

COUNCIL COMMITTEE OF THE WHOLE
Council Chambers
Tuesday, September 05, 2017
6:00 PM

AGENDA

JORI NELSON, COUNCIL PRESIDENT

AGENDA ITEMS FOR DISCUSSION

Introduction of new IT staff members

- *COU2017-37 Consider approval of a construction agreement with WCI, Inc. for the 2017 drainage repair program
Keith Bredehoeft

- *COU2017-38 Consider an amendment to the development agreement for the senior living facility at Meadowbrook
Van Trust

- *COU2017-39 Consider approval of an agreement with E.S. Schubert Sculpture Studios for the purchase of a sculpture to be located at 71st and Mission Road
Wes Jordan

Review of the Council Priority List (if time allows)
Wes Jordan

***Council Action Requested the same night**



PUBLIC WORKS DEPARTMENT

Council Committee Meeting Date: September 5, 2017

Council Meeting Date: September 5, 2017

CONSIDER CONSTRUCTION CONTRACT FOR THE DRAIN17X - 2017 DRAINAGE REPAIR PROGRAM

RECOMMENDATION

Move to authorize the Mayor to sign the construction contract with WCI, Inc. for the DRAIN17X-2017 DRAINAGE REPAIR PROGRAM for \$654,933.00.

BACKGROUND

This project includes repairs of the following drainage channels:

- Canterbury Channel (Near the intersection of Windsor and Cherokee)
- 72nd St Channel (Near Tomahawk and 72nd Street)
- 83rd Street Channel (North of 83rd and Mission Road)
- Natural Channel Slope Repair of Corinth Channel
- Bank Stabilization near Brush Creek (east of Mission Road)
- 84th and Roe (storm damage repair)

On August 30, 2017, the City Clerk Office opened bids for the project. Three acceptable bids were received:

Linaweaver Construction, Inc.	\$695,440.00
WCI, Inc.	\$654,933.00
Kansas Heavy Construction	\$760,500.00
Redford Construction	\$798,649.00
Engineer's Estimate	\$901,075.00

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

The contract will be awarded for \$654,933.00.

FUNDING SOURCES

Funding is available under the CIP project DRAIN17x.

RELATION TO VILLAGE VISION

- 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

August 30, 2017

**CONSTRUCTION CONTRACT
FOR
PROJECT**

DRAIN17X - 2017 STORM DRAINAGE REPAIR POGRAM

**BETWEEN
THE CITY OF PRAIRIE VILLAGE, KANSAS
AND
WCI, INC.**

THIS AGREEMENT, is made and entered into this ____ day of _____, 2017, by and between the City of Prairie Village, Kansas, hereinafter termed the “City”,

and _____ WCI, Inc. _____, hereinafter termed in this agreement, “Contractor”, for the construction and completion of Project DRAIN17X - 2017 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 distributor 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 Six Hundred and Fifty Four Thousand Nine Hundred and Thirty Three DOLLARS (\$ 654,933.00) for all Work covered by and included in the Contract; payment thereof to be made in cash or its equivalent and in a manner provided in the Contract Documents.

5. WORK SUPERINTENDENT

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

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

6. PROJECT MANAGER

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

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

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

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

7. WORK SCHEDULE:

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

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

8. DELAYS AND EXTENSIONS OF TIME

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

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

9. ADVERSE WEATHER:

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

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

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

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

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

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

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

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

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

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

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

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

10. LIQUIDATED DAMAGES

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

11. PAYMENT PROCEDURE

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

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

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

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

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

12. COMPLETION AND FINAL PAYMENT

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

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

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

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

13. CLAIMS BY THE CONTRACTOR

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

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

14. CHANGES IN THE WORK

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

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

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

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

15.3 Minimum Requirements Commercial General Liability Policy Limits -

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

Policy MUST include the following conditions:

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

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

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

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

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

Limits -

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

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

Workers' Compensation:	Statutory
Employer's Liability:	

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

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

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

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

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

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

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

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

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

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

16. INDEMNITY

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

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

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

17. SUCCESSORS AND ASSIGNS

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

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

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

18. NON-DISCRIMINATION LAWS

18.1 The Contractor agrees that:

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

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

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

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

21. RIGHT OF CITY TO TERMINATE

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

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

22. MISCELLANEOUS:

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

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

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

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

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

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

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

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

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

CITY OF PRAIRIE VILLAGE

(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

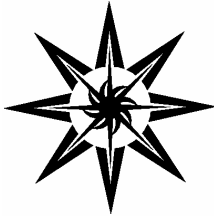
ATTEST:

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.)



Council Committee of Whole Meeting Date: September 5, 2017
Council Meeting Date: September 5, 2017

Proposed First Amendment to Meadowbrook Project Development Agreement

The Development Agreement between the City and the Developer, MB-18 LLC, relating to the Meadowbrook Redevelopment District implements the Park and Village Area Project Plan at the site of the former Meadowbrook County Club. The Project Plan contemplates the development of the Developer retained property to create tax increment revenues to pay principal and interest on bonds issued by the City to fund the acquisition of approximately 82 acres of park land (conveyed by the Developer to the Johnson County Parks and Recreation District), public infrastructure improvements on the park land, and other park improvements (collectively “Park Project”).

The City issued \$11,300,000 of full faith and credit TIF Bonds (“GO TIF Bonds”), and \$8,135,000 of special obligation TIF Bonds (“SO TIF Bonds”), the proceeds of which are being used to pay for the costs of the Park Project. The GO TIF Bonds are payable from incremental property tax revenues, but ultimately from the City’s general taxing authority if the incremental property tax revenues are insufficient. The SO TIF Bonds are payable solely from the incremental property tax revenues. The SO TIF Bonds were purchased by an entity affiliated with the Developer, Van Tuyl Family 2012 Irrevocable Trust FBO Larry Van Tuyl.

The Development Agreement contemplates that a portion of the property retained by the Developer will be developed as a senior living facility by a “Senior Facility Developer”. “Senior Facility Developer” means Legend Real Estate Holdings, LLC, or an entity approved pursuant to Section 6.04(D), which will acquire the Senior Facility Site and construct, own and operate the Senior Living Facility.

The Development Agreement does not obligate the Developer to cause the development of a senior living facility, or penalize the Developer if a senior living facility is not built. However, the development of a senior living facility will generate incremental tax revenues which will be applied to pay the GO TIF Bonds and the SO TIF Bonds, and accordingly the timely completion of the senior living facility is in the best interests of the City and the owner of the SO TIF Bonds. Columbia Capital advises that the incremental tax revenues from Dial’s proposed (and phased-in) 220 unit senior living facility account for approximately 16% of the total projected incremental tax revenues.

As was reported at the May 1, 2017 Council Committee of the Whole meeting, the negotiations between Legend and the Developer did not result in a contract, and the Developer currently has an agreement with Dial Senior Properties, LLC for Dial to purchase and develop the Senior Facility Site. The Developer and Dial updated the Committee of the Whole at that meeting as to a smaller scope senior living facility contemplated, and Jeff White of Columbia Capital reported that based upon current information, he feels that even with the lower density proposed for the senior living

component, the project is slightly ahead of the plan relative to the repayment of the bonds.

The agreement between Dial and the Developer is still in the due diligence phase, which expires on September 19, 2017, at which time Dial is required to make a financial commitment to close on its purchase of the Senior Facility Site, or terminate the purchase agreement.

Section 6.04(D) of the Development Agreement requires the developer of the Senior Facility Site to have at least 20% equity invested in the senior living facility. As part of Dial's due diligence, Dial has advised the Developer and the City that it intends to finance the acquisition and development of the Senior Facility Site through a federal financing program available for development of senior living facilities that requires less than 20% owner equity in the facility. Dial desires to take advantage of this favorable financing. As a consequence, Dial and the Developer have proposed an amendment to Section 6.04(D) of the Development Agreement (which only applies in the event of a sale to Dial or an affiliate) to reduce the required equity to 15%, provided the Developer also demonstrates to the City's financial advisor its financial wherewithal to develop the senior living facility.

The proposed amendment to Section 6.04.D. is set forth in the proposed First Amendment to Development Agreement attached, and, marked to show changes proposed (deletions by strike through and additions in bold, double underscore), is as follows:

Developer may freely without the Governing Body's consent, sell, transfer, convey, lease or otherwise dispose of all, but not less than all, of the Senior Facility Site so long as the proposed grantee is obligated by agreement with the Developer to construct the Senior Living Facility and to use said site for the purposes intended herein, but only if the financial advisor for the City designated by the City determines administratively that the proposed grantee has demonstrated to the reasonable satisfaction of the City (a) ~~will have equity invested in the Senior Living Facility of at least 20% of the total cost of completing the Senior Living Facility~~ **will have equity invested in the Senior Living Facility of at least 15% of the total cost of completing the Senior Living Facility; provided, however, that the proposed grantee shall also provide to the financial advisor for the City, subject to a reasonable nondisclosure agreement, financial information that reasonably demonstrate that such grantee has the financial wherewithal to develop the Senior Living Facility**, (b) has committed financing necessary to complete the Senior Living Facility in a timely fashion, and (c) has not been the subject of a pending indictment or convicted of a felony criminal offense in any federal or state court of the United States and has a reputation of integrity within the senior living industry and demonstrates that it has the experience and track record of success to complete and operate, or will engage a third party with the same credentials of integrity, experience and success, to operate the Senior Living Facility.

The proposed First Amendment to Development Agreement has been reviewed by the City's financial advisor, Columbia Capital, which recommends approval. A Memo dated 8-29-2017 from Jeff White is attached. Note that the approval of the proposed amendment does not constitute the final determination by the City's financial advisor of satisfaction of items (a) through (c), it only modifies item (a) if Dial (or an affiliate) proposes to acquire the Senior Facility Site for development of the senior living facility, as stated.

The proposed First Amendment has been reviewed and approved by Gary Anderson, Gilmore Bell, the City's bond counsel, as permitted under the bond financing.

Proposed Motion: Move to approve the First Amendment to Development Agreement in the form presented.

PREPARED BY

Katie Logan
City Attorney

August 30, 2017

Attachments:

Proposed First Amendment to Development Agreement
Memo from Columbia Capital

FIRST AMENDMENT TO DEVELOPMENT AGREEMENT

This First Amendment to Development Agreement (the “**Amendment**”) is made as of _____, 2017, by and between the City of Prairie Village, Kansas (the “**City**”) and MB-18, LLC (the “**Developer**”).

RECITALS

A. City and Developer entered into that certain Development Agreement dated December 21, 2015 (the “**Development Agreement**”). Capitalized terms not defined herein shall have the meanings as assigned in the Development Agreement.

B. Section 6.04.D. of the Development Agreement states as follows:

Developer may freely without the Governing Body’s consent, sell, transfer, convey, lease or otherwise dispose of all, but not less than all, of the Senior Facility Site so long as the proposed grantee is obligated by agreement with the Developer to construct the Senior Living Facility and to use said site for the purposes intended herein, but only if the financial advisor for the City designated by the City determines administratively that the proposed grantee has demonstrated to the reasonable satisfaction of the City (a) will have equity invested in the Senior Living Facility of at least 20% of the total cost of completing the Senior Living Facility, (b) has committed financing necessary to complete the Senior Living Facility in a timely fashion, and (c) has not been the subject of a pending indictment or convicted of a felony criminal offense in any federal or state court of the United States and has a reputation of integrity within the senior living industry and demonstrates that it has the experience and track record of success to complete and operate, or will engage a third party with the same credentials of integrity, experience and success, to operate the Senior Living Facility.

C. Developer is negotiating with Dial Senior Properties, LLC (“**Dial**”) regarding the sale and development of the Senior Living Facility and desires to revise parenthetical (a) of Section 6.04.D. of the Development Agreement as follows, and that such revision shall only apply to the sale and development of the Senior Living Facility by Dial or its affiliates:

will have equity invested in the Senior Living Facility of at least 15% of the total cost of completing the Senior Living Facility; provided, however, that the proposed grantee shall also provide to the financial advisor for the City, subject to a reasonable nondisclosure agreement, financial statements that reasonably demonstrate that such grantee has the financial wherewithal to develop the project.

D. City and Developer desire to revise the Development Agreement as set forth below.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. Dial Equity Investment. Parenthetical (a) of Section 6.04.D. of the Development Agreement is revised as follows, and such revision shall only apply to the sale and development of the Senior Living Facility by Dial or its affiliates:

will have equity invested in the Senior Living Facility of at least 15% of the total cost of completing the Senior Living Facility; provided, however, that the proposed grantee shall also provide to the financial advisor for the City, subject to a reasonable nondisclosure

agreement, financial information that reasonably demonstrate that such grantee has the financial wherewithal to develop the Senior Living Facility.

2. Amendment Controls; Ratification and Affirmation. In the event that the terms of this Amendment and the Development Agreement are held to be inconsistent, the terms of this Amendment shall control. The parties each agree and warrant that, in all other respects, the Development Agreement is unmodified, in full force and effect, and each party hereby ratifies and affirms the Development Agreement and any terms contained therein not otherwise modified by this Amendment.

3. Counterparts. This Amendment may be executed in counterparts, each of which shall be deemed an original but all of which, taken together, shall constitute one and the same instrument.

[Remainder of Page Intentionally Blank]

IN WITNESS WHEREOF, the parties have executed this Amendment as of the date first written above.

CITY OF PRAIRIE VILLAGE, KANSAS

Laura Wassmer, Mayor

ATTEST:

Joyce Hagen Mundy, City Clerk

APPROVED AS TO FORM:

Catherine P. Logan, City Attorney

DEVELOPER:

**MB-18, LLC,
a Kansas limited liability company**

By: _____
Name: David Harrison
Title: Manager



Jeff White
Principal
913.312.8077
jwhite@columbiacapital.com

MEMORANDUM

0 8 . 2 9 . 1 7

Wes Jordan
City of Prairie Village

You asked us to provide our recommendation with respect to the request of Meadowbrook developer, MB-18, to modify the minimum equity requirement for the senior developer, as provided in the development agreement governing the Meadowbrook development. As proposed, the amendment would reduce the required equity contribution from 20% to 15% but would also require the senior housing operator to submit its financials for review by Columbia Capital.

The City included the 20% equity investment threshold in the development agreement to provide it with the comfort that the senior housing developer would have the financial wherewithal to construct that portion of the overall project. We understand the developer has identified a specific operator to construct the senior housing and is actively engaged in the due diligence process with that operator. The operator, through the developer, has indicated its belief that it can finance the senior housing project with less than a 20% equity contribution.

Particularly with the requirement that we undertake a review of the operator's planned financing approach, we believe the City's ultimate goal of ensuring a high-quality, long-tenured senior housing operator is unlikely to be impaired by the amendment requested. Given the importance to the overall project of the senior housing component, we also believe it is in the City's interest to approve such a modification and proceed with the required review at a pace that will not delay the developer's and operator's move to a financial close on their transaction.

We recommend the City approve the proposed amendment and we look forward to engaging with the operator at its convenience to review its plan of finance for the senior housing project. We will report back to you with our findings from that process.

Please let me know if you have any questions or concerns.



ADMINISTRATION

Council Committee Date: September 5, 2017
City Council Meeting Date: September 5, 2017

COU2017-39: Consider Approval of Agreement with E.S. Schubert Sculpture Studios for Statuary Donation

RECOMMENDATION

Staff recommends a motion to approve the agreement with E.S. Schubert Sculpture Studio to commission an original art piece funded through a donation to the City. No budgeted funds would be used to commission this sculpture.

MOTION

Approve the agreement with E.S. Schubert Sculpture Studio to commission an original art piece funded through a donation to the City.

BACKGROUND

Over a year ago, Mr. Brad Johnson - a Shawnee Mission East graduate - approached the City about making a donation in support for the Mission Road project. The donor stated memories of visiting his grandparents nearby and riding his bike along Mission Road prompted his desire for a sculpture of a child riding a bicycle from the late 1950s/early 1960s era.

The City went through a Request for Proposals process in the summer of 2016, but no bids were submitted for an original art piece as envisioned. When the City reached out to various artists, they said this was due to the estimated \$15,000-\$18,000 allocation, which was too low for an original piece. The City was then given the name of E. Spencer Schubert, who was also a Shawnee Mission East graduate and had family in Prairie Village area.

Brad Johnson and Staff met with Mr. Schubert on multiple occasions to discuss the vision and pricing. Due to his affiliation with the area, Mr. Schubert agreed to a \$10,000 in-kind donation to bring the total price point down to \$46,500. This price includes a life sized bronze sculpture, a cast stone pedestal, and a plaque. During 2018 budget discussions, the City placed \$30,000 in next year's budget to supplement Mr. Johnson's donation estimated at that time to be approximately \$25,000.

In July, an ad-hoc committee met with Mr. Schubert and Mr. Johnson to discuss next steps. At this meeting, Mr. Johnson expressed interest in donating the entire amount to commission the piece and utilize the City's funding for the associated "plaza area" surrounding the sculpture. The City has worked with Mr. Schubert's attorney, Mr. Johnson, and the City Attorney to finalize an agreement that has Mr. Johnson making a direct donation to the City divided into

four phases of production. Mr. Johnson's donation will be made to the City before each phase of contracted work. The agreement is contingent upon the donation of Mr. Johnson and can be terminated if there is a lack of donated funds received.

FUNDING

Private Donation made to City of Prairie Village for \$46,500
2018 Budget - \$30,000 for costs associated with donation and/or placement

ATTACHMENTS

Sculpture Creation and Production Agreement

PREPARED BY

Alley Williams
Assistant to the City Administrator
Date: August 29, 2017



SCULPTURE CREATION AND PRODUCTION AGREEMENT

This Sculpture Creation and Production Agreement (the “**Agreement**”) is made effective as of 8/24/2017 by and between E. Spencer Schubert, E.S. Schubert, LLC, d/b/a E.S. Schubert Sculpture Studios (collectively, “**Artist**”), and The City of Prairie Village (“**Buyer**”). In consideration of the mutual promises, conditions and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby expressly acknowledged, the Parties agree as follows:

1. Creation of Work. Artist is hereby engaged by Buyer to create and deliver a sculpture as described in photos and email conversations among Artist, Buyer and Brad Johnson, and Artist hereby agrees to create and deliver the Sculpture to Buyer pursuant to the terms and conditions set forth in this Agreement and Appendix A. For this project, the Artist shall use reasonable efforts to consult with and gather input from the Prairie Village Arts Council during the maquette stage. Failure of Artist to do so shall in no event be deemed a default under this agreement as the Arts Council approval is not required, and the parties agree that Artist shall have complete creative control over his work. The plaque for the Sculpture shall be approved by Brad Johnson.

2. Price. Buyer agrees that the purchase price of the sculpture shall be \$56,500. See Appendix A for cost breakdown and project scope.

- a) Artist agrees to discount the purchase price by \$10,000 in recognition of Shawnee Mission East Art Teacher Chuck Crawford’s contribution to art education. This recognition shall be noted on the sculpture’s plaque in a manner mutually agreed by Artist, Buyer and Brad Johnson.

Buyer agrees to pay Artist the sum of \$46,500 (the “**Purchase Price**”) for the Sculpture pursuant to the following payment schedule:

- a) 25% of the purchase price upon execution of this agreement.
- b) 25% of the purchase price upon approval of the clay maquette.
- c) 25% of the purchase price upon approval of the full-size clay sculpture.
- d) The balance of the purchase price due prior to delivery of the sculpture.

The project is dependent upon receipt by Buyer of a cash donation to the City of Prairie Village, being made by Brad Johnson. If Buyer wishes to terminate the contract due to lack of donated funds received, it may do so at any time, and the Buyer shall have no further obligation hereunder. Any payments received by artist prior to contract termination will be non-refundable.

3. Site Preparation and design. Costs associated with the preparation of the site will be borne by the City of Prairie Village. The Artist is available for additional consulting regarding site

design. Any consulting or design work regarding the site by the Artist will be covered by the execution of a separate agreement between the Artist and The City of Prairie Village.

4. **Publicity.** The parties acknowledge and agree that Artist wishes to publicize his work on the Sculpture and to conduct publicity about the Sculpture project via social media, such as publishing photographs of the work in progress to Facebook, Twitter and other social media platforms, and that Artist may utilize images of the Sculpture on his website and his portfolio for the purpose of promoting his work as a sculptor. The parties may also develop press releases and give interviews, individually or jointly, about the Sculpture project for dissemination to news media. For any joint press releases, each party will have an opportunity to approve the wording of the release before it is disseminated. The parties agree to provide reasonable cooperation on any joint publicity efforts.

5. **Intellectual Property Rights.** The parties acknowledge and agree that Artist is the creator of the Sculpture, that the Sculpture does not constitute work made for hire, and that Artist retains all copyrights with respect to the Sculpture (the “**Copyrights**”) including, without limitation, all rights granted to Artist pursuant to 17 U.S.C. §106A. Notwithstanding Artist’s rights in the Sculpture pursuant to 17 U.S.C. 106A, Artist acknowledges that the Sculpture will be displayed in a public place and Buyer shall not be held responsible for any damage, vandalism or alteration to the Sculpture made by a third party. Should such an event occur, Buyer will follow its standard protocol for addressing damage, vandalism or alteration to public property.

- a. *License Granted.* Artist hereby grants Buyer a limited, irrevocable, nonexclusive, non-transferable, non-sublicensable license to publicly display the Sculpture, to prepare non-commercial derivative works based upon the Sculpture e.g., for use in promoting the City of Prairie Village and public events of the City of Prairie Village, and to make and distribute non-commercial 2-dimensional copies of the Sculpture (excluding 3-dimensional copies) e.g., for use in promoting the City of Prairie Village and public events of the City of Prairie Village. The City of Prairie Village will list “E.S. Schubert” as “Sculptor” when images of the sculpture are used in derivative works for marketing and promotional purposes.
- b. *Additional Licenses.* Any additional licenses with respect to Buyer’s use of the Copyrights shall require execution of a separate license agreement between the parties. Upon Buyer’s request, Artist agrees to negotiate terms of such a license agreement in good faith, but notwithstanding any such negotiations, the parties agree that any decision to grant additional license terms with respect to the Copyrights remains in the Artist’s sole and absolute discretion.
- c. *Ownership and Validity.* Buyer acknowledges Artist’s ownership of the entire right, title and interest in and to the Copyrights. Buyer shall take no action challenging the validity of, or Artist’s right in, the Copyrights. Buyer acknowledges that its use of the Sculpture shall not create in Buyer any right, title or interest in the Copyrights, apart from the license granted herein.
- d. *Copyright Registration.* Artist may take whatever action that it deems appropriate with respect to the registration of its copyrights in the Sculpture, and Buyer shall have no right to register, apply

to register, or maintain any copyright application or registration with respect to the Sculpture or any derivative works, apart from the license granted herein.

6. Binding Effect. This Agreement shall be binding upon and inure to the benefit of Artist and Buyer, and any and all successors and permitted assigns of the parties.

7. Assignment. Neither Buyer nor Artist shall assign this Agreement without the prior written consent of the other and any purported assignment in violation of this provision shall be null and void *ab initio*.

8. Notices. Notices, statements and other communications to be given under the terms of this Agreement shall be in writing and delivered by hand against receipt or sent by certified or registered mail or by Federal Express or other similar overnight mail service as follows:

If to Artist:

E.S. Schubert, LLC, d/b/a E.S. Schubert, Sculpture Studios
110 Southwest Blvd. Ste. B (rear)
Kansas City, Missouri 64108
Attention: E. Spencer Schubert

With a copy to:

The Martinez Law Firm, LLC
1150 Grand, Suite 240
Kansas City, Missouri 64106
Attention: Robin S. Martinez
Email: robin.martinez@martinezlzaw.net

If to Buyer:

City of Prairie Village, KS
City Hall
7700 Mission Road
Prairie Village, KS 66209
Attn: City Clerk

9. Severability. If any one or more of the provisions contained in this Agreement shall be invalid, illegal, or unenforceable in any respect under any applicable law, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired.

10. Headings. The headings of Sections in this Agreement are inserted for convenience only and shall not be deemed to affect in any way the meaning of the provisions to which they refer.

11. No Partnership. Nothing contained in this Agreement shall be construed to create a partnership or joint venture between Artist and Buyer or their respective successors in interest.

12. Waiver. No failure or delay on the part of any party in the exercise of any power, right, or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such power, right or privilege preclude other or further exercise thereof or of any other right, power or privilege.

13. Non-Exclusive Nature of Expressed Remedies. All of the parties' rights and remedies existing under this Agreement are cumulative to, and not exclusive of, any rights or remedies otherwise available.

14. Entire Agreement. This Agreement constitutes the entire agreement and understanding between the parties as to the subject matter hereof. No modification or amendment of this Agreement shall be valid or binding unless made in writing and signed on behalf of the parties hereto.

15. Governing Law. This Agreement shall be governed by and interpreted and enforced in accordance with the laws of the State of Kansas. Jurisdiction and venue for any dispute regarding this Agreement will be based in Johnson County, Kansas.

16. Attorneys' Fees. The prevailing party in any lawsuit concerning this Agreement or any matter related thereto shall be entitled to any award of reasonable attorney fees and costs from the other, including fees incurred through trial, appeal, or in bankruptcy proceedings.

17. Construction. The parties to this Agreement waive the application of any law, regulation, holding or rule of construction providing that ambiguities in an agreement or other document will be construed against the party drafting such agreement or document. The parties to this Agreement each warrant that they had the assistance of counsel in the preparation of this Agreement.

18. Equitable Relief. Each party shall have the right to seek injunctive relief in any court having appropriate jurisdiction to prevent the other party from breaching its obligations under this Agreement or to compel the other party to perform its obligations under this Agreement.

19. Execution. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

20. Applicable Taxes. Buyer agrees to provide proof of sales tax exempt status in writing to Artist before delivery of sculpture. If proof is not provided, Buyer agrees to immediately remit any and all sales tax due to Artist based on total purchase price.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed on their behalf in the manner legally binding upon them.

ARTIST:

E.S. Schubert, LLC, d/b/a E.S. Schubert, Sculpture Studios

By:

Name: E. Spencer Schubert

Title: Manager

Date: _____

E. Spencer Schubert, in his individual capacity: _____

Date:

BUYER: (printed) _____

(signed) _____

Date: _____

Invoice

E. S. Schubert, Sculpture Studios
 110 Southwest Blvd. Ste. B (rear door)
 Kansas City, MO 64108

Date	Invoice #
6/20/17	1369

Bill To

City of Prairie Village
 Alley Williams
 7700 Mission Road
 Prairie Village, KS 66208



Questions? Call or email us!
 913-638-6634
 Accounts@esschubert.com

P.O. No.	Terms	Project
	Quarters	

Description	Qty	Rate	Amount
Life sized bronze sculpture: Sculpture of a 10 year old riding a bike. Final concept to be based on discussions with client. Included: Creation of: concept, 1/3rd scale maquette, full size clay sculpture, molding and casting in bronze.	1	50,000.00	50,000.00
Design and fabrication of cast stone pedestal for bronze sculpture. Pedestal will be created to allow for installation on client prepared foundation.	1	5,000.00	5,000.00
Creation of bronze plaque to be mounted to sculpture base.	1	1,500.00	1,500.00
Delivery of sculpture to site in Prairie Village, KS is included in cost of sculpture. Installation is NOT included. Consultation and supervision the day of installation is included in sculpture cost.		0.00	0.00T
Sales Tax - Exempt. Certificate must be on file.		0.00%	0.00
In-kind donation in recognition of Chuck Crawford, Shawnee Mission East Art teacher.		-10,000.00	-10,000.00

Subtotal	\$46,500.00
Sales Tax (9.35%)	\$0.00
Total	\$46,500.00
Payments/Credits	\$0.00
Balance Due	\$46,500.00

Project / Initiative List

#	Project/Initiative	Status	Staff Support	Scope
In Progress				
1	Village Square Concept Study	Concept Draft has been completed and presented to the Tree Board and Parks on August 2nd. The Master Draft will be presented to City Council prior to public input.	Alley/Keith/Wes	Lg
2	Park Purchase from Faith Lutheran	Purchase agreement approved. Closing for end of Oct. Environ. assessment ongoing. Demolition and park planning process later in 2017.	Alley/Keith	Lg
3	Review of animal ordinance / procedure	Draft of proposed amendments expected to be discussed at the August 21st Council meeting.	Tim	Med
4	Bike/ped master plan	Project is progressing. Initial public meeting and public outreach effort are completed. Will propose improvements to committee and make final recommendations to Council. Will take back to public before final adoption of plan.	Keith	Med
5	Statuary donation - along Mission Rd	Staff is working with the artist, donor, and City Attorney to finalize process to accept donation and start the project. Donor has now tentatively agree to fund the entire purchase.	Alley/Keith/Wes	Sm
6	Revisit the effectiveness and need for the Countryside East zoning overlay	The P/C passed the repeal on August 1st and will be presented to Council on August 21st.	Brewster/Wes	Sm
7	Review and update AV system in the Council Chambers	Agreement with CTI approved by Council. Work is slated to take place Oct 20-Nov 1. This project will close the use of chamber room during that time.	Alley	Sm
8	Live stream / recording / audio stream Council meetings	Council approved \$3,500.00 for equipment - project may coincide with AV system repairs/upgrades.	Alley	Med
9	Review and update zoning code (allowable uses, SUP process)	Initiating Process	Brewster	Lg
	Building code guidelines - Phase 2			Lg
10	Discussions with First Washington about future plans for the two shopping centers	First Washington will be addressing the Council on August 7th concerning redevelopment plans for Corinth South.	Wes	Med
Next Up				
11	Research and discuss drone ordinance		Intern	Med
12	Restructure of the Prairie Village Foundation	Discussion about City / Foundation funded PT position	Meghan	Med
Potential Initiatives (not currently addressed with staff resources)				
13	Review and update the City Code book			Lg
14	Review and update City policies			Lg

Project / Initiative List

#	Project/Initiative	Status	Staff Support	Scope
15	Determine and develop economic development strategies and incentives			Med
16	Consider developing small business program: business incubator. Look into JCCC programs	Depends on scope. Use Econ Dev funds.		Med
17	Establish or reenergize dormant homes associations where they do not currently exist			Med
18	Develop form based codes and comprehensive plan amendments	Planning & attorney costs for review		Med
19	Research the possibility of initiating a transportation program for seniors and special needs residents	Based on other cities' experience - \$40k annual		Med
20	Proactive approach for regional transit related topics			Med
21	Explore a more proactive approach to the location and size of wireless tower facilities. Compliance with FCC updates.	May include a consultant		Med
22	Review of Code of Ethics			Med
23	Initiate a resident welcome packet			Med
24	Change zoning code for public facilities such as city, county and CFD2 owned property	May consider combining with #9		Med
25	Explore transition of Village Voice to magazine style with ads offsetting cost			Med
26	Research and review KP&F plan for new hires in PD			Sm
27	Political sign regulations - as reqd by changes in state statute	Supreme Court decision also impacts.		Sm
28	Pedestrian crossings - education/enforcement/evaluation of signage for optimum compliance	Cost associated with new signage / equip.		Sm
29	Revisit use of the Consent Agenda			Sm
30	Explore the use of alternative fuel vehicles			Sm
31	Determine level of involvement in Community of All Ages/residents aging in place			Sm
32	Review of smoking ordinance and e-cigarettes	Review distance smoking is allowed from a doorway		Sm
33	Program to encourage neighborhood block parties	Estimate of \$2k annual		Sm
34	Cultivate an environment that celebrates diversity			Sm
35	MARC solar initiative - involvement level of the City TBD			Sm
36	Installation of KCPL electric charging station at City Hall complex - second round	Electricity cost for stations up to \$2k per year		Sm
37	Review of zoning ordinances related to number of individuals living in a household	May consider combining with #9 - no more than 3 unrelated individuals per residence by zoning code.		Sm

Project / Initiative List

#	Project/Initiative	Status	Staff Support	Scope
38	Explore the addition of a parks manager / programmer on city staff to increase parks programming			Sm
39	Explore the addition of a grant writer / researcher on city staff			Sm
40	Research policy for 1% of budget or CIP for Arts Council and projects			Sm
41	Citizen Survey	Council allocated \$15,000 in the 2018 Budget for this project	Alley	Med
Ongoing				

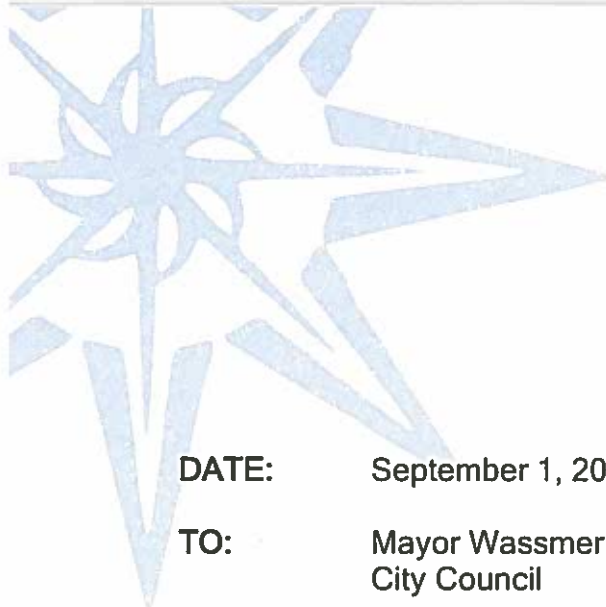
	Coordination of installation of ATT GigaPower product	Completion expected by the end 2017 with restoration in 2018	Melissa	Med
	Reestablish / strengthen the Island Committee & develop plan for island statuary maintenance.	Inventory audit conducted. Maintenance plan started.	Alley	Med
	Desire for more maintenance code inspections. Promote homeownership, review rental licensing program and property maintenance ordinance	Added Full FTE starting in 2015. Staff is reviewing recent legislative changes that limit interior inspections.	Wes	Med
	More effective / proactive communication with residents		Meghan	Med

Completed 2016 / 2017				
	PV building guidelines	Expanded to City-wide ordinance. Presentation to Council in 2016. Phase One includes height, setback and elevation. Hearing on June 7th.	Wes	Lg
	Zika outreach, response and education	PW has plan to monitor and address ponding water in channels. Code Enforcement is also treating standing water pools.	Keith	Sm

Discussed and not being pursued further				
	Review breed specific dog ban ordinance	Public comments in Aug. Council discussion and vote on Sept. 6, 2016		Med

Aug-17

Prepared by: Wes Jordan



THE CITY OF PRAIRIE VILLAGE

STAR OF KANSAS

DATE: September 1, 2017

TO: Mayor Wassmer
City Council

FROM: Wes Jordan 

SUBJECT: SEPTEMBER PLAN OF ACTION

The following projects will be initiated during the month of September:

- JazzFest - Staff (09/17)
- Collections/Court Consideration - Deanna (09/17)
- Assistant City Admin. Hiring Process - Wes/Alley/Amy (09/17)
- 68th Street Flooding Follow Up - Keith/Wes (09/17)
- KCP&L Infrastructure - Wes (09/17)
- YMCA Management Meeting - Alley/Wes (09/17)
- Immigration Proclamation - Joyce/Wes (09/17)
- Zoning Presentation - Chris (09/17)
- Village Voice RFP - Meghan (09/17)
- Prosecutor Reference Checks - Deana (09/17)
- Citizen Survey - Dan/Alley

In Progress

- Animal Enumerations - Joyce (08/17)
- Council Priority List Presentation - Wes (08/17)
- First Washington Proposed Expansion - Wes (08/17)
- Meeting With SME Concerning Baseball Field - Staff (08/17)
- Community Forum Planning - Alley (08/17)
- Animal Ordinance Presentation - Tim (08/17)
- 2018 Health Insurance Renewal - Amy/Wes (08/17)
- Skate Park Usage Project - Alley (07/17)
- Tyler/Encode Upgrade - Deana/IT Staff (07/17)
- Meadowbrook Transit Stop - Keith/Wes (07/17)
- KC Christian Expansion - Chris/Wes (07/17)
- Annual Report - Meghan (07/17)

- Council Chamber AV Equipment Project - Alley (07/17)
- Statuary Maintenance - Alley (07/17)
- Statuary Donation - Alley/Keith/Wes (07/17)
- Park Acquisition - Alley/Wes (07/17)
- Village Square Design Concept(s) - Alley/Keith/Wes (06/17)
- Handbook Benefit Update - Amy (06/17)
- Small Cell Franchise Fees - David Waters/Wes (06/17)
- Trash Cart Screening Flyer - Codes Staff/Wes (06/17)
- Rental License Form Revision - City Clerks/Wes (04/17)
- City Hall Roof Replacement - PW/Mitch (04/15)
- Update and amend Job Description(s) - Amy/Wes (02/17)
- Countryside East Overlay Repeal Process - Wes (02/17)
- Franchise Agreements for Small Cells - David W./Quinn/Wes (02/17)
- Cell Tower SUP's - Shannon/Wes (11/16)
- Revise Cell Tower Contracts - Shannon/Wes (10/16)
- Zoning Ordinance Update on SUP's/CUP's - Chris (10/16)
- Amend Wireless Facilities Zoning - David Waters/Wes (10/16)

Completed

- Art Council Applicants for Vacancies - Eric/Dan/Wes (08/17)
- Amusement Ride Permitting Process - Alley (08/17)
- New Intern Orientation - Alley (08/17)
- 2018 Budget - Public Hearing - Lisa
- JazzFest Alcohol Permit -- Joyce (08/17)
- Storm Debris Removal Project - Staff (08/17)
- UCS Proclamation - Joyce/Wes (07/17)
- Server Infrastructure Evaluation - IT Staff (07/17)
- Overlay Repeal Presentation/Ordinance - Brewster (08/17)
- New Councilmember Orientation - Staff (08/17)
- Meadowbrook Design Book Amendment - Wes (07/17)
- KC Chamber Presentation/KCI - Wes (07/17)
- Procecutor Hiring Process - Deanna/Tim/Wes (08/17)
- Animal Enumeration Open Records Request - Joyce (08/17)

Tabled

- MARC Solar Initiative - Wes (05/15)
- Site Plan Audit/Reinspection Process (Per Mayor) - Wes (09/15)
- Abatement limitations on Private Property - Wes/Katie (06/16)
- ADP Replacement Presentation - Amy (03/17)
- Art Council Reappointments - Joyce/Wes (03/17)
- Planning Commission Reappointments - Joyce/Wes (03/17)

Ongoing Long-Term

- Meadowbrook
- Mission Chateau
- National Fitness Campaign Equipment/Grant - Keith/Wes (07/17)

**COUNCIL MEETING AGENDA
CITY OF PRAIRIE VILLAGE
Council Chambers
Tuesday, September 05, 2017
7:30 PM**

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

National Drive Electric Week

- VI. **PUBLIC PARTICIPATION**

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

- VII. **CONSENT AGENDA**

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

By Staff

- 1. Approve the regular City Council meeting minutes - August 21, 2017

- VIII. **COMMITTEE REPORTS**

Council Committee of the Whole

- COU2017-37 Consider approval of a construction agreement with WCI, Inc. for the 2017 drainage repair program
- COU2017-38 Consider an amendment to the development agreement for the senior living facility at Meadowbrook
- COU2017-39 Consider approval of an agreement with E.S. Schubert Sculpture Studios for the purchase of a sculpture to be located at 71st and Mission Road

- IX. **MAYOR'S REPORT**
- X. **STAFF REPORTS**
- XI. **OLD BUSINESS**

XII. NEW BUSINESS

XIII. ANNOUNCEMENTS

XIV. ADJOURNMENT

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

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

CITY OF PRAIRIE VILLAGE

WHEREAS, Americans have always embraced new technologies, and have excelled in creating many of the world's most important innovations, including the mass-produced automobile; with plug-in electric cars and trucks represent the next generation of technological innovation in the automotive sector; and

WHEREAS, these electric vehicles (EVs) help us address multiple problems facing our city, citizens and nation, including air pollution from conventional cars and trucks and the health problems this pollution causes, dependence on foreign sources of oil and gasoline, and greenhouse gases contributing to a warming planet; and

WHEREAS, Prairie Village is a part the greater Kansas city metro area which is already a national leader in the deployment of electric car charging infrastructure, and has become so through a combination of private- and public-sector investment and leadership, with more than 1,000 public charging stations already deployed in the metro area, more than in any other city in America; and

WHEREAS, EV fleets are likely to become a key element in America's smart electric grid as it develops in the years ahead, capable of providing energy to the grid from their batteries while parked during periods of peak demand, then recharging as demand falls; and

WHEREAS, EVs need no gasoline or diesel, no oil changes, no radiator fluid and little of the routine maintenance necessary for conventional vehicles; and

WHEREAS, the cost of recharging an EV is, on average, less than half of the cost of gasoline or diesel for a conventional vehicle, and when combined with the lack of maintenance costs, provides for a far lower lifetime cost of ownership than for a conventional vehicle;

THEREFORE, BE IT RESOLVED that I, Laura Wassmer, Mayor of Prairie Village, Kansas, do hereby proclaim

September 9-17, 2017 as National Drive Electric Week,

and encourage Prairie Village residents to take advantage of this week's many events to learn more about this exciting technology, and about the positive financial, environmental and social benefits that electric vehicles can offer their owners - and all of us.


Mayor Laura Wassmer



**CITY COUNCIL
CITY OF PRAIRIE VILLAGE**

August 21, 2017

The City Council of Prairie Village, Kansas, met in regular session on Monday, August 21, 2017 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: Jori Nelson, Serena Schermoly, Steve Noll, Eric Mikkelson, Andrew Wang, Sheila Myers, Dan Runion, Ted Odell and Terrence Gallagher.

Staff present: Tim Schwartzkopf, Chief of Police; Keith Bredehoeft, Public Works Director; Katie Logan, City Attorney; Wes Jordan, City Administrator; Lisa Santa Maria, Finance Director, Alley Williams, Assistant to the City Administrator and Joyce Hagen Mundy, City Clerk. Also present was Chris Brewster, City Planning Consultant.

INTRODUCTION OF STUDENTS & SCOUTS

No students or scouts were in attendance.

PRESENTATIONS

Appointment of Chad Herring to Ward 1 Council Seat

Mayor Wassmer welcomed and introduced Chad Herring.

Brooke Morehead moved the City Council ratify the Mayor's appointment of Chad A. Herring to complete the unexpired term of Ashley Weaver as Ward 1 Council

Representative. The motion was seconded by Steve Noll and passed by a vote of 9 to 1 with Mrs. Schermoly voting nay. The City Clerk administered the Oath of Office to Mr. Herring who introduced his wife and family and friends in attendance.

PUBLIC PARTICIPATION

Ashley Silence, 7610 Russell Lane in Mission, Kansas, questioned how democracy worked as the proposed animal ordinance still includes the prohibition on pit bulls after the council was told by a majority of individuals that they wanted the ban repealed. People do not want the city to tell them what kind of dog they can own. There are only three cities that still have a ban on pit bulls. People are not going to stop asking for the repeal of this language. The city needs to act with compassion and understanding.

Mary Morgan, 2400 West 75th Street, referenced several sections of the proposed animal ordinances that she opposed including Section 2-102 (c) & (l) and Section 2-123. She noted that animal control will not respond to a call to pick up a stray cat. She also questioned Section 2-118(i) requiring notification within 10 days of a change of status of an animal that has been declared as potentially dangerous or dangerous.

With no one else wishing to address the Council public participation was closed at 7:40 p.m.

CONSENT AGENDA

Jori Nelson moved approval of the Consent Agenda for August 21, 2017 as presented:

1. Approval of the regular City Council meeting minutes - August 7, 2017
2. Approval the School Resource Officer agreement with the Shawnee Mission School District for the 2017-2018 school year.

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

COMMITTEE REPORTS

Planning Commission

PC2017-01 Consider Repeal of Countryside East Homes Association Overlay District

Chris Brewster stated in 2013, the Prairie Village City Council approved the establishment of the Countryside East Neighborhood Overlay District and adopted the associated Design Guidelines to address remodeling or re-building for homes within the Countryside East HOA. This effort was in partnership between residents and City Staff. The area of the overlay district follows the Countryside East Homes Association boundaries, and is roughly 63rd Street (city limits) on the north, Roe Avenue on the east, 67th Street on the south, and Nall Avenue on the west.

The property is all zoned R-1A, and the Overlay and Design Guidelines alter the general R-1A standards in the following ways:

1. The side setback is 12.5% of the lot width on each side, (the City’s recent R-1A amendments have a minimum side setback of 7’ with a minimum of 20% between both sides.)
2. Upper-story limits requiring 1.5 story homes (The City’s recent R-1A amendments retained a 35’ height limit, but clarified that this is measured from the top of foundation to the peak of a roof, as opposed to the mid-point of the roof)
3. It includes several design standards regarding the facade design, eave line relationships between adjacent homes, roof slopes, minimum square footage, and massing dealing with how the 1.5 story height will be interpreted.
4. Establishes an appeal process to involve the HOA, requiring two members of the HOA and one from the Planning Commission to review appeals, with some provisions that attempt to coordinate this with the Board of Adjustments role in appeals.

Mr. Brewster noted that since the adoption of the ordinance, City Staff has encountered some difficulties with the standards and guidelines. There have been five appeals for application of the standards (primarily for setbacks to allow for garage expansions) and all appeals have been approved by the HOA review board. Additionally, City Staff has had some difficulties in interpreting and applying some of the design guidelines due to potential conflicts or application to specific situations. City staff has the following concerns with the Countryside East Overlay and Design Guidelines:

1. The appeals process does not work well. It is not explicit on the makeup, role or process/criteria for the appeals board, and this process is not well integrated with Planning Commission site plan review and/or Board of Zoning Appeals review. (the official review and appeals boards of the City.)
2. Some of the design standards are difficult to interpret, making the likelihood that City Staff, an applicant, the overlay appeals board, or the Planning Commission or Board of Zoning appeals will need to reconcile interpretations.
3. All of the appeals to the date of the hearings were approved by the overlay appeals board, indicating that there may be a disjoint between the standards and what the neighborhood is comfortable accepting. These appeals have all dealt with side setback issues.
4. City Staff does not want to encourage future overlay districts based on current staffing and case load, particularly to the extent that the overlay districts would strictly follow HOA district boundaries, rather than broader neighborhood patterns and development characteristics within the City.

In late 2016, after Planning Commission members had sat on the board for appeal applications as is required by the ordinance, the Commission asked City Staff to contact the HOA and explore their interest in dissolving the overlay. Staff was invited to attend the annual Countryside East HOA meeting to discuss the overlay district. On November 14th, 2016, Mr. Brewster and Wes Jordan attended the meeting and presented issues relating to the overlay district, as well as the City's recent efforts with regard to residential zoning districts and neighborhood design. At that time, and following the meeting, there were indications that the HOA and its Board were in favor of a repeal of the overlay, in part due to some of the same issues City Staff was having with implementation.

City Staff initiated notice and a public hearing to repeal the Countryside East Overlay and Design Guidelines. On March 7th, 2017, the Planning Commission held a public hearing to consider repeal of the overlay district. There was substantial discussion from many stakeholders in the area, and concern about repeal of the overlay district. The Planning Commission continued this hearing to the May 2, 2017 meeting to allow further discussion among the stakeholders and with the direction that the HOA attempt to develop a consensus position on the overlay district and design guidelines.

To that end, city staff attended and assisted with two HOA meetings hosted at City Hall - March 29, 2017 and March 30, 2017. At these meetings staff presented more material on the issues and implementation of the overlay district and design guidelines, as well as the recent amendments to the City's residential zoning categories. Stakeholders for the HOA presented background on the development of the HOA and discussed current positions with respect to regulations for the district. Another meeting was held by the HOA on April 18, 2017.

During this time, different options for potential amendments to the overlay district were considered. However, since the notice of hearing was specifically for the repeal of the overlay, amendments to the overlay district could not be considered without beginning the process again with a new notice mailed to residents.

At the May 2, 2017 continued public hearing, Planning Commission again discussed this issue. At this time the HOA summarized the steps that had occurred since the initial hearing, and indicated that a survey had been distributed among its residents. Additional options were under consideration by the HOA, such as implementing an HOA-led architectural review board, strengthening their own private covenants, or otherwise taking on a greater role in the design review. The HOA

indicated that it needed more time to try to develop further consensus on these items as well as consider what costs and obligations they would be taking on with a greater HOA role in design review. The Planning Commission approved another 90-day continuance to the August 1, 2017 meeting to allow further work by the HOA and residents.

Prior to the August 1, 2017 hearing the HOA submitted a position on streamlined options for the overlay district standards - specifically simplifying the current regulations in the following ways:

- Clarifying how 1.5 stories is measured, using one or both of the following methodologies:
 - Allowing a second story only up to 60% of the ground floor if the height is between 25 feet and 35 feet, and requiring it to be off-set 8 feet or more from the side building line; OR
 - Allowing a second story, provided the overall height remains under 25 feet.
 - Plus, removing some of the design guidelines that address different techniques for a building or facade to appear as 1.5 stories,
- Adjusting the side setback measurement to be similar to the appeals approved by the HOA appeals board, and that anticipates the types of home improvements they expect in the neighborhood. Specifically this would be a flat 10% side setback, but identifying an exception for single-car garages being expanded to as close to 7 feet from the side lot to accommodate a 2-car garage. This is similar to the City's recent city-wide side setback amendment (20% of lot width between both sides, but 7' minimum), other than it eliminates the sliding footprint with one exception.
- Removing some of the more subjective aesthetic or "character" guidelines and leaving simple mass or form standards.

The HOA indicated that it preferred that the City retain this streamlined approach in its regulations, but that it was exploring other options to incorporate these approaches into private covenants enforced by the homes association in the event that the City repeals the overlay district.

Following testimony, consideration of the hearing record, and discussion on the options, the Planning Commission recommended that the Governing Body repeal the overlay district. However to allow the HOA to fully incorporate the new direction and new

position on development in the Countryside East neighborhood, they recommended that the ordinance repealing the district not become effective until after January 1, 2018.

Dan Runion asked what the basis was for the Planning Commission's recommendation. Mr. Brewster responded that the Commission felt the appeal process as established was not working, some of the items addressed in the overlay district have been addressed in the revisions to the city code and others will be considered in phase 2 and the difficulty created for staff interpreting these guidelines in addition to city code.

Jori Nelson noted that she attended many of these meetings and is not convinced that the opinion of the Board reflects that of the homes association membership.

Mr. Brewster felt from the comments made at the public hearing that the homes association would not be discontinuing the guidelines, but would be taking on the responsibility of enforcing them rather than requiring the city to do so through an established overlay district.

Eric Mikkelson noted that no one was in attendance from the homes association and asked if they were aware of the meeting. Mr. Brewster replied the date of the meeting and subsequent action was explained at the end of the public hearing by Chairwoman Nancy Wallerstein.

Serena Schermoly stated as Planning Commission liaison she was in attendance for these meetings and confirmed that there was significant communication at the meetings and between the meetings between the HOA and the city. She was confident that residents would be in attendance if they were opposed to the Planning Commission recommendation. She commended the Commission for their willingness to continue this application to allow the homes association to meet with their residents and to propose alternatives.

Chad Herring asked how the effective date was determined. Mr. Brewster replied that the proposed effective date was requested by the homes association. Based on their discussions with members and research conducted, they felt that processes for their enforcement of the desired design lines could be in place by the first of the year.

Eric Mikkelson moved the Governing Body adopt Ordinance 2366 amending Chapter 19.25 entitled "Overlay Zoning Districts" to the Prairie Village, Kansas Zoning Ordinance, by amending Sections 19.25.050 entitled "NC Districts Established" and 19.25.055 entitled "NC District Development/Design Standards Established" and deleting Section 19.25.060 "Incorporation by Reference of "Design Guidelines Countryside East Homes Association 2012 Edition". The motion was seconded by Andrew Wang.

A roll call vote was taken with the following votes cast: "aye" Schermoly, Noll, Mikkelson, Wang, Meyers, Morehead, Runion, Wassmer; "nay" Nelson, Odell and Gallagher with Mr. Herring abstaining.

Council Committee of the Whole

COU2017-35 Approval of construction contract for Police Records window bullet resistant glass project

Steve Noll moved the City Council authorize the Mayor to sign the construction contract with Lawrence Glass & Mirror, Inc. for the Police Records window bullet resistant glass project in the amount of \$41,437.00. The motion was seconded by Terrence Gallagher and passed unanimously.

MAYOR'S REPORT

Mayor Laura Wassmer reported that she met with Senator Barbara Bollier last week and received a positive update on the state legislature. She also hosted the

Northeast Johnson County Mayor's luncheon last week and received several positive comments from the neighboring mayors.

STAFF REPORTS

Public Safety

- Chief Tim Schwartzkopf announced that the department will be hosting a "Frozen Yogurt with a Cop" at Peachwave (94th & Mission) on September 1st from 5 to 7.
- There will be a joint "Coffee with a Cop" the end of September at the Starbucks at Ranchmart hosted by Leawood, Overland Park and Prairie Village Police Departments.

Public Works

- Keith Bredehoeft reported that he had met with five of the six residents appearing before the Council at its last meeting regarding flooding issues. After meeting with them all he plans to meet with Don Baker regarding conducting a review/study of the area with his report on possible options/plans being presented to the City Council in October.
- Mr. Bredehoeft reported that work crews were moved off Mission Road to another area for the opening of school, but would be returning to complete Mission Road sections of the project.
- The Tomahawk project by the Prairie Village Shopping Center is underway.

Mayor Wassmer asked if the City was prepared to address to the projected storms for the area this evening. Mr. Bredehoeft responded that the city's weather service will keep them updated on the forecast and timing; however, he noted that Brush Creek rises very quickly. Chief Schwartzkopf noted that during the morning storm Captain Ward was in contact with James Carney , the Public Works Field Superintendent. The police department will be as proactive as possible to block intersections if needed if cars are available.

Brooke Morehead noted that there were also several power outages in the city during the morning storm. Wes Jordan responded that KCP&L is aware of problems within the city due to aging infrastructure and have committed to address them as quickly as possible. The Prairie Village area is always a challenge with the number of power lines and the volume of large mature trees. He noted the Mayor and he met with the

customer service individual from KCP&L after the last rain event and they were assured action would be taken to correct infrastructure problems as soon as possible. Mayor Wassmer added she is confident that KCP&L is on top of it and that after speaking with other northeast Mayors they share the same confidence.

Jori Nelson asked when Mr. Bredehoeft would be meeting with Don Baker. Mr. Bredehoeft responded the meeting has not been set up yet as he is still meeting with residents gathering information.

Serena Schermoly noted significant ponding of water at the entrance to Meadowbrook at Nall. Mr. Bredehoeft noted that he was aware of problems with the underground pipe in that area not draining properly.

Dan Runion questioned the reference made to trimming trees and the its impact on the damage from the last storm. Mr. Jordan replied that trimming trees on a regular basis would help; however, the primary damage resulted from the aging infrastructure which KCP&L has committed to address as soon as possible.

- Keith Bredehoeft presented a video on the National Fitness Campaign which believes that fitness stations should be available to all. They have built fitness courts in several areas and are looking at potentially building 100 more in 2018. After viewing the video, Mr. Bredehoeft asked the Council if they would be interested in placing the concept in a city park, perhaps "North Park".

Jori Nelson felt this would be great for Meadowbrook Park to compliment the proposed senior fitness component. Sheila Myers asked the size of the court. Mr. Bredehoeft replied he did not have specific dimensions but felt that 30' x 30' would be a valid estimate. Mrs. Myers felt it was a good idea. It was noted that trail from Franklin Park to Meadowbrook is complete. Ted Odell stated he liked the concept. Terrence Gallagher stated he felt there were a couple of possible locations in Prairie Village parks and asked what the next step was.

Mr. Bredehoeft replied he could gather more information, noting that the only budget funding available is for North Park. Construction in another location would require movement of proposed projects or securing additional funding.

Ted Odell moved to direct staff to explore and gather further information on possible participation in the National Fitness Campaign. The motion was seconded by Eric Mikkelson. Mr. Runion feels it would be appropriate to get in line if doing so did not require a binding commitment from the city. Mr. Bredehoeft replied that he did not believe such action would require a binding commitment from the city.

Terrence Gallagher noted that he learned from his participation on the Meadowbrook Park committee of the interest of insurance companies in fitness programs and as a possible source of funding. The motion was voted on and passed unanimously.

Administration

- Wes Jordan stated he would like direction on the first ten items of the Council Priority List

Terrance Gallagher stated he has additional items that staff is working on that are not included on the priority list including KCP&L, Flooding, Mission Road and the Pool that should be added to the list. Mr. Jordan replied there are things that cannot be avoided that staff has to address under normal city operational responsibilities. These items are in addition to the priority list which contains items above and beyond normal city operations.

Mr. Jordan sought direction on item #9 "Review and update of zoning code". He noted that items #24 (changing zoning code for public facilities) and #37 (zoning regulations related to the number of individuals living in a household) are related issues

and asked if they could be handled in conjunction with #9. Brook Morehead stated that she would like to include #24 as she feels the current ordinance is too loose.

Chris Brewster stated institutional uses are allowed in any zoning districts in most municipalities as they are viewed as places that support the community. However, some of these facilities are becoming very large, i.e. Mega Churches, no longer fitting into a residential community and cities are adding scalability and performance standards to their regulations.

Eric Mikkelson questioned that by the time all of these issues are added if it would not be better to prepare a new comprehensive plan as it has been several years since the adoption of Village Vision.

Chris Brewster responded that regulations and policy decisions should not be mixed. The comprehensive plan is a policy document. The items proposed to be changed are regulations such as landscape standards, sign criteria that would allow staff approval without site plan approval, identification of items requiring a special use permit or a conditional use permit or neither. The comprehensive plan does not provide that direction. Wes Jordan noted that update of the Comprehensive Plan is addressed in item #18.

Ted Odell supports #9 and expressed concern with the amount of time that would be required to add #24 to this priority also.

Terrence Gallagher stated the development of landscape standards would be beneficial and suggested that input is sought from the Tree Board. He confirmed that the city is not considering building design standards noting that he would not be supportive of those. Mr. Jordan responded that in the adoption of the initial code revisions the Council

directed staff to look into design standards to further address scale and massing as phase 2 with the involvement of interested community members.

Mayor Wassmer asked if direction on #9 was crucial at this time. Mr. Jordan responded that it was not. However, based on the recent adoption of the budget which included a resident survey, he asked if this item should not be moved onto the active priority list. He noted that this would be a good project for the new city intern to work on, doing background research on what other cities have done, processes they followed, etc. Mayor Wassmer stated that she would like to see this added to the list with the initial background work started before the beginning of the year.

Mr. Mikkelson noted this is a 2018 budgeted item. Mr. Jordan responded that if the survey is to be used in the development of the city budget, it must be conducted in early 2018 with background work started in 2017.

Chad Herring felt that item #37 could be taken off the list.

Chad Herring moved the City Council direct staff to add to the Council Priority Listing the creation of a citizen survey. The motion was seconded by Sheila Myers and passed by a vote of 10 to 1 with Mr. Odell voting in opposition.

Mr. Jordan stated that he would have Chris Brewster address the Council on the differences between zoning regulations and the Comprehensive Plan.

OLD BUSINESS

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

NEW BUSINESS

Serena Schermoly announced that Teen Council applications are due August 22nd. All of last year's teen council members will be coming back in leadership roles. She will be bringing revisions to the program for council review at a later meeting.

Ted Odell asked for an update on the Mission Chateau project as to if it was on schedule and on property maintenance. Mr. Jordan replied that he did not know the status of construction in relation to their construction schedule and stated that the code enforcement officers are monitoring the property maintenance and have talked with the property owners.

Eric Mikkelson commented on the recent events in Charlottesville stated the Governing Body is committed in their opposition to bigotry and white supremacy. Although the city has a history of racism as documented in some deed restrictions and covenants, the city has an obligation to proactively speak out against bigotry and encourage diversity. He views the lack of diversity in the city as a weakness and that it is incumbent upon current city leaders to create a more inclusive and welcoming atmosphere.

ANNOUNCEMENTS

Committee meetings scheduled for the next two weeks:

JazzFest Committee	08/30/2017	5:30 p.m.
Council Committee of the Whole	09/05/2017	6:00 p.m.
City Council	09/05/2017	7:30 p.m.

=====
The Prairie Village Arts Council is pleased to feature the work of Greg Schieszer and Annette Hadley in the R.G. Endres Gallery during the month of August

The pool will close for the season on Monday, September 4th at 6 p.m. Mark your calendars for the annual "Puppy Pool-Ooza" Dog Swim at the pool on Tuesday, September 5th from 5 to 7 p.m.

Plan to attend the 8th Annual Prairie Village Jazz Festival on Saturday, September 9th from 3 to 10:30 p.m. Volunteer opportunities are still available. Let Joyce know if you plan to attend.

Mark your Calendar for the Kansas League of Municipalities Conference in Wichita on September 16-18, 2017. RSVP to Meghan Boom.

Mark your Calendars for the Shawnee Mission Education Foundation 25th Annual Fall Breakfast on October 10. RSVP to Meghan Boom.

Save the Date for the Annual National League of Cities Conference in Charlotte, November 15-18, 2017. RSVP to Meghan Boom.

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



PUBLIC WORKS DEPARTMENT

Council Committee Meeting Date: September 5, 2017

Council Meeting Date: September 5, 2017

CONSIDER CONSTRUCTION CONTRACT FOR THE DRAIN17X - 2017 DRAINAGE REPAIR PROGRAM

RECOMMENDATION

Move to authorize the Mayor to sign the construction contract with WCI, Inc. for the DRAIN17X-2017 DRAINAGE REPAIR PROGRAM for \$654,933.00.

BACKGROUND

This project includes repairs of the following drainage channels:

- Canterbury Channel (Near the intersection of Windsor and Cherokee)
- 72nd St Channel (Near Tomahawk and 72nd Street)
- 83rd Street Channel (North of 83rd and Mission Road)
- Natural Channel Slope Repair of Corinth Channel
- Bank Stabilization near Brush Creek (east of Mission Road)
- 84th and Roe (storm damage repair)

On August 30, 2017, the City Clerk Office opened bids for the project. Three acceptable bids were received:

Linaweaver Construction, Inc.	\$695,440.00
WCI, Inc.	\$654,933.00
Kansas Heavy Construction	\$760,500.00
Redford Construction	\$798,649.00
Engineer's Estimate	\$901,075.00

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

The contract will be awarded for \$654,933.00.

FUNDING SOURCES

Funding is available under the CIP project DRAIN17x.

RELATION TO VILLAGE VISION

- 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

August 30, 2017

**CONSTRUCTION CONTRACT
FOR
PROJECT**

DRAIN17X - 2017 STORM DRAINAGE REPAIR POGRAM

**BETWEEN
THE CITY OF PRAIRIE VILLAGE, KANSAS
AND
WCI, INC.**

THIS AGREEMENT, is made and entered into this ____ day of _____, 2017, by and between the City of Prairie Village, Kansas, hereinafter termed the “**City**”,

and _____ WCI, Inc. _____, hereinafter termed in this agreement, “**Contractor**”, for the construction and completion of Project DRAIN17X - 2017 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 distributor 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 Six Hundred and Fifty Four Thousand Nine Hundred and Thirty Three DOLLARS (\$ 654,933.00) for all Work covered by and included in the Contract; payment thereof to be made in cash or its equivalent and in a manner provided in the Contract Documents.

5. WORK SUPERINTENDENT

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

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

6. PROJECT MANAGER

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

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

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

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

7. WORK SCHEDULE:

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

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

8. DELAYS AND EXTENSIONS OF TIME

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

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

9. ADVERSE WEATHER:

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

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

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

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

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

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

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

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

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

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

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

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

10. LIQUIDATED DAMAGES

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

11. PAYMENT PROCEDURE

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

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

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

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

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

12. COMPLETION AND FINAL PAYMENT

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

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

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

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

13. CLAIMS BY THE CONTRACTOR

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

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

14. CHANGES IN THE WORK

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

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

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

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

15.3 Minimum Requirements Commercial General Liability Policy Limits -

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

Policy MUST include the following conditions:

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

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

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

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

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

Limits -

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

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

Workers' Compensation:	Statutory
Employer's Liability:	

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

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

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

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

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

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

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

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

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

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

16. INDEMNITY

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

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

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

17. SUCCESSORS AND ASSIGNS

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

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

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

18. NON-DISCRIMINATION LAWS

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

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

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

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

21. RIGHT OF CITY TO TERMINATE

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

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

22. MISCELLANEOUS:

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

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

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

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

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

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

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

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

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

CITY OF PRAIRIE VILLAGE

(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

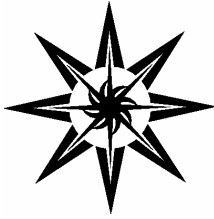
ATTEST:

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.)



Council Committee of Whole Meeting Date: September 5, 2017
Council Meeting Date: September 5, 2017

Proposed First Amendment to Meadowbrook Project Development Agreement

The Development Agreement between the City and the Developer, MB-18 LLC, relating to the Meadowbrook Redevelopment District implements the Park and Village Area Project Plan at the site of the former Meadowbrook County Club. The Project Plan contemplates the development of the Developer retained property to create tax increment revenues to pay principal and interest on bonds issued by the City to fund the acquisition of approximately 82 acres of park land (conveyed by the Developer to the Johnson County Parks and Recreation District), public infrastructure improvements on the park land, and other park improvements (collectively "Park Project").

The City issued \$11,300,000 of full faith and credit TIF Bonds ("GO TIF Bonds"), and \$8,135,000 of special obligation TIF Bonds ("SO TIF Bonds"), the proceeds of which are being used to pay for the costs of the Park Project. The GO TIF Bonds are payable from incremental property tax revenues, but ultimately from the City's general taxing authority if the incremental property tax revenues are insufficient. The SO TIF Bonds are payable solely from the incremental property tax revenues. The SO TIF Bonds were purchased by an entity affiliated with the Developer, Van Tuyl Family 2012 Irrevocable Trust FBO Larry Van Tuyl.

The Development Agreement contemplates that a portion of the property retained by the Developer will be developed as a senior living facility by a "Senior Facility Developer". "Senior Facility Developer" means Legend Real Estate Holdings, LLC, or an entity approved pursuant to Section 6.04(D), which will acquire the Senior Facility Site and construct, own and operate the Senior Living Facility.

The Development Agreement does not obligate the Developer to cause the development of a senior living facility, or penalize the Developer if a senior living facility is not built. However, the development of a senior living facility will generate incremental tax revenues which will be applied to pay the GO TIF Bonds and the SO TIF Bonds, and accordingly the timely completion of the senior living facility is in the best interests of the City and the owner of the SO TIF Bonds. Columbia Capital advises that the incremental tax revenues from Dial's proposed (and phased-in) 220 unit senior living facility account for approximately 16% of the total projected incremental tax revenues.

As was reported at the May 1, 2017 Council Committee of the Whole meeting, the negotiations between Legend and the Developer did not result in a contract, and the Developer currently has an agreement with Dial Senior Properties, LLC for Dial to purchase and develop the Senior Facility Site. The Developer and Dial updated the Committee of the Whole at that meeting as to a smaller scope senior living facility contemplated, and Jeff White of Columbia Capital reported that based upon current information, he feels that even with the lower density proposed for the senior living

component, the project is slightly ahead of the plan relative to the repayment of the bonds.

The agreement between Dial and the Developer is still in the due diligence phase, which expires on September 19, 2017, at which time Dial is required to make a financial commitment to close on its purchase of the Senior Facility Site, or terminate the purchase agreement.

Section 6.04(D) of the Development Agreement requires the developer of the Senior Facility Site to have at least 20% equity invested in the senior living facility. As part of Dial's due diligence, Dial has advised the Developer and the City that it intends to finance the acquisition and development of the Senior Facility Site through a federal financing program available for development of senior living facilities that requires less than 20% owner equity in the facility. Dial desires to take advantage of this favorable financing. As a consequence, Dial and the Developer have proposed an amendment to Section 6.04(D) of the Development Agreement (which only applies in the event of a sale to Dial or an affiliate) to reduce the required equity to 15%, provided the Developer also demonstrates to the City's financial advisor its financial wherewithal to develop the senior living facility.

The proposed amendment to Section 6.04.D. is set forth in the proposed First Amendment to Development Agreement attached, and, marked to show changes proposed (deletions by strike through and additions in bold, double underscore), is as follows:

Developer may freely without the Governing Body's consent, sell, transfer, convey, lease or otherwise dispose of all, but not less than all, of the Senior Facility Site so long as the proposed grantee is obligated by agreement with the Developer to construct the Senior Living Facility and to use said site for the purposes intended herein, but only if the financial advisor for the City designated by the City determines administratively that the proposed grantee has demonstrated to the reasonable satisfaction of the City (a) ~~will have equity invested in the Senior Living Facility of at least 20% of the total cost of completing the Senior Living Facility~~ **will have equity invested in the Senior Living Facility of at least 15% of the total cost of completing the Senior Living Facility; provided, however, that the proposed grantee shall also provide to the financial advisor for the City, subject to a reasonable nondisclosure agreement, financial information that reasonably demonstrate that such grantee has the financial wherewithal to develop the Senior Living Facility**, (b) has committed financing necessary to complete the Senior Living Facility in a timely fashion, and (c) has not been the subject of a pending indictment or convicted of a felony criminal offense in any federal or state court of the United States and has a reputation of integrity within the senior living industry and demonstrates that it has the experience and track record of success to complete and operate, or will engage a third party with the same credentials of integrity, experience and success, to operate the Senior Living Facility.

The proposed First Amendment to Development Agreement has been reviewed by the City's financial advisor, Columbia Capital, which recommends approval. A Memo dated 8-29-2017 from Jeff White is attached. Note that the approval of the proposed amendment does not constitute the final determination by the City's financial advisor of satisfaction of items (a) through (c), it only modifies item (a) if Dial (or an affiliate) proposes to acquire the Senior Facility Site for development of the senior living facility, as stated.

The proposed First Amendment has been reviewed and approved by Gary Anderson, Gilmore Bell, the City's bond counsel, as permitted under the bond financing.

Proposed Motion: Move to approve the First Amendment to Development Agreement in the form presented.

PREPARED BY

Katie Logan
City Attorney

August 30, 2017

Attachments:

Proposed First Amendment to Development Agreement
Memo from Columbia Capital

FIRST AMENDMENT TO DEVELOPMENT AGREEMENT

This First Amendment to Development Agreement (the “**Amendment**”) is made as of _____, 2017, by and between the City of Prairie Village, Kansas (the “**City**”) and MB-18, LLC (the “**Developer**”).

RECITALS

A. City and Developer entered into that certain Development Agreement dated December 21, 2015 (the “**Development Agreement**”). Capitalized terms not defined herein shall have the meanings as assigned in the Development Agreement.

B. Section 6.04.D. of the Development Agreement states as follows:

Developer may freely without the Governing Body’s consent, sell, transfer, convey, lease or otherwise dispose of all, but not less than all, of the Senior Facility Site so long as the proposed grantee is obligated by agreement with the Developer to construct the Senior Living Facility and to use said site for the purposes intended herein, but only if the financial advisor for the City designated by the City determines administratively that the proposed grantee has demonstrated to the reasonable satisfaction of the City (a) will have equity invested in the Senior Living Facility of at least 20% of the total cost of completing the Senior Living Facility, (b) has committed financing necessary to complete the Senior Living Facility in a timely fashion, and (c) has not been the subject of a pending indictment or convicted of a felony criminal offense in any federal or state court of the United States and has a reputation of integrity within the senior living industry and demonstrates that it has the experience and track record of success to complete and operate, or will engage a third party with the same credentials of integrity, experience and success, to operate the Senior Living Facility.

C. Developer is negotiating with Dial Senior Properties, LLC (“**Dial**”) regarding the sale and development of the Senior Living Facility and desires to revise parenthetical (a) of Section 6.04.D. of the Development Agreement as follows, and that such revision shall only apply to the sale and development of the Senior Living Facility by Dial or its affiliates:

will have equity invested in the Senior Living Facility of at least 15% of the total cost of completing the Senior Living Facility; provided, however, that the proposed grantee shall also provide to the financial advisor for the City, subject to a reasonable nondisclosure agreement, financial statements that reasonably demonstrate that such grantee has the financial wherewithal to develop the project.

D. City and Developer desire to revise the Development Agreement as set forth below.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. Dial Equity Investment. Parenthetical (a) of Section 6.04.D. of the Development Agreement is revised as follows, and such revision shall only apply to the sale and development of the Senior Living Facility by Dial or its affiliates:

will have equity invested in the Senior Living Facility of at least 15% of the total cost of completing the Senior Living Facility; provided, however, that the proposed grantee shall also provide to the financial advisor for the City, subject to a reasonable nondisclosure

agreement, financial information that reasonably demonstrate that such grantee has the financial wherewithal to develop the Senior Living Facility.

2. Amendment Controls; Ratification and Affirmation. In the event that the terms of this Amendment and the Development Agreement are held to be inconsistent, the terms of this Amendment shall control. The parties each agree and warrant that, in all other respects, the Development Agreement is unmodified, in full force and effect, and each party hereby ratifies and affirms the Development Agreement and any terms contained therein not otherwise modified by this Amendment.

3. Counterparts. This Amendment may be executed in counterparts, each of which shall be deemed an original but all of which, taken together, shall constitute one and the same instrument.

[Remainder of Page Intentionally Blank]

IN WITNESS WHEREOF, the parties have executed this Amendment as of the date first written above.

CITY OF PRAIRIE VILLAGE, KANSAS

Laura Wassmer, Mayor

ATTEST:

Joyce Hagen Mundy, City Clerk

APPROVED AS TO FORM:

Catherine P. Logan, City Attorney

DEVELOPER:

**MB-18, LLC,
a Kansas limited liability company**

By: _____
Name: David Harrison
Title: Manager



Jeff White
Principal
913.312.8077
jwhite@columbiacapital.com

MEMORANDUM

0 8 . 2 9 . 1 7

Wes Jordan
City of Prairie Village

You asked us to provide our recommendation with respect to the request of Meadowbrook developer, MB-18, to modify the minimum equity requirement for the senior developer, as provided in the development agreement governing the Meadowbrook development. As proposed, the amendment would reduce the required equity contribution from 20% to 15% but would also require the senior housing operator to submit its financials for review by Columbia Capital.

The City included the 20% equity investment threshold in the development agreement to provide it with the comfort that the senior housing developer would have the financial wherewithal to construct that portion of the overall project. We understand the developer has identified a specific operator to construct the senior housing and is actively engaged in the due diligence process with that operator. The operator, through the developer, has indicated its belief that it can finance the senior housing project with less than a 20% equity contribution.

Particularly with the requirement that we undertake a review of the operator's planned financing approach, we believe the City's ultimate goal of ensuring a high-quality, long-tenured senior housing operator is unlikely to be impaired by the amendment requested. Given the importance to the overall project of the senior housing component, we also believe it is in the City's interest to approve such a modification and proceed with the required review at a pace that will not delay the developer's and operator's move to a financial close on their transaction.

We recommend the City approve the proposed amendment and we look forward to engaging with the operator at its convenience to review its plan of finance for the senior housing project. We will report back to you with our findings from that process.

Please let me know if you have any questions or concerns.



ADMINISTRATION

Council Committee Date: September 5, 2017
City Council Meeting Date: September 5, 2017

COU2017-39: Consider Approval of Agreement with E.S. Schubert Sculpture Studios for Statuary Donation

RECOMMENDATION

Staff recommends a motion to approve the agreement with E.S. Schubert Sculpture Studio to commission an original art piece funded through a donation to the City. No budgeted funds would be used to commission this sculpture.

MOTION

Approve the agreement with E.S. Schubert Sculpture Studio to commission an original art piece funded through a donation to the City.

BACKGROUND

Over a year ago, Mr. Brad Johnson - a Shawnee Mission East graduate - approached the City about making a donation in support for the Mission Road project. The donor stated memories of visiting his grandparents nearby and riding his bike along Mission Road prompted his desire for a sculpture of a child riding a bicycle from the late 1950s/early 1960s era.

The City went through a Request for Proposals process in the summer of 2016, but no bids were submitted for an original art piece as envisioned. When the City reached out to various artists, they said this was due to the estimated \$15,000-\$18,000 allocation, which was too low for an original piece. The City was then given the name of E. Spencer Schubert, who was also a Shawnee Mission East graduate and had family in Prairie Village area.

Brad Johnson and Staff met with Mr. Schubert on multiple occasions to discuss the vision and pricing. Due to his affiliation with the area, Mr. Schubert agreed to a \$10,000 in-kind donation to bring the total price point down to \$46,500. This price includes a life sized bronze sculpture, a cast stone pedestal, and a plaque. During 2018 budget discussions, the City placed \$30,000 in next year's budget to supplement Mr. Johnson's donation estimated at that time to be approximately \$25,000.

In July, an ad-hoc committee met with Mr. Schubert and Mr. Johnson to discuss next steps. At this meeting, Mr. Johnson expressed interest in donating the entire amount to commission the piece and utilize the City's funding for the associated "plaza area" surrounding the sculpture. The City has worked with Mr. Schubert's attorney, Mr. Johnson, and the City Attorney to finalize an agreement that has Mr. Johnson making a direct donation to the City divided into

four phases of production. Mr. Johnson's donation will be made to the City before each phase of contracted work. The agreement is contingent upon the donation of Mr. Johnson and can be terminated if there is a lack of donated funds received.

FUNDING

Private Donation made to City of Prairie Village for \$46,500
2018 Budget - \$30,000 for costs associated with donation and/or placement

ATTACHMENTS

Sculpture Creation and Production Agreement

PREPARED BY

Alley Williams
Assistant to the City Administrator
Date: August 29, 2017



SCULPTURE CREATION AND PRODUCTION AGREEMENT

This Sculpture Creation and Production Agreement (the “**Agreement**”) is made effective as of 8/24/2017 by and between E. Spencer Schubert, E.S. Schubert, LLC, d/b/a E.S. Schubert Sculpture Studios (collectively, “**Artist**”), and The City of Prairie Village (“**Buyer**”). In consideration of the mutual promises, conditions and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby expressly acknowledged, the Parties agree as follows:

1. Creation of Work. Artist is hereby engaged by Buyer to create and deliver a sculpture as described in photos and email conversations among Artist, Buyer and Brad Johnson, and Artist hereby agrees to create and deliver the Sculpture to Buyer pursuant to the terms and conditions set forth in this Agreement and Appendix A. For this project, the Artist shall use reasonable efforts to consult with and gather input from the Prairie Village Arts Council during the maquette stage. Failure of Artist to do so shall in no event be deemed a default under this agreement as the Arts Council approval is not required, and the parties agree that Artist shall have complete creative control over his work. The plaque for the Sculpture shall be approved by Brad Johnson.

2. Price. Buyer agrees that the purchase price of the sculpture shall be \$56,500. See Appendix A for cost breakdown and project scope.

- a) Artist agrees to discount the purchase price by \$10,000 in recognition of Shawnee Mission East Art Teacher Chuck Crawford’s contribution to art education. This recognition shall be noted on the sculpture’s plaque in a manner mutually agreed by Artist, Buyer and Brad Johnson.

Buyer agrees to pay Artist the sum of \$46,500 (the “**Purchase Price**”) for the Sculpture pursuant to the following payment schedule:

- a) 25% of the purchase price upon execution of this agreement.
- b) 25% of the purchase price upon approval of the clay maquette.
- c) 25% of the purchase price upon approval of the full-size clay sculpture.
- d) The balance of the purchase price due prior to delivery of the sculpture.

The project is dependent upon receipt by Buyer of a cash donation to the City of Prairie Village, being made by Brad Johnson. If Buyer wishes to terminate the contract due to lack of donated funds received, it may do so at any time, and the Buyer shall have no further obligation hereunder. Any payments received by artist prior to contract termination will be non-refundable.

3. Site Preparation and design. Costs associated with the preparation of the site will be borne by the City of Prairie Village. The Artist is available for additional consulting regarding site

design. Any consulting or design work regarding the site by the Artist will be covered by the execution of a separate agreement between the Artist and The City of Prairie Village.

4. **Publicity.** The parties acknowledge and agree that Artist wishes to publicize his work on the Sculpture and to conduct publicity about the Sculpture project via social media, such as publishing photographs of the work in progress to Facebook, Twitter and other social media platforms, and that Artist may utilize images of the Sculpture on his website and his portfolio for the purpose of promoting his work as a sculptor. The parties may also develop press releases and give interviews, individually or jointly, about the Sculpture project for dissemination to news media. For any joint press releases, each party will have an opportunity to approve the wording of the release before it is disseminated. The parties agree to provide reasonable cooperation on any joint publicity efforts.

5. **Intellectual Property Rights.** The parties acknowledge and agree that Artist is the creator of the Sculpture, that the Sculpture does not constitute work made for hire, and that Artist retains all copyrights with respect to the Sculpture (the “**Copyrights**”) including, without limitation, all rights granted to Artist pursuant to 17 U.S.C. §106A. Notwithstanding Artist’s rights in the Sculpture pursuant to 17 U.S.C. 106A, Artist acknowledges that the Sculpture will be displayed in a public place and Buyer shall not be held responsible for any damage, vandalism or alteration to the Sculpture made by a third party. Should such an event occur, Buyer will follow its standard protocol for addressing damage, vandalism or alteration to public property.

- a. *License Granted.* Artist hereby grants Buyer a limited, irrevocable, nonexclusive, non-transferable, non-sublicensable license to publicly display the Sculpture, to prepare non-commercial derivative works based upon the Sculpture e.g., for use in promoting the City of Prairie Village and public events of the City of Prairie Village, and to make and distribute non-commercial 2-dimensional copies of the Sculpture (excluding 3-dimensional copies) e.g., for use in promoting the City of Prairie Village and public events of the City of Prairie Village. The City of Prairie Village will list “E.S. Schubert” as “Sculptor” when images of the sculpture are used in derivative works for marketing and promotional purposes.
- b. *Additional Licenses.* Any additional licenses with respect to Buyer’s use of the Copyrights shall require execution of a separate license agreement between the parties. Upon Buyer’s request, Artist agrees to negotiate terms of such a license agreement in good faith, but notwithstanding any such negotiations, the parties agree that any decision to grant additional license terms with respect to the Copyrights remains in the Artist’s sole and absolute discretion.
- c. *Ownership and Validity.* Buyer acknowledges Artist’s ownership of the entire right, title and interest in and to the Copyrights. Buyer shall take no action challenging the validity of, or Artist’s right in, the Copyrights. Buyer acknowledges that its use of the Sculpture shall not create in Buyer any right, title or interest in the Copyrights, apart from the license granted herein.
- d. *Copyright Registration.* Artist may take whatever action that it deems appropriate with respect to the registration of its copyrights in the Sculpture, and Buyer shall have no right to register, apply

to register, or maintain any copyright application or registration with respect to the Sculpture or any derivative works, apart from the license granted herein.

6. Binding Effect. This Agreement shall be binding upon and inure to the benefit of Artist and Buyer, and any and all successors and permitted assigns of the parties.

7. Assignment. Neither Buyer nor Artist shall assign this Agreement without the prior written consent of the other and any purported assignment in violation of this provision shall be null and void *ab initio*.

8. Notices. Notices, statements and other communications to be given under the terms of this Agreement shall be in writing and delivered by hand against receipt or sent by certified or registered mail or by Federal Express or other similar overnight mail service as follows:

If to Artist:

E.S. Schubert, LLC, d/b/a E.S. Schubert, Sculpture Studios
110 Southwest Blvd. Ste. B (rear)
Kansas City, Missouri 64108
Attention: E. Spencer Schubert

With a copy to:

The Martinez Law Firm, LLC
1150 Grand, Suite 240
Kansas City, Missouri 64106
Attention: Robin S. Martinez
Email: robin.martinez@martinezlzaw.net

If to Buyer:

City of Prairie Village, KS
City Hall
7700 Mission Road
Prairie Village, KS 66209
Attn: City Clerk

9. Severability. If any one or more of the provisions contained in this Agreement shall be invalid, illegal, or unenforceable in any respect under any applicable law, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired.

10. Headings. The headings of Sections in this Agreement are inserted for convenience only and shall not be deemed to affect in any way the meaning of the provisions to which they refer.

11. No Partnership. Nothing contained in this Agreement shall be construed to create a partnership or joint venture between Artist and Buyer or their respective successors in interest.

12. Waiver. No failure or delay on the part of any party in the exercise of any power, right, or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such power, right or privilege preclude other or further exercise thereof or of any other right, power or privilege.

13. Non-Exclusive Nature of Expressed Remedies. All of the parties' rights and remedies existing under this Agreement are cumulative to, and not exclusive of, any rights or remedies otherwise available.

14. Entire Agreement. This Agreement constitutes the entire agreement and understanding between the parties as to the subject matter hereof. No modification or amendment of this Agreement shall be valid or binding unless made in writing and signed on behalf of the parties hereto.

15. Governing Law. This Agreement shall be governed by and interpreted and enforced in accordance with the laws of the State of Kansas. Jurisdiction and venue for any dispute regarding this Agreement will be based in Johnson County, Kansas.

16. Attorneys' Fees. The prevailing party in any lawsuit concerning this Agreement or any matter related thereto shall be entitled to any award of reasonable attorney fees and costs from the other, including fees incurred through trial, appeal, or in bankruptcy proceedings.

17. Construction. The parties to this Agreement waive the application of any law, regulation, holding or rule of construction providing that ambiguities in an agreement or other document will be construed against the party drafting such agreement or document. The parties to this Agreement each warrant that they had the assistance of counsel in the preparation of this Agreement.

18. Equitable Relief. Each party shall have the right to seek injunctive relief in any court having appropriate jurisdiction to prevent the other party from breaching its obligations under this Agreement or to compel the other party to perform its obligations under this Agreement.

19. Execution. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

20. Applicable Taxes. Buyer agrees to provide proof of sales tax exempt status in writing to Artist before delivery of sculpture. If proof is not provided, Buyer agrees to immediately remit any and all sales tax due to Artist based on total purchase price.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed on their behalf in the manner legally binding upon them.

ARTIST:

E.S. Schubert, LLC, d/b/a E.S. Schubert, Sculpture Studios

By:

Name: E. Spencer Schubert

Title: Manager

Date: _____

E. Spencer Schubert, in his individual capacity: _____

Date:

BUYER: (printed) _____

(signed) _____

Date: _____

Invoice

E. S. Schubert, Sculpture Studios
 110 Southwest Blvd. Ste. B (rear door)
 Kansas City, MO 64108

Date	Invoice #
6/20/17	1369

Bill To

City of Prairie Village
 Alley Williams
 7700 Mission Road
 Prairie Village, KS 66208



Questions? Call or email us!
 913-638-6634
 Accounts@esschubert.com

P.O. No.	Terms	Project
	Quarters	

Description	Qty	Rate	Amount
Life sized bronze sculpture: Sculpture of a 10 year old riding a bike. Final concept to be based on discussions with client. Included: Creation of: concept, 1/3rd scale maquette, full size clay sculpture, molding and casting in bronze.	1	50,000.00	50,000.00
Design and fabrication of cast stone pedestal for bronze sculpture. Pedestal will be created to allow for installation on client prepared foundation.	1	5,000.00	5,000.00
Creation of bronze plaque to be mounted to sculpture base.	1	1,500.00	1,500.00
Delivery of sculpture to site in Prairie Village, KS is included in cost of sculpture. Installation is NOT included. Consultation and supervision the day of installation is included in sculpture cost.		0.00	0.00T
Sales Tax - Exempt. Certificate must be on file.		0.00%	0.00
In-kind donation in recognition of Chuck Crawford, Shawnee Mission East Art teacher.		-10,000.00	-10,000.00

Subtotal	\$46,500.00
Sales Tax (9.35%)	\$0.00
Total	\$46,500.00
Payments/Credits	\$0.00
Balance Due	\$46,500.00

**/MAYOR'S ANNOUNCEMENTS
September 5, 2017**

Committee meetings scheduled for the next two weeks include:

Tree Board	09/06/2017	6:00 p.m.
Board of Zoning Appeals	09/12/2017	6:30 p.m.
Planning Commission	09/12/2017	7:00 p.m.
Prairie Village Arts Council	09/13/2017	5:30 p.m.
Park & Recreation Committee	09/13/2017	6:30 p.m.
Environment/Recycle committee on Education	09/14/2017	5:30 p.m.
Council Committee of the Whole	09/18/2017	6:00 p.m.
City Council	09/18/2017	7:30 p.m.

=====

The Prairie Village Arts Council is pleased to feature the work of Nanci Stoeffler and Rachel Williams in the R.G. Endres Gallery during the month of September. The artist reception will be held on Friday, September 8th.

Mark your Calendar for the Kansas League of Municipalities Conference in Wichita on September 16-18, 2017. RSVP to Meghan Buum.

Mark your Calendars for the Shawnee Mission Education Foundation 25th Annual Fall Breakfast on October 10. RSVP to Meghan Buum.

Save the Date for the Annual National League of Cities Conference in Charlotte, November 15-18, 2017. RSVP to Meghan Buum.

INFORMATIONAL ITEMS
September 5, 2017

1. Council Committee of the Whole Minutes - August 18, 2017
2. Board of Zoning Appeals Agenda - September 12, 2017
3. Planning Commission Agenda - September 12, 2017
4. Tree Board Minutes - May 3, 2017
5. Tree Board Minutes - June 7, 2017
6. JazzFest Committee Minutes - July 13, 2017
7. Lancer Day Proclamation
8. Constitution Week Proclamation
9. Diaper Week Proclamation
10. Mark Your Calendar

COUNCIL COMMITTEE OF THE WHOLE
August 21, 2017

The Council Committee of the Whole met on Monday, August 21, 2017 at 6:00 p.m. in the Council Chambers. The meeting was called to order by Council President Jori Nelson with the following members present: Mayor Laura Wassmer, Serena Schermoly, Steve Noll, Eric Mikkelson, Andrew Wang, Sheila Myers, Brooke Morehead, Dan Runion, Ted Odell and Terence Gallagher.

Staff Members present: Tim Schwartzkopf, Chief of Police; Keith Bredehoeft; Public Works Director; Katie Logan, City Attorney; Wes Jordan, City Administrator; Lisa Santa Maria, Finance Director; Alley Williams, Assistant to the City Administrator and Joyce Hagen Mundy, City Clerk. Also present were Captain Myron Ward, Sgt. Ivan Washington, Animal Control Officers Roger Blanchard and Allie Jasminski.

Presentation and Discussion Related to the future of the KCI Airport - "A Better KCI"

Joe Reardon and Scott Hall, representatives from the Greater Kansas City Chamber, provided background information from their research on airport alternatives and on the proposed new single terminal for KCI. They were told by representatives of the chamber in Dallas/Fort Worth that their airport was their greatest asset. The economic development pitch given to potential businesses was that you can get anywhere from their airport. It is estimated that each international flight has a \$215M annual impact on the area.

Mr. Reardon stated that while residents of Kansas will not have an opportunity vote on the proposal for a new single terminal building, the economic impact and conveniences do affect Johnson County businesses, residents and visitors. The Kansas City Chamber feels that elected officials in Kansas and citizens deserve to have a platform for their voices to be part of the dialogue.

The proposed funding plan has the project paid for entirely by users of the airport through concessions, parking and ticketing. It is estimated that more than 80% of these fees are paid by non-KCMO residents with Johnson County being the largest user. It is the most visited building in Kansas City.

Scott Hall stated "A Better KCI" is crucial for a better KC region. A new single terminal approach for Kansas City International Airport will ensure maximum efficiency, capacity, expanded air service and future economic growth of the region. The following anticipated benefits were presented and discussed:

- Increased access and destinations
- Economic driver for regional growth and jobs
- Improved conveniences and amenities
- Stronger security and technology
- Maintains KC as a major-league city
- Paid for by the users of the airport - no general tax dollars from any municipality will be used for the airport project

Eric Mikkelson agreed that there are dramatic benefits to be gained from the proposed airport and asked what Prairie Village could do to show its support. Mr. Reardon replied that any assistance in getting information out to the public would be appreciated. He noted the Kansas City Council will be voting on Thursday on the proposed language for the November ballot.

Sheila Myers asked why Kansas City would need to vote on the airport if they were not funding it. Mr. Reardon replied Missouri law requires that the issuance of any aviation bonds requires a public vote. He added that this is a regional asset and that in some areas airports are no longer associated with a city but operate under a regional structure. The KCI airport is operated as a department of the City of Kansas City, Missouri.

Jori Nelson asked if any commitment had been received from airlines if the new airport is constructed. Mr. Reardon replied that the airlines have committed by what they have agreed to pay in lease fees. They do not look at hub activity. For example, Southwest airline needs an increase in transfer access. They are the largest airline in Kansas City as well as the largest airline in the US.

Brooke Morehead asked if there had been any conversation regarding expansion of the Johnson County airport. Mr. Reardon replied that he had not been part of any such conversations. He noted that the KCI airport complex covers over 10,000 acres with all but the terminal being in excellent condition. To start fresh to build a new complex elsewhere would cost three times the proposed cost of the proposed project and take 12 to 15 years to complete. The proposal to replace the terminal is the best option for KCI.

Ted Odell agreed that this is a regional issue. Dan Runion asked if the runways would need to be replaced in the near future. Mr. Reardon replied because of the multiple runways the airport can handle increased capacity. Mr. Hall added that he has been told the KCI runways are world class and in excellent condition.

COU2017-35 Consider approval of the construction contract for the police records window bullet resistant glass project

Captain Myron Ward noted this project was sent out to bid two years ago; however, of the three bids received the low bid was double the budgeted amount. Over the past year, staff has worked with Public Works to revise the project. The current project includes the installation of bullet resistant glass and bullet protection below the window at the Police Records Window. The records window will be reconfigured to include an ADA accessible counter. Captain Ward noted the city has the only records area in the metropolitan area that does not provide security for its employees.

Staff requested bids from three contractors specializing in this work. Two bids were received with Lawrence Glass & Mirror, Inc. submitting the low bid of \$41,437.00. Funding for the project is available in the Police Department Building Improvement Funds.

Ted Odell made the following motion, which was seconded by Serena Schermoly and passed unanimously:

**MOVE THE CITY COUNCIL AUTHORIZE THE MAYOR TO
EXECUTE THE CONSTRUCTION CONTRACT WITH
LAWRENCE GLASS & MIRROR, INC. IN THE AMOUNT OF
\$41,437.00 FOR THE POLICE RECORDS WINDOW BULLET
RESISTANT GLASS PROJECT**

**COUNCIL ACTION TAKEN
08/21/2017**

Discuss proposed amendments and changes to the animal control and regulation ordinance

Chief Tim Schwartzkopf stated at the direction of the City Council and with input from the city attorney and city prosecutor two substantive changes were added to the animal regulations; a new classification for potentially dangerous and vicious animals. And, the mechanism for an animal to be declared potentially dangerous, dangerous or vicious is now being recommended to be handled through Municipal Court. He recognized Sgt. Ivan Washington and Animal Control Officers Roger Blanchard and Allie Jasminski for their research and input in the proposed code.

Council President Jori Nelson asked that the Council review the document page by page.

Ms Nelson questioned Section 2-102(L) the definition of "Person responsible" giving the scenario of a neighbor or friend possibly walking or caring for a dog while the owner is away. She feels only the owner should be responsible. City attorney Katie Logan replied the language was drafted to be more specific. As the incident would now be handled through the municipal court it is better to have more specific language. It was reviewed and approved by city prosecutor who would be handling any charges or appeals.

Ms Nelson asked who was responsible in the situation where a roommate is walking an animal. Mrs. Logan responded that the individual walking the animal is to be in control of the animal. Andrew Wang stated the definition says "an occupant of any premises on which a dog or cat remains or customarily returns is a person responsible for it under this chapter." Mrs. Logan stated the first line of responsibility would be the owner. Chief Schwartzkopf noted there are many ways to review the situation. It could be the owner or it could be both. Each situation is evaluated individually on a case by case basis. Mrs. Myers noted the ordinance does state there may be more than one person responsible for the animal. Ms Nelson asked what if a 10 year old was walking the animal. Chief Schwartzkopf stated that was addressed elsewhere and that the intent of the ordinance is to protect the potential victim.

Chief Schwartzkopf noted that in the definition of "Dangerous Wild Animal" (2-102h) the first line has been changed to read: "Dangerous wild animal means any animal, which is wild by nature and/or of a species which, due to size, vicious nature. . ." per his earlier conversation with Mr. Mikkelson.

Ms Nelson asked that Section 2-102(i) be changed from “Dangerous cat or dog” to “Dangerous Animal”. Chief Schwartzkopf agreed to the change.

Eric Mikkelson stated that he likes the three tier approach presented with potentially dangerous, dangerous, vicious designations of animals. However, he feels the definition for “potentially dangerous” is very loose with the consequences being very severe. Chief Schwartzkopf responded that he spoke with the animal control officers and they have agreed to remove the requirement for signage. The intent of the requirements are to have owners be more responsible and to prevent the animal from becoming declared dangerous. Mr. Mikkelson stated he is particularly concerned with #2 dealing with chasing - noting that dogs chase after things. Chief noted it would involve a pattern of chasing, not a onetime incident. Mr. Mikkelson responded if that is the intent, it should be stated as such. He is also very uncomfortable with the required muzzling. He would like to see the threshold for a “potentially dangerous” animal made higher or the consequences lessened.

Sheila Myers noted the language does not merely addressing chasing “but chasing or approaching in a menacing fashion or apparent attitude of attack.” Chief Schwartzkopf replied that the code cannot legislate every situation and asked the staff be given the leverage to work through different scenarios. He is confident that staff will use their training and good judgment in the field.

Chief Schwartzkopf noted the difference between the required conditions for a potentially dangerous animal and a dangerous animal is that owner of a dangerous animal(s) is required to carry insurance coverage. Steve Noll stated he supported the muzzle requirement for dangerous animals only.

Terrence Gallagher asked about small animals chasing and nipping at runners’ feet or running to the fence and barking. Chief replied everything is dealt with on a case by case basis. A dog nipping someone’s leg is not a bite; however, it is an event that needs to be addressed. Potentially dangerous classification acts to get behaviors corrected. Mr. Mikkelson replied if the dog bites, it is dangerous; not if it chases. Mrs. Myers noted the situation where the runner is able to outrun the animal. She supports the muzzle.

Mayor Wassmer suggested a possible compromise stating that the dog may be muzzled depending on the circumstances and shared an experience with a dog while she was walking. Eric Mikkelson stated he does not support writing bad laws that have staff interpreting. He believes that if chased and feel you are in danger that dog could be declared dangerous. If a dog chases, it does not deserve to be muzzled.

Chief Schwartzkopf talked with animal control and they agreed to remove muzzling and signage requirements for potentially dangerous.

Ms Nelson noted that ADA limits service animals to dogs or miniature horses and the code definition of a “Service/work animal” (Section 2-102n) does not have that restriction. Chief Schwartzkopf stated he was comfortable with the definition as written.

Chief Schwartzkopf noted that one of the biggest changes in the proposed ordinance is the three tier identification of animals as “potentially dangerous”, “dangerous” and “Vicious” along with a change in the process with the involvement of municipal court rather than the governing body. The new process was reviewed and approved by the city attorney and the city prosecutor as well as the police department.

Ms Nelson asked about Section 2-105 regarding pit bulls. Chief Schwartzkopf stated that nothing had been changed in that section.

Ms Nelson asked if it stated anywhere that it was unlawful to have a dangerous animal and what the penalty was. City attorney Katie Logan responded that it is unlawful to have a “vicious” animal within the city. Chief Schwartzkopf replied that Section 2-109b states that keeping such an animal without a permit is misdemeanor subject to the penalties in Section 2-141. Dan Runion replied Section 2-109b only addresses licensing of an animal.

Eric Mikkelson confirmed that a dangerous animal can remain in the city if it meets the conditions established and receives a permit.

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Ms Nelson asked if it was unlawful to have an animal that has not been vaccinated for rabies (Section 2-114). Chief Schwartzkopf replied that animals must have a valid rabies vaccination to be licensed. City Clerk Joyce Hagen Mundy noted that there are instances when an animal cannot be vaccinated due to age or health conditions and with a written statement from their veterinarian they are given a license. Also rabies vaccinations cannot be given to an animal until it is 6 months old.

Ms Nelson questioned the limitation on the number of animals allowed (Section 2-116) noting that several cities allow for a special permit to allow for additional animals, such as rescue animals. This would be on a case by case basis with possible conditions required for the permit. Chief Schwartzkopf noted that would be a policy decision by the **G**Governing Body.

City Clerk Joyce Hagen Mundy stated that several years ago this provision was included in the code; however, after receiving resident complaints, it was removed. Mr. Noll stated this opens the door for puppy mills and noted that four animals is probably the maximum most Prairie Village residents can accommodate without negatively impacting neighborhoods.

Ms Nelson asked for a show of council support for adding a provision to allow by special permit more than four animals per household. Members of the council did not support the provision.

Chief Schwartzkopf noted the new provisions and requirements for keeping potentially dangerous and dangerous cats or dogs were drafted in conjunction with animal control staff, the city prosecutor and the city attorney. As written the only difference between the requirements is the requirement of insurance. Insurance coverage is only required for “dangerous” animals and the amount of coverage has been reduced from \$500,000

to \$300,000. Changes agreed upon this evening were to remove the muzzle and signage requirements for a “potentially dangerous” animal.

Chief Schwartzkopf noted that animal control staff has requested a revision to Section 2-121 regarding inspections for renewal. The change proposed is the addition of language to require notification of animal control 45 days prior to expiration of the permit to allow sufficient time to schedule and conduct the inspections.

Ms Nelson felt the language in Section 2-122 was redundant.

However, noting the time, Council President Jori Nelson recessed the meeting until after the conclusion of the City Council meeting.

The meeting was reconvened at 8:45 and due to a forecast for impending serious weather it was decided to continue discussion to a later meeting in September.

ADJOURNMENT

Council President Jori Nelson adjourned the Council Committee of the Whole meeting at 8:46 p.m.

Jori Nelson
Council President

**BOARD OF ZONING APPEALS
CITY OF PRAIRIE VILLAGE, KANSAS
AGENDA
SEPTEMBER 12, 2017
6:30 P.M.
MULTI-PURPOSE ROOM**

I. ROLL CALL

II. APPROVAL OF MINUTES - August 1, 2017

III. ACTION ITEM

**BZA2017-04 Request for a Variance from PVMC 19.08.020 & 19.44.020(C4)
to decrease the front yard setback and the exception for
encroachment for the construction of an open carport up to four
feet from the front property line
2006 West 71st Terrace
Zoning: R-1b Single Family Residential District
Applicant: Steven Scraggs & Stacey Scheffler**

IV. OTHER BUSINESS

V. OLD BUSINESS

VI. ADJOURNMENT

If you cannot be present, comments can be made by e-mail to
Cityclerk@Pvkansas.com

**PLANNING COMMISSION AGENDA
CITY OF PRAIRIE VILLAGE
TUESDAY, SEPTEMBER 12, 2017
7700 MISSION ROAD
7:00 P.M.
MULTI-PURPOSE ROOM**

- I. ROLL CALL
- II. APPROVAL OF PLANNING COMMISSION MINUTES - AUGUST 1, 2017
- III. PUBLIC HEARINGS
 - PC2017-02 Amendment to Special Use Permit for Private School
 4801 West 79th Street
 Zoning: R-1a
 Applicant: Kansas City Christian School
- IV. NON-PUBLIC HEARINGS
 - PC2017-111 Request for Building Line Modification
 7618 Chadwick
 Zoning: R-1b
 Applicant: Dennis & Merrill Schapker
 - PC2017-112 Sign Approval
 7501 Mission Road
 Zoning: C-0
 Applicant:
- V. OTHER BUSINESS
- VI. ADJOURNMENT

Plans available at City Hall if applicable
If you cannot be present, comments can be made by e-mail to
Cityclerk@Pvkansas.com

***Any Commission members having a conflict of interest, shall acknowledge that conflict prior to the hearing of an application, shall not participate in the hearing or discussion, shall not vote on the issue and shall vacate their position at the table until the conclusion of the hearing.**

TREE BOARD
City of Prairie Village, Kansas

Minutes

Wednesday – May 3, 2017 6:00PM Meeting
Public Works – Conference Room
3535 Somerset Drive

Board Members: Deborah Nixon, Jonathan Pruitt, Devon Murray, Tom Brown.

Other Attendees: Ellie Green, Jeffery Green, Terrence Gallagher, Suzanne Lownes

- 1) **Review and Approve minutes from April 5, 2017 meeting** - Motion by Deborah Nixon to accept the minutes, seconded by Tom Brown. Approved unanimously.
- 2) **Visitor introductions** - Ellie Green was attending the meeting, she is a student and Shawnee Mission East and was interested in the Tree Board and its activities.
- 3) **Arbor Day Wrap-Up**
It was a very cool rainy day with only Tree Board members turning out. The group admired the tree and took a couple of pictures and Deborah gave her information about the Swamp White Oak. The group thanked Deborah for the information as well as the doughnuts and retreated to their dry homes. Deborah said that she was finalizing the article and would email it to Suzanne Lownes.
- 4) **Street Tree Planting**
The group discussed taking their project to Council for approval. Terrence suggested that it might be best to wait until after budget sessions. It was discussed to potentially take the presentation to the August 7th meeting.
- 5) **Boy Scout Work Day**
Terrence Gallagher updated the group that the work day location had been changed to Taliaferro Park and he wasn't sure that James Carney was planning on marking the trees. Suzanne Lownes said that she would check with James Carney about the work day and update the group via email.
- 6) **Old Business**
Deborah Nixon stated that Earth Day had gone well and that in the future the group needs to advertise Arbor Day at that event.

It was also discussed that during Earth Day there were questions concerning tree debris and how to minimize and handle that debris. Deborah Nixon thought that might be a good Fall Seminar topic. Jonathan Pruitt also suggested that Oak mites might also be a good topic.
- 7) **New Business**
Suzanne Lownes updated that group that the Public Works department is currently looking for a new tree specialist to coordinate tree issues with the City.
- 8) The next meeting agenda - The next meeting be Wednesday, June 7, 2017.

The meeting adjourned at 6:45 p.m. Minutes prepared by Suzanne Lownes

TREE BOARD
City of Prairie Village, Kansas

Minutes

Wednesday – June 7, 2017 6:00PM Meeting
Public Works – Conference Room
3535 Somerset Drive

Board Members: Deborah Nixon, Rick Howell, Frank Riott, Tom Brown.

Other Attendees: Suzanne Lownes

- 1) **Review and Approve minutes from May 3, 2017 meeting** - Motion by Deborah Nixon to accept the minutes, seconded by Frank Riott. Approved unanimously.

- 2) **Street Tree Planting**
The group reviewed the plan for taking the project to Council. The plan is to place it on the August 7th Council Committee Meeting. Frank Riott said that he would present and also send a short paragraph describing the event for the Council memo. He already has the power point presentation together and will send that out as well. Frank said he would also talk to Sara Crowder about attending the meeting to answer any additional Council questions.

The group also discussed that during the break that they would look at 79th Street from Belinder to Mission Road on the locations for the tree plantings.

- 3) **Old Business**
There was no old business

- 4) **New Business**
The group discussed how it should process volunteer applications for open positions. Suzanne Lownes updated the group that most other boards the chairperson of that board coordinates the review with the members and contacts the applicants before making a recommendation to the Mayor. They agreed that was a good process and Suzanne Lownes should send the current applications to the Board and any comments should be sent to Deborah Nixon from the members and she would contact the applicants and bring back any information to the Board prior to sending a recommendation to the Mayor. The Tree Board currently has 1 opening and 2 student openings.

- 5) The next meeting agenda - The next meeting be Wednesday, August 2, 2017.

The meeting adjourned at 6:55 p.m. Minutes prepared by Suzanne Lownes

JazzFest Committee Minutes
August 15, 2017

Present: JD Kinney, John Wilinski, Meghan Boom, Dan Andersen, Kyle Kristofer, Amanda Hassett, Dave Hassett, Brian Peters, Brooke Morehead and Joyce Hagen Mundy.

JD announced the resignation of Mike Schermoly from the committee and noted that he has picked up the items that Mike was working on. JD shared the proposed designs for the event fan, event T-shirt (Royal Blue with logo on the front and the line-up on the back with the logos of the three major sponsors), volunteer T-shirts will again be white with the logo on the front and the sponsors on the back) and the JazzFest blanket (black with the JazzFest logo in white) that will be sold in the merchandise tent. The blanket costs were higher than anticipated at \$15, but he is comfortable with the price as they will be sold for \$20 and only 100 are being ordered. He noted that he will be ordering three new welcome banners (6 x 4) for the entrance areas. They will include major sponsors' logos as noted in the sponsorship commitment. He asked Dan to confirm the specifications for stage banner.

Budget

JD reported that as of today, revenue in the bank continues to be above estimated expenditures for the event. Since the last meeting the committed funds from Republic (\$5000) have been received. Also WireCo has purchased a Hospitality table.

Talent

Letters have been sent to all the talent with information regarding cd's and requesting names for identification badges. They will need to be contacted to arrange for specific sound check times. Rooms have already been paid for talent so the only outstanding costs would be any transportation and food required by their riders. Talent is under budget.

Marketing

Joyce distributed copies of JAM Magazine with the full page back cover ad. The material for the Village Voice insert was completed by Mike and has been submitted to Meghan. The Village Voice should be in homes around September 1st. PV Post will feature each of the performers the week prior to the festival. Yard signs have been received and were distributed to committee members for placement. Committee members were reminded that they are responsible to remove signs after the festival. The large signs at city hall and the parks will be hung later this week.

Event

At the last committee meeting members expressed concern with moving the VIP area to backstage. The VIP area will remain at the top of the hill. However, there

needs to more control of alcohol backstage. No alcohol should be served backstage until after 7. Performers are allowed to get drinks at the top of the hill. Dan Andersen reported that talked with rent-a-center regarding the rental of furniture for backstage. They rent furniture by the month and are not open on Sunday so the furniture could not be returned until Monday. The cost for a sofa would to \$100 to \$200. He can rent a 61" TV for \$161.

Dan stated his contact has not gotten back to him on a bid for the video screens. He believes the cost will be \$5000.00.

Setup

The VIP and Hospitality area will be at the top of the hill as it has been in the past. The tents will be more open than in the past. A combination of long and 3 round tables will be set up with wooden chairs with pads.

The following will have merchandise tents/tables: Renewal by Andersen, Hunter Family Vision, James Hardie, Serve Community Church, PV Post, Metheny Foundation & Jazz Ambassadors and Meadowbrook. Dan suggested getting two large tents that would serve multiple tables, rather than smaller individual tents. The committee agreed.

The Arts Council will have Art exhibited at the top of the hill again this year. The art will be available for bid or purchase. They will not have a craft or face painting table.

Merchandise Tent

The merchandise tent will be at the same location. It will have blankets and t-shirts for sale. JD has spoken with Brothers Music and they are interested in participating in the festival as part of the concessions. They will have a separate area in the tent to sell Jazz music. Their sales would be separate. Committee members asked if they were paying a vendor fee. JD indicated that he had not mentioned a vendor fee when he talked with him. Some committee members felt it would be fair to the other vendors to have them pay; others were not concerned with a fee as this is to enhance the merchandise area. JD said he would talk with them about it, but not require it for this initial year. Joyce confirmed that three credit card machines would be available for use at the main gates and merchandise area. Brian confirmed that the ATM would be in place prior to the beginning of the event.

Volunteers

Meghan stated the volunteer signup is approximately 50% complete. Dave Hasset reported the signup for the beer tent is about 70%. The alcohol permit has been requested and he has spoken with Mary Rimann and with Crawford regarding alcohol needs. It was determined that no additional alcohol would need to be purchased for the sangria. The ice has been ordered. Meghan stressed the need for specific job assignments for the setup volunteers.

Event Miscellaneous

There will be 2 portable toilets at the bottom of the hill. The city has boxes available for the trash. Joyce stated that she did receive a call from Quinn's former Boy Scout troop regarding participation again. She will follow-up with them. No water has been donated this year, so this will need to be purchased at HyVee. Amanda stated that she would order sandwich trays for the backstage crew. She asked Joyce to send her Oleta's rider indicating what she needed.

Sound Checks

These have not been finalized. Joyce will contact Jane and Alex and provide John the artists' email addresses for him to follow up with them. JD stated that chairs and stands from SME will be brought over Friday night.

Next Meetings: The next meeting will be Wednesday, August 30th at 5:30 p.m. in the MPR at City Hall.

Adjournment: The meeting was adjourned at 7:15 p.m.

CITY OF PRAIRIE VILLAGE

WHEREAS, a closer relationship between the citizens and associates of our excellent educational facility, Shawnee Mission East, is desired, we, hereby decree: That the City of Prairie Village, Kansas will be changed to Lancer Village, Kansas for the duration of one day – said day to be designated as LANCER DAY; and

WHEREAS, to properly note the occasion, blue, black and white will become the official colors and Lancer Village will be decorated with such colors; and

WHEREAS, Dennis Rice, President of the Student Council, will with this proclamation take over the duties of Honorary Mayor of Lancer Village.

NOW, THEREFORE, I, Laura Wassmer, Mayor of the City of Prairie Village, do hereby proclaim Friday, September 15, 2017 to be

LANCER DAY

IN WITNESS THEREOF, I hereunto set my hand and cause the Seal of the City of Prairie Village, Kansas to be affixed this 15th day of September, 2017.

Mayor Laura Wassmer

City Clerk

Date

CITY OF PRAIRIE VILLAGE

Constitution Week September 17 – 23, 2017

Whereas, September 17, 2017 marks the two hundred and twenty-ninth anniversary of the drafting of the Constitution of the United States of America by the Constitutional Convention; and

Whereas, it is fitting and proper to officially recognize this magnificent document and the anniversary of its creation; and

Whereas, it is fitting and proper to officially recognize the patriotic celebrations which will commemorate the occasion; and

Whereas, public law 915 guarantees the issuing of a proclamation each year by the President of the United States of America designating September 17 through 23 as constitution week;

NOW THEREFORE, I, Laura Wassmer, by virtue of the authority vested in me as Mayor of the City of Prairie Village in the State of Kansas do hereby proclaim the week of September 17 through 23 as

CONSTITUTION WEEK

And ask our citizens to reaffirm the ideals the framers of the constitution had in 1787 by vigilantly protecting the freedoms guaranteed to us through this guardian of our liberties, remembering that lost rights may never be regained.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Great Seal of the City of Prairie Village, Kansas, to be affixed at my office in the City of Prairie Village, Kansas, the 24th day of August, 2017.

Mayor Laura Wassmer

City Clerk

Date

CITY OF PRAIRIE VILLAGE

PROCLAMATION

Whereas, Diaper Need, the condition of not having a sufficient supply of clean diapers to ensure that infants and toddlers are clean, healthy and dry, can adversely affect the health and welfare of infants, toddlers and their families; and

Whereas, national surveys report that one in three mothers experiencing diaper need at some time while their children are less than three years of age and forty-eight percent of families delay changing a diaper to extend their supply; and

Whereas, the average infant or toddler requires an average of 50 diaper changes per week over three years; and

Whereas, diapers cannot be bought with food stamps or WIC vouchers, therefore obtaining a sufficient supply of diapers can cause economic hardship to families; and

Whereas, a supply of diapers is generally an eligibility requirement for infant and toddlers to participate in childcare programs and quality early education programs; and

Whereas, the people of Prairie Village recognize that addressing Diaper Need can lead to economic opportunity for the state's low-income families and can lead to improved health for families and their communities; and

Whereas, Prairie Village is proud to support community organizations that recognize the importance of diapers in helping provide economic stability for families and distribute diapers to poor families through various channels; now

Therefore, I, Laura Wassmer, Mayor of the City of Prairie Village, do hereby proclaim the week of September 25th through October 1st, 2017 as

DIAPER NEED AWARENESS WEEK

in the City of Prairie Village and encourage the citizens of Prairie Village to donate generously to diaper banks, diaper drives, and those organizations that distribute diapers to families in need to help alleviate diaper need in Prairie Village and environs.

Mayor Laura Wassmer

City Clerk

Date

**Council Members
Mark Your Calendars
September 5, 2017**

September 2017 Nanci Stoeffler and Rachel Williams in the R.G. Endres Gallery

September 5 Puppy Pool-Ooza (Dog Swim) 5:00 p.m. to 7 p.m.
September 8 Artist Reception in the R.G. Endres Gallery
September 9 Prairie Village Jazz Festival - 3:00 p.m. to 10:30 p.m.
September 16-18 Kansas League of Municipalities Conference in Wichita
September 18 City Council Meeting

October 2017 State of the Arts in the R.G. Endres Gallery

October 2 City Council Meeting
October 10 Shawnee Mission Education Foundation 25th Annual Fall Breakfast
October 10 Environmental Community Forum at Johnson County Heritage
Center 5:30 - 8:30 p.m.
October 13 State of the Arts Reception in the R.G. Endres Gallery
October 16 City Council Meeting

November 2017 Shelley Preston & Gary Beaumont in the R.G. Endres Gallery

November 6 City Council Meeting
November 7 General Election
November 15-18 National League of Cities Conference in Charlotte, NC
November 20 City Council Meeting
November 23 & 24 City Offices closed for Thanksgiving Holiday.
November 30 Mayor's Holiday Tree Lighting

December 2017 Pastel Society in the R.G. Endres Gallery

December 3 Gingerbread House event
December 4 City Council Meeting
December 8 Mayor's Holiday Volunteer Party
December 18 City Council Meeting
December 25 City Offices closed for Christmas Holiday