appropriate design from a building code or drainage and site design process is forced to get an exception. This, combined with the fact that the standards and exceptions do not seem to adequately address the reason for these standards to begin with (deal with building scale), caused staff to revisit these standards. The goal was to allow all lots a reasonable foundation elevation based on the site grade and lot, and not necessarily tie it to where an existing structure’s first floor elevation happens to be. Further, since the proposed draft addresses some of the overall height concerns on the upper end, a more reasonable allowance for foundation elevations based on typical building practices seems appropriate. The response to this situation is to allow all residential lots a top of foundation that is 6 inches to 24 inches above grade along the front façade, and to improve the current exception process for greater elevations with more specific criteria.

3. Side Setbacks:

The relationship and the scale and mass of structures adjacent to each other have been a big part of this discussion. The current side setbacks - 4 feet (R-1B) and 5 feet (R-1A) can allow structures in close proximity. Therefore the current standards also have a minimum separation requirement from existing structures (12 feet in R-1B and 14 feet in R-1A). Since this pins a standard to what a neighbor may or may not do, and is subject to change as different property owners build at different times, these types of standards can become difficult to administer. Standards roughly similar to the current standards and keyed to the lot and not a neighbors building were explored. The response to this situation is to set the setback at 10% of the lot width resulting in a setback for a minimum size R-1B lot of 6 feet on each side (10% of the required 60 foot lot width) and a setback for a minimum size R-1A lot of 8 feet on each side (10% of the required 80 foot lot width). This would result in approximately the same scale, massing and dimensions of the current building separation standards (12 feet and 14 feet, respectively) if each lot were built to the extent of the setback, yet it can be applied independent of any review or analysis of what a neighboring property owner may have done. Further, the setback would scale to the size of the lot, requiring a slightly greater setback the wider the lot is.

Direction from the Council is to continue to work with stakeholders on potential solutions to the “Second Tier” issues. These discussions will involve continued work on more detailed building scale and mass standards, discussion of other elements of site or building design that impact the “neighborhood character” identified in Village Vision, and analysis of new potential strategies brought up in the public forum including basic material standards and “four-sided” architecture requirements.

Gregory Wolf asked if a two story home could be constructed under the proposed 29' height restrictions. Mr. Brewster replied based on their analysis it could be done. Wes Jordan distributed a map for the Commission's review identifying new homes constructed in 2015 and reflecting their roof height. The average height was 28.6' with only three homes built that would not be in compliance with the new height regulation.

Jeffrey Valentino confirmed the new setback regulations would remove the location of the first home constructed impacting the setback for the neighbor's home. Jonathan Birkel asked how windows would be handled. Mitch Dringman replied that windows and bays could project within the setback area.

Gregory Wolf confirmed the new setback regulations would be based on a percentage of the width of the lot and not be a set number. Mr. Brewster noted that many of the homes association deed restrictions in the city already establish setback as a percentage of width.

Jeffrey Valentino asked how the 12' separation was determined. Mr. Brewster replied there is no magic number or universal residential standard. One of the considerations was having a width great enough to allow equipment to get into a rear yard if necessary. The 12 feet is consistent with other 1st tier suburbs.

Melissa Brown asked if there were any provision regarding roof appurtenances allowed. Mr. Brewster replied that the current code 19.44.015C would remain allowing for these items. Mrs. Brown asked if there was a size restriction. Mr. Brewster replied the items are not to be occupiable space.

Jonathan Birkel asked what exceptions are allowed outside the setback. Mr. Brewster stated Section 19.44.020C from the current code would remain allowing for projecting windows, eaves, cornices, pilasters, trellises etc. to project into required yard setbacks.

Nancy Wallerstein asked how many of the current rebuilds would not be in compliance with the proposed code. Wes Jordan stated staff conducted an analysis of 2015 rebuilds to attempt to get balanced restrictions. He noted that the proposed code allows for the Building Official to grant minor variances to height. Of the 25 homes built last year only three would not comply with the proposed code.

Wes Jordan noted side yard setback is one of the biggest complaints received by the City from neighbors trespassing on and damaging neighboring property while constructing or working on adjacent residences. He stated that the Building Official spent significant time dealing with this problem over the Memorial Day weekend.

There has been significant discussion on these items to get a good balance to address issues and concerns that have been raised. The city has received several letters from members of the Prairie Village Homes Association in support of the proposed regulations.

Chairman Nancy Wallerstein opened the public hearing requesting those speaking limit their comments to five minutes.

Dennis O'Rourke, 5007 West 63rd Terrace, expressed concern with the potential impact the proposed regulations would have on residential home values. He views the changes taking place throughout Prairie Village as strengthening property values. He noted his difficulty in finding a home in Prairie Village that would accommodate his growing family's needs. He feels trying to maintain a village of Cape Cods is forcing families to move out. There needs to be more flexibility on smaller lots to allow for long term sustainability of housing stock. He asked the Commission to reconsider the 29' height restriction for the R-1b District. The city needs to look 20 to 30 years ahead to maintain a sustainable housing stock. He would like to have homes be able to have the desired 10' ceiling height and this can't be done with the proposed height. Mr. O'Rourke feels 33 to 35' height is fair and would like to see at least a minimum of 30 feet.

Andrea Ernst, 6828 El Monte, supported the proposed regulations and desires to maintain the character created by J.C. Nichols in developing Prairie Village. She noted some of the new homes constructed recently look like they belong further south. She does not want to see Prairie Village become another Olathe. She recognizes the changing demographics in the city and supports redevelopment but feels that the character of the community needs to be maintained.

Bruce Wendlandt, 4400 West 71st Street, stated the biggest challenge is addressing the density in R-1b. He was on the committee working on the proposed regulations and was hoping for a 30' height restriction. He wants to see the city re-green and redevelop. Mr. Wendlandt shared different scenarios addressing his concerns with density in R-1b. He feels the goal is to strike a good livable balance with continuity in fabric.

Bill Copeland, 5200 West 81st Street, stated he felt the proposed regulations are reasonable. He does not want to see the growth and increased property values caused by the teardown/rebuilds go to waste.

Annie Ireland, 4905 West 70th Street, moved from Leawood and likes the character and flavor of Prairie Village neighborhoods. She supports the proposed revisions and noted that in building bigger to get more light, the homes are denying light to the adjacent properties. She urged the Commission to approve the proposed regulations.

Allen Gregory, 3906 West 69th Street, stated that he is currently rebuilding a tear down in order to meet the needs of his family. He views the issue from the viewpoint of increasing property values and believes everyone benefits from increased building that is occurring. He stated that most surrounding communities have 35 feet for their building height regulation with Fairway having 31 feet. He noted that the city of Leawood allows smaller lots to have a 40' building height to allow them to accommodate housing needs. He feels the tighter restrictions will result in cheapened construction and he does not want to see market values decrease. Mr. Gregory stated 35' is the standard height regulation in the metropolitan area regardless of lot size.

Pat Roberts, 3912 West 68th Street, a 40 year resident does not want to stop change, but feels the issue is maintaining an appropriate ratio.

Lissa Haag, 6817 El Monte, stated that she and others in the Prairie Village Homes Association recently went door to door to get resident feedback on the proposed revisions. The majority of the residents they spoke with supported having some limitations put in place. She feels that the proposed 29' height is actually very tall compared to some of the existing homes in Prairie Village. Ms. Haag noted that families are moving into Prairie Village and there is a lot that can be done to homes within the proposed regulations to continue that trend. She encouraged the Commission to listen to the ordinary residents as well as the architects speaking this evening.

Steve Johnson, 3915 West 73rd Street, expressed appreciation to the Commission and the City as a resident since 1979. He stressed the need to strike a balance that will give families the features they need and desire while maintaining the character of Prairie Village neighborhoods.

Wes Jordan noted that recently a Prairie Village Homes Association had their covenants challenged that restricted homes to one and a half story and lost. Countryside East Homes Association has created an overlay district to provide greater control over redevelopment in their area. Prairie Village Homes Association was seeking to do the same but it became clear that more than an overlay was needed to address this issue. Mr. Jordan noted the PV Homes Association had previously proposed a 27' height restriction.

Mr. Jordan noted that more restrictive covenants and deed restrictions supersede the city's zoning regulations. He added it is very difficult and in some cases impossible to change covenants as they require 100% support and that it not possible. The Prairie Village Homes Association Board recently sent notification that the Association supported the proposed amendments.

The Public Hearing was closed at 8:17 p.m.

Mr. Birkel asked for clarification of Mr. Wendlandt's comments related to density.

Mr. Wolf asked for confirmation if smaller lots in Leawood allowed 30' height for homes; staff was not aware of this provision in Leawood's code and had not researched that issue.

Mrs. Brown expressed concern with the 29' wall section provided by Mr. Wendlandt and the challenges it would provide for windows. Mr. Brewster responded that the regulations address outside massing. Mr. Valentino questioned the ability to construction a standard two story home with a 29' height restriction. Noting the analysis done with most homes being 29 feet plus inches, suggested that the height be set at 30 feet. He noted he likes that the new houses being constructed in his neighborhood are different.

Mr. Wolf was concerned with the 29' height restriction was too restrictive causing Prairie Village residents to move south and feels that 30' makes sense with the ability to request a variance to allow for any higher construction.

Patrick Lenahan asked if heights of existing homes were reviewed by staff in making their recommendation. Mr. Brewster replied staff did not systemically measure specific homes, but did compare the relative scale of typical homes noting that one story elements had eave lines approximately between 8' and 1' and ridge lines between 15 feet and 18 feet; one and one-half story elements had ridge lines between approximately 15 feet and 22 feet. Two-story elements have eave lines between approximately 15 feet and 20 feet and ridge lines between 22 feet and 29 feet. Mr. Lenahan replied the crux of the residential complaints is based on how much taller the new construction is than what currently exists in the neighborhood. He noted his home is 22' in height and a 35' home would certainly tower over that and many of the existing ranches are 15 feet in height.

He is comfortable with the 30' noting only one home constructed in 2015 in R-1b exceeded that height or leave it at 29 feet.

Wes Jordan stressed that under the proposed regulations the Building Official can accept up to a 3% tolerance from the height. This would allow for up to 10.5" additional inches and could result in an actual height of almost 30'. If the Commission increases the height to 30', he recommends the ability to grant a variance be removed.

Jonathan Birkel agreed that with the variance the height is almost at 30'. He noted that missing from consideration with the proposed changes are limitations on the massing portion and scale that will be discussed later. Character is very important, not just height. He feels that a lot of value can be added and still be within scale. Regarding the side setbacks, he feels that they should be at least 5 feet.

Jeffrey Valentino stated he would support the 29' height with the allowed 3% tolerance granted by the Building Official, knowing that beyond that they can seek a variance. Mr. Brewster noted in Phase II an appeal process will be established for design. He does not want to address changes through the established variance process which requires legal criteria to be met.

Melissa Brown confirmed that the submitted plans for approval for a building permit must be drawn with a maximum 29' height and that the 3% allowance is for field conditions or construction practices.

Nancy Wallerstein stated that she preferred a set height limitation. She is hearing between 29 and 30 feet from the commission. She would like a clear maximum.

Chris Brewster reviewed the new definition of height which addresses both how it is measured (from the finished grade) and the 3% tolerance.

Nancy Wallerstein was concerned that the waiver/tolerance allowed builders to exceed the code. Gregory Wolf asked if the tolerance should be reduced from 3% to 2%. Mr. Birkel noted the idea to allow actual construction to be up to 30 feet while ensuring that it does not exceed 30 feet. Mr. Wolf asked if the building was 12" too tall, what the city would do. Would it be required to meet code? Mr. Birkel asked when the height is measured. Mr. Dringman replied it would be measured at rough-in. Mr. Wolf stated that a tolerance of 10.5" seems like a lot to him and he wants to be sure that it will be enforced. Mr. Valentino stated that by making it flexible, it is more likely to be enforced. Mr. Dringman noted that with height measurement taking place at rough-in there is still time to make necessary changes.

Jeffrey Valentino asked how the new side yard setbacks affected odd lots and corner lots. Mr. Jordan replied that the measurement of width would be taken at the front building line. Chris Brewster noted the exceptions granted in the existing code would remain and read them to the Commission. Mr. Lenahan stated that his was more of an issue with pie shaped lots and noted that most commercial zoning has set numbers for setbacks rather than percentages. Mr. Brewster replied the setback measurement is taken at the building line and follows through the lot line on all sides.

Gregory Wolf moved the Planning Commission recommend the Governing Body adopt the proposed revisions for Chapter 19.02, Section 19.02.100 entitled "Building Height". The motion was seconded by Jonathan Birkel and passed by a vote of 4 to 2 with Melissa Brown and Nancy Wallerstein voting in opposition.

Patrick Lenahan moved the Planning Commission recommend the Governing Body adopt the proposed revisions for Chapter 19.06, Section 19.06.020 entitled "Height" (R-1a). The motion was seconded by Melissa Brown and passed by a vote of 6 to 0.

Patrick Lenahan moved the Planning Commission recommend the Governing Body adopt the proposed revisions for Chapter 19.06 Section 19.06.030 entitled "Side Yard" (R-1a). The motion was seconded by Gregory Wolf and passed by a vote of 5 to 1 with Jeffrey Valentino voting in opposition.

Patrick Lenahan moved the Planning Commission recommend the Governing Body adopt the proposed revisions for Chapter 19.08, Section 19.08.015 entitled "Height" (R-1b). The motion was seconded by Jeffrey Valentino and passed by a vote of 6 to 0.

Melissa Brown moved the Planning Commission recommend the Governing Body adopt the proposed revisions for Chapter 19.08, Section 19.08.025 entitled "Side Yard" (R-1b). The motion was seconded by Gregory Wolf and passed by a vote of 5 to 1 with Jeffrey Valentino voting in opposition.

Gregory Wolf moved the Planning Commission recommend the Governing Body adopt the proposed revisions for Chapter 19.44, Section 19.44.030 entitled "Building Elevations". The motion was seconded by Melissa Brown and passed by a vote of 6 to 0.

Gregory Wolf moved the Planning Commission recommend the Governing Body adopt the proposed revisions for Chapter 19.44, Section 19.44.015 entitled "Height". The motion was seconded by Patrick Lenahan and passed by a vote of 6 to 0.

Jonathan Birkel asked what the timeline was for Phase II discussions. Mr. Jordan replied that if the proposed revisions are approved by the City Council on June 20th staff will make sure the Council still wants to proceed with Phase II as a priority. If so, he would anticipate those discussion would begin very quickly.

NEXTMEETING

The planning commission secretary noted filing deadline for the July meeting is the end of the week. No submittals have been made to date.

Mr. Lenahan stated he would not be in attendance at either the proposed joint PC/CC meeting on July 5th or the regulation Planning Commission meeting on July 12th.

ADJOURNMENT

With no further business to come before the Commission, Chairman Nancy Wallerstein adjourned the meeting at 9:12 p.m.

Nancy Wallerstein
Chairman

**BOARD OF ZONING APPEALS
CITY OF PRAIRIE VILLAGE, KANSAS
MINUTES
TUESDAY, JUNE 7, 2016**

ROLL CALL

The meeting of the Board of Zoning Appeals of the City of Prairie Village, Kansas was held on Tuesday, June 7, 2016 in the Council Chambers of the Municipal Building at 7700 Mission Road. Chairman Gregory Wolf called the meeting to order at 6:30 p.m. with the following members present: Jonathan Birkel, Melissa Brown, Jeffrey Valentino, Patrick Lenahan and Nancy Wallerstein. Also present in their advisory capacity to the Board of Zoning Appeals were: Chris Brewster, Planning Consultant; Wes Jordan, Assistant City Administrator; Mitch Dringman, City Building Official; Serena Schermoly, Council Liaison and Joyce Hagen Mundy, Board Secretary.

APPROVAL OF MINUTES

Patrick Lenahan moved the approval of the minutes of the March 1, 2016 meeting as presented. The motion was seconded by Nancy Wallerstein and passed by a vote of 4 to 0 with Gregory Wolf and Jeffrey Valentino abstaining.

**BZA2016-04 Request for a Variance from PVMC 19.08.030 to allow the
garage to encroach the rear yard setback by approximately 9 feet
2015 West 79th Street**

Audrey Chinook, 8419 Meadow Lane and Terry Woodward, 204 Redbud Lane, appeared before the Board requesting a variance that would allow them to remove an existing non-conforming garage replacing it with a new garage in the same location but extending four feet further to the side.

Chris Brewster stated the applicant is requesting a variance from Section 19.08 and 19.34.020A to replace an existing attached garage at the current location. The garage is 15.85 feet from the rear property line, instead of the required 25 feet and an allowance for as shallow as 18' for certain attached garages. Replacement of the existing garage would be allowed for treatment as a non-conforming situation, except that the new garage is approximately 4.7 feet wider, thus increasing the extent of the non-conformance an additional 4.7 feet along the current 15.85 foot setback.

This variance request impacts several sections of the ordinance and requires a few interpretation considerations, prior to applying the setbacks and the variance criteria.

First, it requires a determination of what is the front lot line, so that appropriate lot and setback dimensions can be determined and applied in appropriate locations. Second, it

impacts an exception to the rear setback for attached garages. And third it requires application of the non-conforming status of the current building.

This lot is a corner lot. The Zoning Ordinance defines front lot line as “the boundary between a lot and the street right-of-way on which it fronts. The front lot line of a corner lot shall be deemed as the least dimension adjacent to a street unless otherwise specified by the Building Official” [19.02.320]. The property is addressed from West 79th Street, the building is oriented to West 79th Street, and the lot has driveway access off West 79th Street. Therefore the Building Official has determined that the front lot line is the north boundary along West 79th Street. As a result, the lot is not typically shaped (it is much wider than it is deep) and that the south lot line (the line in question for the garage placement) is the rear lot line for setback determinations.

In general the rear setback in R-1B is 25 feet. However the accessory use section for single-family and two-family dwellings requires private garages, and has exceptions to the setbacks for detached garages or attached garages on corner lots [19.34.020.A.]. The exception allows an attached garage to extend into the rear setback to within 18 feet of the rear property line rather than the 25 feet otherwise required, and further provided it maintains a 25-foot setback from the side street line. The assumption is that this exception allows a different configuration for corner lots, where instead of having the garage accessed from the front (which ordinarily would be the shorter side), and the lot can be accessed from what would be the side street, and the garage can then project into the rear lot more to take advantage of this side access. This configuration allows the garage and the driveway access to be placed at a more discrete location of the lot in relation to the streetscape, and allows the principal building to have a more prominent orientation in relation to adjacent structures on each street frontage. Note that this configuration would be very similar to the existing and proposed configuration on this lot, except that the home still is oriented to West 79th Street, rather than the narrower street frontage on Cambridge.

Additionally, this lot apparently has a legal non-conforming status if the interpretation of the south interior boundary as the rear lot line is correct. In such cases, legal non-conforming structures may be maintained and may be built back at the same location provided the investment is less than 50% of the overall value [19.40.015]. However, this allowance to continue and to reinvest in non-conforming structures is limited to the extent that you do not expand the degree of the non-conformance. The fact that the proposed garage is 4.7 feet wider than the existing garage, thus increasing the degree of any non-conformance, is the reason this application for a variance is before the Board.

Chairman Gregory Wolf opened the hearing for comments. No public comments were made and the public hearing was closed.

The Board reviewed the criteria required for granting a variance as presented in the staff report.

A. Uniqueness

That the variance requested arises from such condition which is unique to the property in question and which is not ordinarily found in the same zone or district; and is not created by an action or actions of the property owner or the applicant.

In order for the property to meet the condition of uniqueness, it must have some peculiar physical surroundings, shape, or topographical condition that would result in a practical difficulty as distinguished from a mere inconvenience to utilize the property without granting the variance.

The lot is a corner lot, and a determination has been made that the front lot line is the longer side, which is not typical of most corner lots according to the ordinance definition. This results in a wider lot that is much wider than the required width for R-lb lots (120' compared to 60') with a shallow depth which is less than the required lot depth for R-lb lots (87' compared to 100'). As a result of this determination and its unique context, it also fronts on the park across the street. When applying the typical setbacks to this lot, it results in a different building envelop than typical corner lots – much wider but very shallow (approximately 101 feet wide by 32 feet deep).

Nancy Wallerstein moved the Board find favorably on Criteria A “Uniqueness”. The motion was seconded by Jeffrey Valentino and passed by a vote of 6 to 0.

B. Adjacent Property

That the granting of the permit for the variance would not adversely affect the rights of adjacent property owners or residents.

The proposed application is a slight extension of an existing situation. The current home and attached garage are built at the same location as the proposed extension, and it currently exists on a large portion of the side boundary. The additional extension is not close to the existing structure to the south as this portion of the lot backs to the back yard of the adjacent lot. Further, the relationship of the home to the east exceeds all required side setbacks for this boundary substantially (4' are required with 12' from the existing structure and 22' are proposed).

Jonathan Birkel moved the Board find favorably on Criteria B “Adjacent Property”. The motion was seconded Nancy Wallerstein and passed by a vote of 6 to 0.

C. Hardship

That the strict application of the provisions of these regulations from which a variance is requested will constitute an unnecessary hardship upon the property owner represented in the application.

The ordinance requires all single-family dwellings to have a garage. The current structure has the same or similar pattern and relationship as proposed with the new garage. Compliance with the rear setback at this location, when considering the exception to allow corner lots to have as little as 18 feet rear setbacks for garages, would force the garage to be shifted closer to the street, and be offset event further than the current home. This could negatively affect this property compared to similarly situated lots in the area. Further, shifting just the expanded portion of the garage (the 4.7 feet of the additional non-conformance) would be impractical.

Nancy Wallerstein moved the Board find favorably on Criteria C “Hardship”. The motion was seconded by Patrick Lenahan and passed by a vote of 5 to 1 with Jonathan Birkel voting in opposition.

D. Public Interest

That the variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare.

The proposed building complies with all other setback and building coverage standards for this district with the exception of the current non-conforming status on the south property line based on the Building Official’s determination. This building relationship with the property to the south is less than required for rear setbacks, but is more than would be required for side setbacks. The building relationship with the property to the east is much greater than required for side setbacks, and similar to what is required for rear setbacks. Further, the extent of the variance is minimal as it is a small extension of the current building footprint.

Nancy Wallerstein moved the Board find favorably on Criteria D “Public Interest”. The motion was seconded by Melissa Brown and passed by a vote of 6 to 0.

E. Spirit and Intent of the Regulation

That the granting of the variance desired would not be opposed to the general spirit and intent of these regulations.

The variance would be for only a small portion of the extension of a legally non-conforming structure. Further, the proposed pattern of the garage and lot appears to be consistent with the intent for an exception for corner lots granted by 19.34.020A. That is the garage is accessed from the “long side” of the corner lot, the garage is placed at a location most remote from the public streetscape in the interior most corner, and the garage has an appropriate relationship to adjacent structures. If this lot were determined to be fronting on Cambridge Street rather than West 79th Street, the proposed garage would meet the standards for side setbacks, street side setbacks and the exception for rear setbacks.

Nancy Wallerstein moved the Board find favorably on Criteria E “Spirit and Intent of the Regulation”. The motion was seconded by Patrick Lenahan and passed by a vote of 6 to 0.

Nancy Wallerstein confirmed that the applicant had received and was in agreement with the conditions of approval recommended by staff.

Nancy Wallerstein moved that finding favorably on all five criteria as required by State Statutes the Board approve BZA 2016-04 granting a variance only to the extent shown on the submitted plans and only for the proposed addition extending an additional 4.7 feet on the current building line up to an 15.85’ setback on the southeast corner and that the variance be recorded with the County Register of Deeds within 1 year of approval. The motion was seconded by Patrick Lenahan and passed by a vote of 6 to 0.

OLD BUSINESS

There was no Old Business to come before the Board.

NEXT MEETING

Board Secretary Joyce Hagen Mundy reported the filing deadline for the July meeting with is the second Tuesday in July in June 10 and to date no application have been filed for the Board.

ADJOURNMENT

Chairman Gregory Wolf adjourned the meeting of the Board of Zoning Appeals at 6:50 p.m.

Gregory Wolf
Chairman

JazzFest Committee Minutes June 15, 2016

Present: JD Kinney, Dan Andersen, Lee Duong, Jane Andrews, Donlea Hespe, Alex Toepfer, Brooke Morehead, Brian Peters, John Wilinski and Joyce Hagen Mundy. Mike Schermoly, Michael Polich and Dave Hassett had work related conflicts and were unable to attend.

The minutes of the May 11, 2016 meeting were approved.

Budget

JD Kinney distributed and reviewed the 2016 proposed Jazz Fest Committee budget. The current balance in the account is \$21,390.72. Talent costs are below budget. Stage and tent rental has been budgeted based on last year's usage and can be adjusted if necessary. Sponsorships and donations received are significantly below budget. Dan Andersen stated most donations come in later in the summer. Joyce felt personal follow-up should be made with large donors who have not committed for 2016.

Talent

All of the performance contract's have been received and signed. Checks have been mailed to Marilyn Maye and Dan Thomas. Alex noted an error on the line-up card for Chris Hazelton. It should be "Chris Hazelton's Boogaloo 7" not Chris Hazelton and the Boogaloo 7. Joyce stated that she would make sure it is corrected on future marketing pieces and was correct on the website. She was sending contracts, line-up cards and letters to all of the performers. John Wilinski confirmed that hotel reservations have been made at the Sheraton per Marilyn Maye's contract. He confirmed that air travel arrangements would be made by the performer's and submitted for reimbursement. He would need to follow-up regarding transportation to and from the airport. John will also coordinate the performer merchandise sales.

Dan Andersen asked Jane and Alex to work with the performer's to firm up sound check schedules for the morning of the festival.

PV Art Fair/VillageFest

It was reported that the committee distributed most of the printed line-up cards at the PV Art Fair to a very positive response. Fifteen T-shirts were sold at \$5 each. No volunteers were signed up for the festival. The committee discussed their presence at the July 4th VillageFest celebration. Lee stated that she will be out of town for the event, but will again coordinate the sign-up for volunteers. We will have a table from 9 a.m. to 1 p.m. and will hand out the remaining line-up cards and offer for sale the remaining T-Shirts. It was suggested that the committee also have a "child related raffle item" for the festival. This was done at a previous VillageFest will success. Joyce noted the raffle items were donated. No formal action was taken. JD stated he would be available to work the table. Joyce stated that she would have other responsibilities at the event and would not be available.

Committee Reports:

Marketing - Nothing to report, more information will be available on T-Shirts at the July meeting.

Stage/Set-up - Dan reported that he will be meeting with Public Works and Police Department after July 4th to discuss operations. A tentative tent order is on hold based on last year's use.

Food & Beverage - Dave was not present to report. JD reported that with summer upon us, Dave is considering not pursuing the committee securing its own liquor license, but to see if we could again use BRGR's license. Other possible liquor license sources were discussed that JD would talk with Dave about.

PV Art Council Participation

Art Council participation and the level of support was discussed. Options for face painting were discussed. Alex suggested using SME art students.

The meeting was adjourned at 6:30 p.m.

Next Meeting

The next meeting will be Wednesday, July 7th at 5:30 p.m.

Prairie Village Arts Council
Wednesday, May 11, 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), Shelly Trewolla, Julie Flanagan, Wayne Wilkes, Art Weeks, and Stephen LeCerf. Also present was Wes Jordan (Assistant City Administrator) and Eric Mikkelson (Council Liaison).

Minutes - were approved as presented.

Prairie Village Art Fair - Donna Potts, Prairie Village Merchants Association, was invited to discuss the PV Art Fair scheduled for June 3-5, 2016. Donna said this will be the 60th year this event has been held and over 500 artists applied to participate with 105 of those applicants being selected to be in this year's show. Donna also said there will be musical entrainment as part of the event. As in previous years, the Arts Council will have a booth and assist in serving wine on Friday evening, pass out meals on Saturday, and help present the Best in Show Award on Saturday.

Americans for the Arts National Study - Sara Vanlanduyt, Executive Director of the Arts Council of Johnson County, asked the Arts Council to participate in the National Study by collecting surveys. The data would be solicited from people attending art events and the information would be used to measure the economic impact of nonprofit arts and culture organizations. Sara asked the Arts Council to consider participating for one year and submit information on a quarterly basis. After discussion, the Arts Council agreed to participate for one quarter before committing for one full year.

Introduction of Applicants - Ada Koch, David Keeter, Julie Hassel, and Al Guarino were in attendance and are considering becoming members of the Arts Council. Everyone in attendance took a few minutes to introduce themselves, share background information, and their interest in the arts. Dan Andersen or Wes Jordan will follow up with the applicants prior to appointment.

Council Report - Councilman Eric Mikkelson took a few minutes to express how pleased he was to have the opportunity to serve as the Council Liaison to the Arts Council. He also provided updates to the Meadowbrook Project and the changes that are planned for Mission Road between 71st & 75th Street. Mr. Mikkelson said that the road would be narrowed to 3 lanes with expanded green space and sidewalks that are a safer distance from Mission Road. The Arts Council members expressed support for the quality of life amenities that are being planned for this area such as wider sidewalks, benches, ornate street lights, etc. He also informed the Arts Council that a citizen has generously agreed to donate \$25,000 toward beautification efforts. The expenditure of these funds is still being discussed and there is also consideration of a sculpture that may be incorporated

into the project. Dan Andersen asked Mr. Mikkelson about the status of the sculpture garden. Mr. Mikkelson said the City had completed the inventory of statuary and the committee was still discussing what would be best for placement and care for the pieces throughout the City.

Financial Report - Wes Jordan provided a budget report (attached) the provided the follow fund balances: *RG Endres Gallery* - \$8,704.60 and *Municipal Arts* - \$22,795.34 for a total of \$31,499.94. This report does not reflect expenses pending for the Future of the Arts event.

Exhibits/Receptions

Future of the Arts - Julie Flanagan reported that approximately 84 people attended this event that featured 25 works of fine art. There were many positive comments about this juried show for young artists who expressed their appreciation for having this opportunity. The seven award winners were genuinely appreciative. Julie reported this event was under budget and ARTrageous Creative Studio donated two awards for the visual arts grade school categories valued at \$140.00 each. The top two award winners will each receive a \$300.00 scholarship that will be distributed through the Arts Council of Johnson County.

Congressional Art Competition - The Arts Council co-hosted this event that was sponsored by Congressman Kevin Yoder for the 3rd District that he represents. This was a juried art show for High School students. The timing of this exhibit coincided with the Future of the Arts that showcased the talent of young artists in our community.

May Exhibit - will feature art by The Saturday Group with the reception on May 13th.

Update to 2016 Schedule - The remainder of the 2016 exhibit schedule assignments were discussed and finalized. Art Weeks agreed to be the curator in August and Stephen LeCerf volunteered to work the September exhibit. The Arts Council also agreed to fill the December exhibit with art that is owned by the City. The subcommittee is still working on suggestions for dispersing some of the pieces owned by the City due to storage limitations.

Ongoing Business

Website Update - Wayne Wilkes reported that the framework for the new website was near completion and he would need assistance with creating content. Julie Flanagan and Dan Andersen volunteered to assist. They arranged to meet and work on the project on Friday, May 13th.

Fundraising - Stephen LeCerf, chair of the subcommittee, reported the draft of the campaign letter was nearing completion. The Arts Council reviewed the draft and offered comments. Mr. Mikkelson also suggested a correction to the non-profit designation being corrected to specify the Prairie Village Foundation. Once the letter is

finalized it will be distributed to potential sponsors that do not conflict with donors of other City events.

State of the Arts - Dan Andersen spoke briefly about the October event and suggested at a future meeting a chair/co-chair be determined to oversee organization of the event.

New Business

PV Art Fair - The Arts Council discussed promotional items and planned sales of T-shirts, bumper stickers, and pavers. Dan Andersen also suggested consideration of a raffle item to raise funds for the Arts Council. The Council decided to authorize the expenditure of an amount to not exceed \$500.00 to be used for promotional items to include a \$300.00 raffle piece. The Council approved the expenditure of \$2300.00 that had been budgeted for the PV Arts Show. The Council discussed the need an improved process to accept credit card transactions. The decision was made to pursue *Square* to process those transactions with funds credited directly to the PV Foundation account. Dan said he will work out schedules with volunteers prior to the event.

Adjournment - The meeting was adjourned at 8:10 p.m.

WLJ

2016 Prairie Village Arts Council Budget

Description	Projected Revenue	Expenses
Donations	2000 -0-	
State of Arts - Entry Fee	4000	
State of Arts Event		4000
State of Arts - Awards	3500	3500
Future of Arts - Entry Fees	500 (50.93)	
Future of Arts Event		1000
Future of Arts - Awards	2560	2560
Art Sales	5000 (146.05)	3500
Grants		3000
Café Software		1300
Bumper Stickers	375 (2.50)	300
Logos		300
T-Shirt Sales	375 (25.00)	
Brick Sales	525 (315)	200
Marketing		3500
Jazz Fest Booth		600
Pay Pal Fees		20
Misc Expenses		500
Interest Income	25	
Monthly Receptions (10)		3000
PV Art Fair		2300
Total	\$18,860	\$29,580

Beginning Account Balance as of January 6, 2016 - \$33,833.50

Projected Ending Balance For 2016 - \$23,113.50 (Balance + Projected Revenue - Expenses = Total)

2016 Revenue versus Expenses - (-\$10,730)

MAY 11, 2016 REPORT

Fund Balances as of May 9, 2016

- Municipal Arts - \$22,795.34
- Endress Gallery - \$8,704.60
- TOTAL = \$31,499.94

Art Sales total not reflected in budget total = \$109.54 (Jan) \$36.51 (Apr FOTA)

FOTA Expenses pending

Donations to date = \$0

Revenue from brick sales \$315.00

COUNCIL COMMITTEE OF THE WHOLE
July 5, 2016

The Council Committee of the Whole met on Monday, July 5, 2016 at 6:00 p.m. in the Council Chambers. The meeting was called to order by Acting Council President Brooke Morehead with the following members present: Mayor Laura Wassmer, Ashley Weaver, Jori Nelson, Serena Schermoly, Steve Noll, Eric Mikkelson, Andrew Wang, Sheila Myers, Dan Runion, Courtney McFadden and Terrence Gallagher.

Staff Members present: Tim Schwartzkopf, Chief of Police; Keith Bredehoeft, Public Works Director; Quinn Bennion, City Administrator; Wes Jordan, Assistant City Administrator; Lisa Santa Maria, Finance Director and Joyce Hagen Mundy, City Clerk.

NE Johnson County Chamber Update

It was noted that the Chamber representative had a last minute emergency and the update will be rescheduled for a later meeting.

Highland Cemetery Presentation

Marianne Noll, President of the Board of the Highland Cemetery, a one acre private cemetery located at 65th & Hodges in Prairie Village, provided a history on the cemetery which was established in 1859 with the first burial in 1860. The cemetery was chartered by the State of Kansas in 1919. In 1970, responsibility for the cemetery was handed down to Asher Langworthy. In 2005, an article in the Kansas City Star, brought attention to the small cemetery creating both an interest in the cemetery, volunteers providing maintenance and additional funds.

In 2015 a new volunteer Board of Directors was created to oversee the operation and maintenance of the small cemetery. There are currently 20 gravesites available, as well as 21 lots that will accommodate multiple gravesites. Purchasers are given a deed to their site. Due to limited funds, the maintenance of the property is handled primarily by volunteers. Mrs. Noll acknowledged the assistance of scouts doing their Eagle Scout projects at the cemetery.

Brooke Morehead asked if there were other cemeteries in Prairie Village. Mrs. Noll responded there are three: Highland, Corinth and a private horse cemetery in Corinth Downs. The only funding for their cemetery is from donations and the sale of gravesites and lots. Sheila Myers suggested the Board contact Shawnee Mission East SHARE group as a possible volunteer source. Mrs. Noll noted that Mrs. McFadden had visited the site and thought that perhaps she could arrange a group from AT&T to help out. Mrs. McFadden asked Mrs. Noll to return with an update for the Council next year and thanked her for her presentation and work to preserve this piece of Prairie Village history.

COU2016-42 Consider Design Agreement with Affinis Corporation for the Design of the 2017 Mission Road Rehabilitation Project from 75th Street to 84th Terrace

Keith Bredehoeft presented the design agreement for the 2017 Mission Road Rehabilitation project from 75th Street to 84th Terrace. The final design will include rehabilitation of the pavement, concrete replacement, drainage improvements, and well as other items of work including continuing the pedestrian lighting from the 71st Street corridor to 83rd Street. Construction is anticipated to begin in the late spring of 2017.

Funding for this project will be from the 2016 CARS CIP Project (\$75,000) and additional street funds of \$16,005 for a total cost of \$91,005.00

Steve Noll made the following motion which was seconded by Ashley Weaver and passed unanimously:

**MOVED THE CITY COUNCIL APPROVE THE DESIGN AGREEMENT
WITH AFFINIS CORPORATION FOR THE DESIGN OF THE 2017
MISSION ROAD REHABILITATION PROJECT FROM 75TH STREET
TO 84TH TERRACE IN THE AMOUNT OF \$91,005.**

**COUNCIL ACTION TAKEN
07/05/2016**

Discussion of Teen Council Program

In August 2014, the City Council approved the implementation of the Teen Council Program and authorized the allocation of up to \$500 for program costs.

Councilmember Jori Nelson presented the program and an ad-hoc committee was established to design the pilot program for Prairie Village. The program was initiated as a Council led and operated program. The Council acknowledged that there would be limited staff involvement due to work load and other projects.

The Teen Council pilot program has operated for two years - the 2014-15 & 2015-16 school years. Six students completed the program the first year and three students participated the second year.

Mr. Bennion noted with school starting in mid-August, the Teen Council program will need some attention and work in the coming months if the third year program is to start soon.

Mayor Wassmer thanked Jori Nelson for her work with this program over the past two years. In other cities that offer similar programs, the program is coordinated by city staff. She does not feel there are council members with the available time to coordinate and run the program. Ms. Nelson's current family health issues prevent her from continuing to oversee the program for the coming year. City staff do not have the time to take over the program responsibilities without a change in priorities.

Jori Nelson stated she feels it is very important to provide this opportunity for youth to become involved in and learn about municipal government; as well as learn more about the services provided by the city. She said that if the Council chose not to offer the program this coming school year, she would be willing to head up the program next year.

Serena Schermoly stated she would hate to see the program stopped for a year. Andrew Wang agreed and stated that if the program is to continue the Council needs to provide support and structure and volunteered to participate in that.

Eric Mikkelson stated it is a worthy program and encouraged going forward with Mrs. Schermoly and Mr. Andrew leading the program in 2016-2017. He would like to see the youth be more involved in discussions and to share their opinions. Sheila Myers asked if the program was similar to those operated by other cities. She views the program as lots of meetings and observing. Jori Nelson responded that it is not the same as other cities where staff work with the students and they form their own council. Mrs. Myers noted that Overland Park and Olathe are much larger communities with more students to draw from and asked how the city would get greater participation. She noted that students can attend meetings and visit with city leaders without the teen council program. Jori noted the teen council offers the opportunity to form relationships. Mrs. Schermoly felt the Council has the responsibility to engage and communicate with the students.

Brooke Morehead stated she felt there needed to be leadership and buy-in from the school. She is supportive with some possible changes in the structure.

Mayor Wassmer stated this program requires a lot of communication throughout the year with the students - not simply during meetings. It involves a lot of work and has to be a council project. A decision does not need to be made this evening unless the Council wants to go forward with the program for the coming school year.

Ms. Nelson responded the principal at Shawnee Mission East is very supportive and acknowledged that more promotion of the program is needed.

Mayor Wassmer confirmed that Mrs. Schermoly would chair the committee with Andrew Wang and Jori Nelson.

Councilman Terrence Gallagher arrived.

STAFF REPORTS

Public Safety

- Chief Schwartzkopf announced that the Animal Control Officers would be hosting a “Dog Days of Summer” event at Franklin Park on Saturday, August 20th from 10 a.m. to 2 p.m.
- The Department has been investigating new records management software for police records over the past ten months. They have selected a new system that will be used by all Johnson County cities, as well as Kansas City, Missouri allowing for the sharing of information. Johnson County will host the system. Chief will be bringing an inter-agency agreement to the Council for approval later this year.

Eric Mikkelson asked what date the new animal ordinance would be presented to the Council. Chief Schwartzkopf replied he did not have a specific date. Quinn Bennion

advised that it is on the list of upcoming council items. Mr. Mikkelson noted he continues to get several inquiries and noted the light agenda for this meeting would have been a good opportunity to have that discussion. He stated the council voted 11 to 1 to place it on a future agenda for further consideration. Mayor Wassmer stated direction was after budget discussions. The item will be on the agenda at the July 18th meeting or an August meeting. Chief Schwartzkopf stated that Animal Control is working on the dangerous animal regulations, but there is no draft ordinance ready at this time. There are several discussion points. On the repeal of the ban, he is gathering information. Mr. Mikkelson replied a draft ordinance is not necessary, the Council either decides to repeal the existing ordinance or not. The public needs to have the opportunity to come and express their views. He feels both issues should be addressed at the same time.

Mayor Wassmer repeated it will to be on a future agenda. The challenge is this law affects over 22,000 residents, many of whom have no idea council is considering removing it based on an appeal primarily from non-residents. This is a public safety issue which she does not feel should be decided upon solely by the City Council without significant resident input, whether it be via a petition or public meeting. This needs to be publicly discussed and information communicated to residents. Most residents are not aware this is being considered and she wants their input to be heard. She stressed that a decision would not be made with only one meeting.

Terrence Gallagher noted he is getting the same e-mails as others and voted to place this on a future agenda. He is ok with researching and investigating this issue. Both he wants to make sure he hears from both sides. There is no rush to make this happen. It is not a council priority.

Eric Mikkelson stated he appreciated the commitment for July or August consideration. He noted the city will not hear from all of its residents. The information is out there through the "Post" and "Star" articles. He disagreed that this was a non-resident issue and that he has heard from several Prairie Village residents with 1/5 of them in opposition. Mr. Gallagher replied reading e-mails does not provide enough information for him to make an educated decision.

Serena Schermoly noted it is important to set a date so individuals have adequate notice of the meeting to make arrangements to attend, particularly those knowledgeable on the issue. Every voice matters and should be heard. Mayor Wassmer replied that all voices will be heard.

Jori Nelson noted Prairie Village is one of three cities with this ordinance still in place. She suggested Chief Schwartzkopf talk with his colleagues at those cities that recently repealed their regulations to get their views and any ramifications they experienced with the change. She is more concerned with dangerous animals than randomly banning a breed.

Sheila Myers asked if it would be possible to put information in the Village Voice. Mr. Bennion noted the next issue comes out the beginning of September. He noted information could be placed on the city's website.

Quinn Bennion noted the two issues are separate. The dangerous animal ordinance deals with a process. He noted the breed ban as written applies to specific breeds. Chief Schwartzkopf responded that he has been in communication with Chief Morris in Shawnee and stressed the need to be careful as Prairie Village and Shawnee are very different cities. Prairie Village is a more densely located population than Shawnee.

Courtney McFadden stated she has three issues with the proposed ban. The e-mails being sent are not providing information but meant to elicit an emotional response from the Council. Second, most insurance companies will not provide home owners insurance coverage for pit bulls and those that do charge an extremely large premium for the coverage. Third, the city is responsible for protecting its residents.

Andrew Wang stated this has been driven by the number of dog attacks that have resulted in serious injury or death to other animals. Based on the current dangerous animal ordinance and subsequent council action no restrictions were placed on these animals or their owners and the Council twice overturned the judgment of its employees responsible for the protection of its residents. The city has to assure that its residents are protected and therefore, must take action on both of these issues.

Eric Mikkelson questioned staff's desire to deal with these separately as he feels they are intertwined. He does not want to repeal the pit bull prohibition until the new dangerous animal ordinance is in place. He does not feel the Council is the best body to hear these appeals. He would like to hear from insurance companies on their policies for pit bulls.

Public Works

- Mr. Bredehoeft reported the UBAS surface on 75th Street west of Mission Road to Metcalf has been placed; restriping will be done shortly for this joint project with the City of Overland Park.
- Meadowbrook Project is on-going. The city inspector for the project is monitoring the removal of trees.
- Mr. Bredehoeft reported that the street has been completed and striped for the Chadwick Court project off 75th Street. It was noted that three of the five lots have been sold.
- Work continues on the street for Homestead Estates. Some of the lots have been sold, but construction cannot begin until the street is completed and approved by the City.

ADMINISTRATION

- Lisa Santa Maria distributed the printed CAFR, Management Letter and the PAFR (Popular Annual Report). All three documents are currently on the city's website.

- Wes Jordan reported there will be a mandatory meeting with all solid waste service bidders on July 7th. The bids are due Friday, July 21st.
- Mr. Jordan reported that the Building Official has completed his initial review of the building plans for Mission Chateau and sent comments to the architect. The review was extensive and they are currently addressing the comments.
- Mr. Bennion noted that City Attorney Katie Logan is attending a meeting in Junction City tonight.
- Mr. Bennion reported that he would be out of the office on vacation the remainder of the week. Assistant City Administrator Wes Jordan will be the point of contact in his absence.

ADJOURNMENT

The Council Committee of the Whole meeting was adjourned at 7:23 p.m.

Brooke Morehead
Acting Council President

Council Members
Mark Your Calendars
July 18, 2016

July 2016 July 22	The Senior Arts Council in the R.G. Endres Gallery Moonlight Swim - Pool complex remains open until 10 p.m.
August 2016 August 1 August 5 August 8 August 15	Mary Ann Coonrod & Cookie Cave in the R.G. Endres Gallery City Council Meeting - 2017 Budget Hearing Moonlight Swim - Pool complex remains open until 10 p.m. Reduced pool hours begin - Pool opens at 4:30 p.m. weekdays City Council Meeting
September 2016 September 4 September 5 September 6 September 10 September 19	Gary Cadwallader & Jodi Harsch in the R.G. Endres Gallery Labor Day Holiday - Pool Closes at 6 p.m. City Council Meeting Puppy Pool-ooza (Dog Swim) 5 p.m. to 7 p.m. Prairie Village Jazz Festival 2:30 - 10:30 p.m. City Council Meeting
October 2016 October 3 October 14 October 20	State of Arts in the R.G. Endres Gallery City Council Meeting State of the Arts Reception in the R.G. Endres Gallery City Council Meeting
November 2016 November 7 November 21 November 24-25	Jeff Foster, Jonathan Crabtree & Louanne Hein in the R.G. Endres Gallery City Council Meeting City Council Meeting City Offices Closed for Thanksgiving Holiday
December 2016 December 5 December December 19 December 26	Chris Willey in the R.G. Endres Gallery City Council Meeting Mayor's Holiday Volunteer Party City Council Meeting City offices closed for the Christmas Holiday