

**COUNCIL COMMITTEE OF THE WHOLE**  
**Council Chambers**  
**Monday, March 05, 2018**  
**6:00 PM**

**AGENDA**

**DAN RUNION, COUNCIL PRESIDENT**

**AGENDA ITEMS FOR DISCUSSION**

- COU2018-12 Consider approval of the Mobilitie Franchise Ordinance and Master License Agreement for Attachments to City Facilities (Pole Attachment Agreement)  
David Waters
  
- \*COU2018-13 Consider approval of an agreement with Affinis Corporation for the design of the 2018 Paving Program  
Keith Bredehoeft
  
- COU2018-14 Consider approval of the construction administration agreement with TREKK Design Group for 2018 construction projects  
Keith Bredehoeft
  
- 2019 Budget/Council Goals and Objectives Discussion  
Lisa Santa Maria
  
- 2019 Preliminary CIP Discussion  
Keith Bredehoeft/Lisa Santa Maria

**\*Council Action Requested the same night**



## PUBLIC WORKS DEPARTMENT

Council Meeting Date: March 5, 2018  
REGULAR AGENDA

COU2018-12:            **Mobilitie Franchise Ordinance and Master License Agreement for Attachments to City Facilities (Pole Attachment Agreement)**

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### RECOMMENDATIONS:

**RECOMMEND THE CITY COUNCIL APPROVE ORDINANCE NO. 2376 GRANTING A FRANCHISE TO MOBILITIE, LLC, TO OPERATE WITHIN THE CITY RIGHT-OF-WAY AS A WIRELESS INFRASTRUCTURE PROVIDER.**

**RECOMMEND THE CITY COUNCIL APPROVE A MASTER LICENSE AGREEMENT FOR ATTACHMENTS TO CITY FACILITIES WITH MOBILITIE, LLC.**

### BACKGROUND:

In 2016, the Kansas Legislature passed, and Governor Brownback signed into law, the Kansas New Wireless Deployment Act, codified at K.S.A. 66-2019 (the "Act"). The Act provides both "wireless service providers" (such as Verizon, AT&T, and Sprint—typical "carriers" of wireless services) and "wireless infrastructure providers" (companies that build out networks and then lease the facilities to the wireless service providers themselves) with expanded rights to use the City's public rights-of-way for the installation of wireless and "small cell" facilities, including poles and antenna.

Mobilitie, LLC ("Mobilitie") operates as a wireless infrastructure provider, building out a network of small cell facilities and then leasing them to providers, oftentimes Sprint. Typical examples of Mobilitie installations may include the following:



Mobilitie has approached the City about installing its facilities on one existing City pole located at approximately 75th Street and Ash Street. Public Works staff is currently reviewing the application and supporting materials provided by Mobilitie, to determine conformity with the City's right-of-way regulations. That particular project is not part of this specific agenda item, but staff expects it would be the first Mobilitie project in the City, and a typical example of small cell installations.

### **Franchise Ordinance and Franchise Fees.**

Among the most important pieces of the Act is that wireless services providers and wireless infrastructure providers "shall have the right to construct, maintain and operate wireless support structures, utility poles, small cell wireless facilities or distributed antenna systems along, across, upon, under or above the public right-of-way." K.S.A. 66-2019(d)(2)(A). However, it has been the City's position (one that is shared by neighboring cities) that, under K.S.A. 12-2001, the City must still grant a "franchise" to both wireless services providers and wireless infrastructure providers. At its simplest, a franchise is the mechanism or vehicle through which the right to operate in the right-of-way is granted. (One exception to this is that "video service providers," such as Google, are governed by a different set of statutes.)

Accordingly, Staff and legal counsel have been negotiating an appropriate franchise agreement with Mobilitie (the "Franchise"), presented as Ordinance No. 2376 (K.S.A. 12-2001(b)(1) specifies that "[a]ll contracts granting or giving any such original franchise, right or privilege, or extending or renewing or amending any existing grant, right, privilege or franchise, to engage in such an activity shall be made by ordinance, and not otherwise".) This Franchise would govern and apply to all applications which Mobilitie may make to the City—the City Council would not be approving every separate right-of-way permit handled by the Public Works Department and issued pursuant to this Franchise.

The form recommended for approval is based on, and is generally consistent with, the form utilized by the City of Overland Park, Kansas, when it granted Mobilitie a franchise in 2015. The key provisions of the Franchise are:

- The Franchise grants Mobilitie the right to construct and maintain its facilities in the public right-of-way, subject to the terms of the Franchise and subject to other requirements of applicable law (including but not limited to the City's right-of-way regulations).
- As required by law, the authority to occupy the public right-of-way must be granted in a competitively neutral and nondiscriminatory basis.
- Mobilitie would pay a franchise fee of five percent (5.00%) of its gross receipts from every physical facility/pole/antenna that it maintains within the City, and then leases out to wireless service providers (such as Sprint).

This 5.00% was approved separately by the City Council on February 20, 2018.

- The Franchise contains standard and appropriate indemnity and insurance provisions. The Franchise also requires that Mobilitie maintain a performance bond to better ensure the appropriate and timely performance of Mobilitie's work in the right-of-way.
- The Franchise would be effective for an initial term of ten (10) years, as required by the Act. *See* K.S.A. 66-2019(f)(10). The Franchise would automatically renew for successive one (1) year terms.
- The Franchise recognizes that Mobilitie (like other providers) may rely on confidentiality protections (primarily as to trade secrets) under the Kansas open records act, the code of civil procedure, and statutes applicable to the Kansas Corporation Commission. However, the Franchise states that Mobilitie will hold the City harmless from any penalties the City may face should the City not disclose such information.

A wireless services provider (such as Sprint) that is utilizing the facilities of a wireless infrastructure provider (such as Mobilitie) would not be required to obtain its own separate franchise from the City. Meaning, where Mobilitie owns the antenna or equipment, and all Sprint has are the necessary proprietary circuits so that Mobilitie's antenna will function for Sprint, the City would not require that Sprint have a separate wireless franchise. This is the current situation in Overland Park where a company called "Extenet" owns antennas in the rights-of-way and lease them to Verizon. As a contrasting example, Verizon is now planning to install its own antennas (in both Overland Park and in Prairie Village, and other cities) and bypass using a wireless infrastructure provider like Extenet or Mobilitie. In that situation, the City would require that Verizon (the wireless services provider) have its own wireless franchise because it will directly own the antenna/equipment.

#### **Master License Agreement (aka Pole Attachment Agreement).**

Wireless service providers and wireless infrastructure providers may also request that the City allow them to attach to City-owned facilities located within the public right-of-way (such as streetlights or utility poles). These may include small cell antennas, radios, electric panels, and cables. In some cases (such as Mobilitie's current proposal), antennae and other facilities may be added to existing City poles; in others, providers may replace existing poles with new ones that better accommodate the needed facilities. And, again, under the Act, a wireless services provider or wireless infrastructure provider generally "shall have the right to construct, maintain and operate wireless support structures, utility poles, small cell wireless facilities or distributed antenna systems along, across, upon, under or above the public right-of-way." K.S.A. 66-2019(d)(2)(A).

However, the Franchise does not cover the actual connection of facilities to City-owned poles. Rather, the Franchise only applies to the use of the right-of-way itself (that is, the

right to use the public right-of-way, as opposed to requiring that facilities be installed within private easements instead). For a "pole attachment" situation, municipalities in Johnson County typically utilize a "master license agreement" or "pole attachment agreement" with the providers (the "Agreement").

As with the Franchise, City Staff and legal counsel have worked with other Johnson County municipalities to develop an overall consistent form of Agreement. As with the Franchise, the Agreement is built primarily on the form utilized by the City of Overland Park in recent years. The key provisions of the Agreement are as follows:

- The Agreement operates as a "master" agreement, applicable to any attachments that Mobilitie might make to City-owned poles (and to any replacement poles that Mobilitie might install, which would become the property of the City). Specific attachments would be documented by numbered "Supplements" to the Agreement.
- The term of the Agreement would be ten (10) years, provided, that each Supplement (for each particular application) would also be for a term of ten (10) years, such that the Agreement would survive, but only as to any remaining Supplements. Mobilitie would be required to remove its attachments upon expiration or other termination of the Agreement or applicable Supplement.
- The Agreement does not necessarily require that attachments to City facilities be allowed. For example, facilities must have sufficient capacity, must not interfere with other governmental purposes, and must not violate applicable right-of-way or zoning regulations. The City may also consider aesthetic issues. However, the City must treat requestors in a competitively-neutral and non-discriminatory manner and, given the provisions of the Act, could not likely use these factors as pretexts to reject all applications. Further, location on existing City facilities may be preferable to the installation of new poles under the Act.
- As previously discussed with and approved by the City Council, Mobilitie would pay a "per pole" attachment fee of \$45.00 per month (\$540 per year). These would payable yearly, in advance (when new poles are installed, the prorated amount for the remainder of the year would be paid in advance).
- City Public Works staff would review all applications for attachments in accordance with applicable right-of-way and other regulations, and other appropriate installation standards. Staff would be authorized to approve and execute Supplements to the Agreement upon approval of permits for the attachments.
- The Agreement requires that Mobilitie make all reasonable effort to ensure the design, color, and aesthetics of its attachments blend with and do not contrast with City facilities. Again, aesthetics may be subjective, and

enforcement of City preferences may be limited, to some degree, by the requirements of the Act.

- The Agreement contemplates that there may be situations where, due to load capacity, or to better handle aesthetic concerns, poles may be replaced entirely. Such work would be the responsibility of Mobilitie, and the City would become the owner of the replacement pole. (See Section 9 of the Agreement.)
- The Agreement contains provisions for removal of facilities after the expiration or termination of the Agreement. The Agreement further addresses abandoned City facilities.
- The Agreement contains standard and appropriate indemnity and insurance provisions.
- Because Mobilitie is a wireless infrastructure provider (not a wireless services provider itself), the Agreement does allow Mobilitie to sub-license and use the "internal space" of its attachments to third-party wireless providers without further approval from the City.

**ATTACHMENTS:**

Ordinance No. 2376 Granting a Franchise to Mobilitie, LLC, to Operate Within the City Right-of-Way as a Wireless Infrastructure Provider.

Master License Agreement for Attachments to City Facilities with Mobilitie, LLC.

**PREPARED BY:**

David E. Waters  
Lathrop Gage LLP

Keith Bredehoeft  
Public Works Director

Date: February 22, 2018

**ORDINANCE NO. 2376**

**AN ORDINANCE GRANTING TO MOBILITIE, LLC, A NEVADA LIMITED LIABILITY COMPANY, A CONTRACT FRANCHISE TO CONSTRUCT, OPERATE AND MAINTAIN WIRELESS FACILITIES AS A WIRELESS INFRASTRUCTURE PROVIDER, AS PROVIDED IN K.S.A. 66-2019, ALL IN THE PUBLIC RIGHT-OF-WAY OF THE CITY OF PRAIRIE VILLAGE, KANSAS.**

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

**SECTION 1. DEFINITIONS.**

For the purposes of this Ordinance the following words and phrases shall have the meaning given herein. When not inconsistent within the context, words used in the present tense include the future tense and words in the single number include the plural number. The word "shall" is always mandatory, and not merely directory.

- a. "City" - means the City of Prairie Village, Kansas.
- b. "Contract Franchise" - means this Ordinance granting the right, privilege and franchise to Grantee to use the City's Public Right-of-Way to provide Wireless Services as a Wireless Services Provider, within the City.
- c. "Facilities" - means the Grantee's "antennas", "accessory equipment", "wireless facilities", "small cell facilities", "transmission equipment," "distributed antenna system," and any "wireless support structure" (all as such terms are defined or described in K.S.A. 66-2019, as amended), as well as associated cables, wires, lines, and fiber, comprising the Grantee's system located within the Public Rights-of-Way, and to the extent permitted under any applicable Laws (defined below), that are designed and constructed for the purpose of producing, receiving, amplifying, or distributing Wireless Services.
- d. "Grantee" - means Mobilitie, LLC, a Nevada limited liability company, authorized to do business in Kansas, a Wireless Services Provider providing Wireless Services within the City. References to Grantee shall also include, as appropriate, any and all successors and assigns.
- e. "Gross Revenue" means and includes any and all income and other consideration of whatever nature in any manner gained or derived and received by Grantee or its affiliates from or in connection with the provision of competitive infrastructure and Wireless Services through Grantee's Facilities, either directly by Grantee or indirectly through its affiliates, to customers of such Wireless Services within the City, including any imputed revenue derived from commercial trades and barter equivalent to the full retail value of goods and services provided by Grantee. Gross Revenue shall not include: (a) sales, ad valorem, or other types of "add-on" taxes, levies, or fees calculated by gross receipts or gross revenues which might have to be paid to or collected for federal, state, or local government (b) non-collectable amounts due Grantee or its affiliates; (c) refunds or rebates; and (d) non-operating revenues such as interest income or gain from the sale of an asset.
- f. "Public Right-of-Way" - means only the area of real property in which the City has a dedicated or acquired right-of-way interest in the real property. It shall include the area on, below or

above the present and future streets, alleys, avenues, roads, highways, parkways or boulevards dedicated or acquired as right-of-way. The term does not include the airwaves above a right-of-way with regard to Wireless Services or other non-wire telecommunications or broadcast service, easements obtained by utilities or private easements in platted subdivisions or tracts. The term does not include infrastructure located within the Public Rights-of-Way owned by the City or other third-parties, such as poles, ducts or conduits, use of which shall require a separate license agreement for attachment to city facilities.

- g. "Wireless Infrastructure Provider" - means any person that builds or installs transmission equipment, wireless facilities or wireless support structures, but that is not a Wireless Services Provider as described in K.S.A. 66-2019(b)(20).
- h. "Wireless Services" - means "personal wireless services" and "personal wireless service facilities" as defined in 47 U.S.C. § 332(c)(7)(C), including commercial mobile services as defined in 47 U.S.C. § 332(d), provided to personal mobile communication devices through wireless facilities or any fixed or mobile wireless services provided using wireless facilities, as described in K.S.A. 66-2019(b)(19).
- i. "Wireless Services Provider" - means a provider of Wireless Services, as described in K.S.A. 66-2019(b)(24).

## **SECTION 2. GRANT OF CONTRACT FRANCHISE.**

- a. There is hereby granted to Grantee this nonexclusive Contract Franchise to construct, maintain, extend and operate its Facilities along, across, upon or under any Public Right-of-Way for the purpose of supplying Wireless Services as a Wireless Infrastructure Provider within the corporate boundaries of the City, for the term of this Contract Franchise, subject to the terms and conditions of this Contract Franchise.
- b. The grant of this Contract Franchise by the City shall not convey title, equitable or legal, in the Public Right-of-Way, and shall give only the right to occupy the Public Right-of-Way, for the purposes and for the period stated in this Contract Franchise. This Contract Franchise does not:
  - (1) Grant the right to use Facilities or any other property, telecommunications related or otherwise, owned or controlled by the City or a third-party, without the consent of such party;
  - (2) Grant the authority to construct, maintain or operate any Facility or related appurtenance on property owned by the City outside of the Public Right-of-Way, specifically including, but not limited to, parkland property, City Hall property or public works facility property; or
  - (3) Excuse Grantee from obtaining appropriate access or attachment agreements before locating its Facilities on the facilities owned or controlled by the City or a third-party.
- c. As a condition of this grant, Grantee is required to obtain and is responsible for any necessary permit, license, certification, grant, registration or any other authorization required by any appropriate governmental entity, including, but not limited to, the City, the Federal Communications Commission (FCC) or the Kansas Corporation Commission (KCC). Grantee shall also comply with all applicable laws, statutes and/or City regulations (including, but not



limited to those relating to the construction and use of the Public Right-of-Way or other public or private property).

- d. Grantee shall not provide any additional services for which a franchise is required by the City, including but not limited to services as a Wireless Services Provider, without first obtaining a separate franchise from the City or amending this Contract Franchise, and Grantee shall not knowingly allow the use of its Facilities by any third party in violation of any federal, state or local law. In particular, this Contract Franchise does not provide Grantee the right to provide cable service as a cable operator (as defined by 47 U.S.C. § 522 (5)) within the City. Grantee agrees that this franchise does not permit it to operate an open video system without payment of fees permitted by 47 U.S.C. § 573(c)(2)(B) and without complying with FCC regulations promulgated pursuant to 47 U.S.C. § 573.
- e. This authority to occupy the Public Right-of-Way shall be granted in a competitively neutral and nondiscriminatory basis and not in conflict with state or federal law.

### **SECTION 3. USE OF PUBLIC RIGHT-OF-WAY.**

- a. Pursuant to K.S.A. 66-2019, and amendments thereto, and subject to the provisions of this Contract Franchise, Grantee shall have the right to construct, maintain and operate its Facilities along, across, upon and under the Public Right-of-Way. Such Facilities shall be so constructed and maintained as not to obstruct or hinder the usual travel or public safety on such public ways or obstruct the legal use by other utilities.
- b. Grantee's use of the Public Right-of-Way shall always be subject and subordinate to the reasonable public health, safety and welfare requirements and regulations of the City. The City may exercise its home rule powers in its administration and regulation related to the management of the Public Right-of-Way; provided that any such exercise must be competitively neutral and may not be unreasonable or discriminatory. Grantee shall be subject to all applicable laws and statutes, and/or rules, regulations, policies, resolutions and ordinances (hereinafter "Laws") adopted by the City, relating to the construction and use of the Public Right-of-Way, including, but not limited to the City's Use and Occupancy of the Public Right-of-Way Ordinance and amendments thereto, Codified at Chapter 13, Article 5 of the City Code, and the City's zoning and land use ordinances, to the extent such laws do not conflict with or are preempted by any Federal law or regulation.
- c. Grantee shall participate in the Kansas One Call utility location program.

### **SECTION 4. COMPENSATION TO THE CITY.**

- a. In consideration of this Contract Franchise, Grantee agrees to remit to the City an annual franchise fee of five percent (5%) of Gross Revenues. To determine the franchise fee, Grantee shall calculate its Gross Revenues and multiply such amount by five percent (5%).
- b. Grantee shall pay franchise fees due and payable to the City on a monthly basis, without requirement for invoice or reminder from the City, and within forty-five (45) days after the last day of the month for which the payment applies. If any franchise fee, or any portion thereof, is not postmarked or delivered on or before the due date, interest thereon shall accrue from the due date until received, at the applicable statutory interest rate.

- c. Upon written request by the City, but no more than once per payment period, Grantee shall submit to the City a statement, executed by an authorized officer of Grantee or his or her designee, showing the manner in which the franchise fee was calculated for the period covered by the payment.
- d. No acceptance by the City of any franchise fee shall be construed as an accord that the amount paid is in fact the correct amount, nor shall acceptance of any franchise fee payment be construed as a release of any claim of the City. Grantee's payment obligations shall survive the expiration or termination of this Contract Franchise.
- e. The City shall have the right to examine, upon reasonable written notice to Grantee no more often than once per calendar year, those records necessary to verify the correctness of the franchise fees paid by Grantee, as provided in K.S.A. 12-2001(b).
- f. Unless previously paid, within sixty (60) days of the effective date of this Contract Franchise, Grantee shall pay to the City a one-time application fee of One Thousand Dollars (\$1,000.00). The parties agree that such fee reimburses the City for its reasonable, actual and verifiable costs of reviewing and approving this Contract Franchise.
- g. The franchise fee required herein shall be in addition to, not in lieu of, all taxes, charges, assessments, licenses, fees and impositions otherwise applicable that are or may be imposed by the City under K.S.A. 12-2001 and/or 66-2019, and amendments thereto. The franchise fee is compensation for use of the Public Right-of-Way and shall in no way be deemed a tax of any kind.

#### **SECTION 5. INDEMNITY AND HOLD HARMLESS.**

- a. It shall be the responsibility of Grantee to take adequate measures to protect and defend its Facilities in the Public Right-of-Way from harm or damage. If Grantee fails to accurately or timely locate Facilities when requested, in accordance with the Kansas Underground Utility Damage Prevention Act, K.S.A. 66-1801 *et seq.*, it has no claim for costs or damages against the City and its authorized contractors unless such parties are responsible for the harm or damage caused by their negligence or intentional conduct. The City and its authorized contractors shall be responsible to take reasonable precautionary measures including observing marker posts when working near Grantee's Facilities.
- b. Grantee shall indemnify and hold the City and its officers and employees harmless against any and all claims, lawsuits, judgments, costs, liens, losses, expenses, fees (including reasonable attorney fees and costs of defense), proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including personal or bodily injury (including death), property damage or other harm for which recovery of damages is sought, to the degree that it is found by a court of competent jurisdiction to be caused by the negligence, gross negligence or wrongful act of Grantee, any agent, officer, director, representative, employee, affiliate or subcontractor of Grantee, or its respective officers, agents, employees, directors or representatives, while installing, repairing or maintaining Facilities in the Public Right-of-Way.
- c. If Grantee and the City are found jointly liable by a court of competent jurisdiction, liability shall be apportioned comparatively in accordance with the laws of this state without, however, waiving any governmental immunity available to the City under state law and without waiving any defenses of the parties under state or federal law. This section is solely for the benefit of the City

and Grantee and does not create or grant any rights, contractual or otherwise, to any other person or entity.

- d. Grantee or City shall promptly advise the other in writing of any known claim or demand against Grantee or the City related to or arising out of Grantee's activities in the Public Right-of-Way.

**SECTION 6. INSURANCE REQUIREMENT AND PERFORMANCE BOND.**

- a. During the term of this Contract Franchise, Grantee shall obtain and maintain insurance coverage at its sole expense, with financially reputable insurers that are licensed, authorized, or permitted to do business in the State of Kansas. Should Grantee elect to use the services of an affiliated captive insurance company for this purpose, that company shall possess a certificate of authority from the Kansas Insurance Commissioner. Grantee shall provide not less than the following insurance:
  - (1) Workers' compensation as provided for under any worker's compensation or similar law in the jurisdiction where any work is performed and employers' liability with a limit of \$1,000,000.00 each accident/disease/policy limit.
  - (2) Commercial general liability, including coverage for contractual liability and products completed operations liability on an occurrence basis and not a claims made basis, with a limit of not less than Two Million Dollars (\$2,000,000.00) combined single limit per occurrence for bodily injury (including death) and property damage. The City shall be included as an additional insured, as its interest may appear under this Agreement, with respect to liability arising from Grantee's operations under this Contract Franchise.
- b. Grantee shall, as a material condition of this Contract Franchise, prior to the commencement of any work and within fifteen (15) days of any renewal thereof, deliver to the City a certificate of insurance reasonably satisfactory in form and content to the City, evidencing that the above insurance is in force.
- c. Grantee shall, as a material condition of this Contract Franchise, prior to the commencement of any work and prior to any renewal thereof, deliver to the City a performance bond in the amount of \$50,000.00, payable to the City to ensure the appropriate and timely performance in the construction and maintenance of Facilities located in the Public Right-of-Way. The required performance bond must be with good and sufficient sureties, issued by a surety company authorized to transact business in the State of Kansas, and reasonably satisfactory to the City in form and substance.

**SECTION 7. REVOCAION AND TERMINATION.**

In case of failure on the part of Grantee to comply with any of the provisions of this Contract Franchise, or if Grantee should do or cause to be done any act or thing prohibited by or in violation of the terms of this Contract Franchise, Grantee shall forfeit all rights, privileges and franchise granted herein, and all such rights, privileges and franchise hereunder shall cease, terminate and become null and void, and this Contract Franchise shall be deemed revoked or terminated, provided that said revocation or termination, shall not take effect until the City has completed the following procedures:

- a. Before the City proceeds to revoke and terminate this Contract Franchise, it shall first serve a written notice upon Grantee, setting forth in detail the neglect or failure complained of, and Grantee shall have sixty (60) days thereafter in which to comply with the conditions and

requirements of this Contract Franchise, or, in the event compliance cannot be reasonably achieved within sixty (60) days, commenced reasonable efforts to comply, provided that compliance is achieved within ninety (90) days after the date of City's written notice.

- b. If at the end of such sixty (60) day period or such extended period as shall be reasonably necessary for Grantee to comply, the City deems that the conditions have not been complied with the City shall take action to revoke and terminate this Contract Franchise by an affirmative vote of the governing body of the City present at the meeting and voting, setting out the grounds upon which this Contract Franchise is to be revoked and terminated; provided, to afford Grantee due process, Grantee shall first be provided reasonable notice of the date, time and location of the governing body's consideration, and shall have the right to address the governing body regarding such matter.
- c. Upon any determination by the City Council to revoke and terminate this Contract Franchise, Grantee shall have thirty (30) days to appeal such decision to the District Court of Johnson County, Kansas. This Contract Franchise shall be deemed revoked and terminated at the end of this thirty (30) day period, unless Grantee has instituted such an appeal. If Grantee does timely institute such an appeal, such revocation and termination shall remain pending and subject to the court's final judgment. Provided, however, that the failure of Grantee to comply with any of the provisions of this Contract Franchise or the doing or causing to be done by Grantee of anything prohibited by or in violation of the terms of this Contract Franchise shall not be a ground for the revocation or termination thereof when such act or omission on the part of Grantee is due to any cause or delay beyond the control of Grantee or to bona fide legal proceedings.

Nothing herein shall prevent the City from invoking any other remedy that may otherwise exist at law.

#### **SECTION 8. RESERVATION OF RIGHTS.**

- a. The City specifically reserves its right and authority as a customer of Grantee and as a public entity with responsibilities towards its citizens, to participate to the full extent allowed by law in proceedings concerning Grantee's rates and services to ensure the rendering of efficient Wireless Services and any other services at reasonable rates, and the maintenance of Grantee's property in good repair.
- b. In granting its consent hereunder, the City does not in any manner waive its regulatory or other rights and powers under and by virtue of the laws of the State of Kansas as the same may be amended, or under the Constitution of the State of Kansas (including but not limited to the City's "home rule" authority), nor any of its rights and powers under or by virtue of present or future ordinances of the City.
- c. In entering into this Contract Franchise, neither the City's nor Grantee's present or future legal rights, positions, claims, assertions or arguments before any administrative agency or court of law are in any way prejudiced or waived. By entering into the Contract Franchise, neither the City nor Grantee waive any rights, but instead expressly reserve any and all rights, remedies, and arguments the City or Grantee may have at law or equity, without limitation, to argue, assert, and/or take any position as to the legality or appropriateness of any present or future laws, non-franchise ordinances and/or rulings.

**SECTION 9. FAILURE TO ENFORCE.**

The failure of either the City or the Grantee to insist in any one or more instances upon the strict performance of any one or more of the terms or provisions of this Contract Franchise shall not be construed as a waiver or relinquishment for the future of any such term or provision, and the same shall continue in full force and effect. No waiver or relinquishment shall be deemed to have been made by the City or the Grantee unless said waiver or relinquishment is in writing and signed by both the City and the Grantee.

**SECTION 10. TERM AND TERMINATION DATE.**

- a. This Contract Franchise shall be effective for a term beginning on the Effective Date (defined below) of this Contract Franchise and ending on that date which is ten (10) years thereafter. This Contract Franchise shall automatically renew at the end of the initial ten (10) year term for successive periods of one (1) year unless Grantee shall, not later than ninety (90) days prior to the end of the then current term, notify City of Grantee's intent to not renew.
- b. Upon written request of either the City or Grantee, this Contract Franchise shall be renegotiated at any time in accordance with the requirements of state law upon any of the following events: changes in federal, state, or local laws, regulations, or orders that materially affect any rights or obligations of either the City or Grantee, including but not limited to the scope of the Contract Franchise granted to Grantee or the compensation to be received by the City hereunder. In the event a renegotiation is initiated pursuant to this section, then compensation paid to the City shall also be updated so as to reflect the current market rate paid for wireless infrastructure services within the City.
- c. Amendments under this Section, if any, shall be made by Contract Franchise ordinance as prescribed by statute. This Contract Franchise shall remain in effect according to its terms, pending completion of any review or renegotiation provided by this section.
- d. In the event the parties are actively negotiating in good faith a new Contract Franchise ordinance or an amendment to this Contract Franchise upon the termination date of this Contract Franchise, the parties by written mutual agreement may extend the termination date of this Contract Franchise to allow for further negotiations. Such extension period shall be deemed a continuation of this Contract Franchise and not as a new Contract Franchise ordinance or amendment.

**SECTION 11. POINT OF CONTACT AND NOTICES.**

Grantee shall at all times maintain with the City a local point of contact who shall be available at all times to act on behalf of Grantee in the event of an emergency. Grantee shall provide the City with said local contact's name, address, telephone number, fax number and e-mail address. Emergency notice by Grantee to the City may be made by telephone to the City Clerk or the Public Works Director. All other notices between the parties shall be in writing and shall be made by personal delivery, depositing such notice in the U.S. Mail, Certified Mail, return receipt requested, or by facsimile. Any notice served by U.S. Mail or Certified Mail, return receipt requested, shall be deemed delivered five (5) calendar days after the date of such deposit in the U.S. Mail unless otherwise provided. Any notice given by facsimile is deemed received by the next business day. "Business day" for purposes of this section shall mean Monday through Friday, City and/or Grantee observed holidays excepted.

To the City:  
City of Prairie Village  
7700 Mission Road  
Prairie Village, Kansas 66208  
Attn: Director of Public Works

To Grantee:  
Mobilitie, LLC  
660 Newport Center Drive, Suite 200  
Newport Beach, CA 92660  
Attn: Asset Management  
877-999-7070  
[assetmgmt@mobilitie.com](mailto:assetmgmt@mobilitie.com)

With copy to:  
Mobilitie, LLC  
660 Newport Center Drive, Suite 200  
Newport Beach, CA 92660  
Attn: Legal Department  
877-999-7070  
[legal@mobilitie.com](mailto:legal@mobilitie.com)

or to replacement addresses that may be later designated in writing.

## **SECTION 12. TRANSFER AND ASSIGNMENT.**

This Contract Franchise is granted solely to the Grantee and shall not be transferred or assigned without the prior written approval of the City; provided that such transfer or assignment may occur without written consent of the City to a wholly owned parent or subsidiary, or between wholly owned subsidiaries, or to an entity with which Grantee is under common ownership or control, upon written notice to the City. In the event of any transfer or assignment of either this Contract Franchise or Grantee's business or assets, Grantee shall: timely notify the City of the successor entity; provide a point of contact for the successor entity; and advise the City of the effective date of the transfer or assignment. Additionally, Grantee's obligations under this Contract Franchise with regard to indemnity, bonding and insurance shall continue until the transferee or assignee has taken the appropriate measures necessary to assume and replace the same, the intent being that there shall be no lapse in any coverage as a result of the transfer or assignment.

## **SECTION 13. CONFIDENTIALITY.**

Information provided to the City under this Contract Franchise shall be governed by confidentiality procedures in compliance with K.S.A. 45-215, 60-432, and 66-1220a, *et seq.*, and amendments thereto. Grantee agrees to indemnify and hold the City harmless from any and all penalties or costs, including attorneys' fees, arising from the actions of Grantee, or of the City, at the request of Grantee, in seeking to safeguard the confidentiality of information provided by Grantee to the City under this Contract Franchise.

## **SECTION 14. ACCEPTANCE OF TERMS.**

Grantee shall have sixty (60) days after the final passage and approval of this Contract Franchise to file with the City Clerk its acceptance in writing of the provisions, terms and conditions of this Contract Franchise, which acceptance shall be duly acknowledged before some officer authorized by law to administer oaths; and when so accepted, this Contract Franchise and acceptance shall constitute a contract between the City and Grantee subject to the provisions of the laws of the state of Kansas, and such contract shall be deemed effective on the later of the date Grantee files acceptance with the City or publication of this Contract Franchise in accordance with applicable Laws (the "Effective Date").

**SECTION 15. PAYMENT OF PUBLICATION COSTS.**

In accordance with Kansas statute, Grantee shall be responsible for payment of all costs and expense of publishing this Contract Franchise, and any amendments thereof.

**SECTION 16. SEVERABILITY AND SURVIVAL.**

If any clause, sentence, or section of this Contract Franchise, or any portion thereof, shall be held to be invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remainder, as a whole or any part thereof, other than the part declared invalid; provided, however, the City or Grantee may elect to declare the entire Contract Franchise invalidated if the portion declared invalid is, in the judgment of the City or Grantee, an essential part of the Contract Franchise. The provisions of this Contract Franchise shall survive the expiration or termination of this Contract Franchise.

**SECTION 17. FORCE MAJEURE.**

Each and every provision hereof shall be reasonably subject to acts of God, fires, strikes, riots, floods, war and other disasters beyond Grantee's or the City's control.

**PASSED** by the City Council of the City of Prairie Village, Kansas, on March 5, 2018.

APPROVED:

\_\_\_\_\_  
Laura Wassmer, Mayor

ATTEST:

\_\_\_\_\_  
Joyce Hagen Mundy, City Clerk

APPROVED AS TO LEGAL FORM:

\_\_\_\_\_  
Catherine P. Logan, City Attorney

**MASTER LICENSE AGREEMENT  
FOR ATTACHMENTS TO CITY FACILITIES  
(WIRELESS/SMALL CELL FACILITIES)  
MOBILITIE, LLC**

THIS MASTER LICENSE AGREEMENT FOR ATTACHMENTS TO CITY FACILITIES (WIRELESS/SMALL CELL FACILITIES) ("Agreement") is dated as of [REDACTED], 2018 (the "Effective Date"), and is made by and between the **City of Prairie Village, Kansas** (the "City"), and **Mobilitie, LLC**, a Nevada limited liability company authorized to do business in Kansas ("Licensee") (the City and Licensee are collectively referred to herein as the "Parties").

**RECITALS**

WHEREAS, Licensee obtained a contract franchise by the City's adoption and Licensee's acceptance of City Ordinance No. 2376, which permits Licensee to install, maintain and operate certain facilities within the City's right-of-way and to pay franchise fees for such privilege; and

WHEREAS, the City owns, operates and maintains certain Facilities located in the City; and

WHEREAS, Licensee proposes to install and maintain Licensee's Attachments on or within City Facilities so as to allow third-party wireless providers utilizing Licensee's Attachments to provide Wireless Services; and

WHEREAS, the City is willing to grant Licensee a non-exclusive, revocable license under which the Parties will enter into a license supplement ("Supplement"), in substantially the form attached hereto as Exhibit A, authorizing the placement or installation of Licensee's Attachments on or within specified City Facilities, provided that the City may in its sole discretion, for reasons relating to insufficient capacity, safety, reliability, generally applicable engineering purposes or other governmental needs, uses, obligations and reasons, refuse to enter into a Supplement for any particular City Facility so long as Licensee is treated in a competitively neutral and non-discriminatory manner as compared with other similarly situated third-parties; and

WHEREAS, the City's lease of Facilities is a commercial transaction involving the rental of City property and the City's intention to act in a non-discriminatory manner notwithstanding, such commitment shall only apply to this Agreement when viewed as a whole and nothing herein shall be construed as a requirement that any other license agreements be identical. Nor shall it be construed as an obligation to proactively ensure competitive neutrality or prevent the City from obtaining in-kind consideration in instances where it is mutually agreeable to the parties.

NOW, THEREFORE, in consideration of the above recitals and the following mutual covenants, agreements, and obligations of the Parties, which constitute good and valuable consideration, the sufficiency of which is acknowledged, and with the intention to be legally bound hereby, the City and Licensee agree as follows:

**1. DEFINITIONS.** For the purposes of this Agreement, the following terms, phrases, words, and their derivations, shall have the meaning given herein, unless more specifically defined within a specific Article or Paragraph of this Agreement. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. The words "shall" and "will" are mandatory and "may" is permissive. Words not defined shall be given their common and ordinary meaning.



**1.1 Affiliate:** when used in relation to Licensee, means another entity that owns or controls, is owned or controlled by, or is under common ownership or control with Licensee.

**1.2 Applicable Standards:** means all applicable engineering and safety standards governing the installation, maintenance and operation of equipment and the performance of all work in or around City Facilities and includes the most current versions of National Electric Safety Code ("NESC"), the National Electrical Code ("NEC"), and the regulations of the Occupational Safety and Health Administration ("OSHA"), each of which is incorporated by reference in this Agreement, and/or other reasonable safety and engineering requirements of the City or other federal, State or local authority with jurisdiction over City Facilities.

**1.3 Application:** means the application for a Supplement pursuant to the applicable requirements of this Agreement and any applicable city code or regulation, in such form as the City may reasonably require.

**1.4 Attaching Entity:** means any public or private entity, including Licensee, who, pursuant to a valid authorization with the City, places an Attachment on or within City Facilities to provide Communications Service.

**1.5 Attachment(s):** means Licensee's Communications Equipment that is placed directly on or within City Facilities. For billing purposes an Attachment is counted for Licensee's antenna(s) on or within each City Facility together with the associated cables and small-cell equipment.

**1.6 Capacity:** means the ability of a City Facility to accommodate an additional Attachment based on Applicable Standards, including space and loading considerations.

**1.7 City Facilities or Facilities:** means City-owned Street Lights, poles (excluding pole top extenders/brackets, which shall constitute Attachments), rooftops, or Conduits, and associated property, that are capable of accommodating Communications Equipment in accordance with Applicable Standards. Provided, however, no Attachments will be allowed on any traffic control signal (as defined in the Manual on Uniform Traffic Devices).

**1.8 Communications Equipment:** means Licensee's "antennas", "accessory equipment", "wireless facilities", "small cell facilities", "transmission equipment," "distributed antenna system," and any "wireless support structure" (all as such terms are defined or described in K.S.A. 66-2019, as amended), as well as associated cables, wires, lines, and fiber, comprising Licensee's system located within the public rights-of-way, and to the extent permitted under any applicable laws, statutes and/or City regulations (including, but not limited to those relating to the construction and use of the public right-of-way or other public or private property) or Licensee's contract franchise, that are designed and constructed for the purpose of producing, receiving, amplifying, or distributing Wireless Services.

**1.9 Conduit System:** means the City's conduits, Innerduct, manholes, handholes, vaults, pull-boxes and trenches.

**1.10 Innerduct:** means flexible conduit installed inside a larger rigid conduit for the placement of wire or cable.

**1.11 Licensee:** means Mobilitie, LLC, a Nevada limited liability company authorized to do business in Kansas, its authorized agents, successors, designees and assigns.

**1.12 Make-Ready Work:** means all work, as reasonably determined by the City, required to accommodate Licensee's Attachment and/or to comply with all Applicable Standards. Such work includes, but is not limited to, rearrangement of City Facilities or existing attachments, inspections, engineering work, permitting work, design, planning, construction, materials, cost of removal (less any salvage value), cost of expanding existing Conduit, cost of a (City-approved) substitution of light poles, tree trimming (other than tree trimming performed for normal maintenance purposes), Facility construction, or Conduit System clearing, but does not include routine maintenance.

**1.13 Post-Construction Inspection:** means the inspection by the City to determine and verify that the Attachments have been made in accordance with Applicable Standards and the Supplement.

**1.14 Pre-Construction Survey:** means all work or operations required by Applicable Standards and/or the City to determine the potential Make-Ready Work necessary to accommodate Licensee's Communications Facilities on or within a City Facility. Such work includes, but is not limited to, field inspection and administrative processing.

**1.15 Reserved Capacity:** means capacity or space on or within a Facility that the City has identified and reserved for City or other governmental requirements, including, but not limited to, Johnson County, other municipalities and any local school districts.

**1.16 Site:** means each place where City Facilities for which the parties enter into a Supplement pursuant to this Agreement for purposes of installing Licensee's Attachment.

**1.17 Street Light:** means each City-owned street light fixture and attached photocell, together with the lateral arm on which the street light fixture is mounted.

**1.18 Supplement:** means the written agreement or sublicense substantially in the form attached hereto as Exhibit A, which shall be executed by the Parties and shall document Licensee's authorization to make and maintain specific Attachments to specific City Facilities pursuant to the requirements of this Agreement and any applicable City code or regulation.

**1.19 Tag:** means to place distinct markers on wires and cables, coded by color or other means specified by the City and/or applicable federal, State or local regulations, that will readily identify the type of Attachment and its owner.

**1.20 Wireless Services:** means "personal wireless services" and "personal wireless service facilities" as defined in 47 U.S.C. § 332(c)(7)(C), including commercial mobile services as defined in 47 U.S.C. § 332(d), provided to personal mobile communication devices through wireless facilities or any fixed or mobile wireless services provided using wireless facilities, as described in K.S.A. 66-2019(b)(19).

## **2. SCOPE OF AGREEMENT.**

**2.1 Grant of License.** Subject to the provisions of this Agreement, the City hereby grants Licensee a revocable, nonexclusive license authorizing Licensee to install and maintain permitted Attachments on or within specified City Facilities, as further detailed and authorized through individual Supplements to this Agreement. Placement of Licensee's Attachments on or within any specific City Facility shall be at the sole discretion of the City so long as Licensee is treated in a competitively neutral and non-discriminatory manner as compared with other similarly situated third parties.

**2.2 Conflicting Provisions.** In the event of any conflict between this Agreement and any Supplement hereto, the terms and conditions of this Agreement, as amended from time to time, shall control.

**2.3 Supplement Issuance and Attachment Conditions.** The City will enter into a Supplement with Licensee for an Attachment on or within a specific City Facility only when the City determines, in its sole judgment, exercised reasonably, that (i) it has sufficient Capacity to accommodate the requested Attachment(s), (ii) Licensee meets all requirements set forth in this Agreement, and (iii) such Attachments comply with all Applicable Standards. Notwithstanding, the City reserves the right to deny or modify Licensee access to any City Facilities, on a competitively-neutral and non-discriminatory basis, where City determines that Licensee's proposed attachment will (a) jeopardize the public health, safety or welfare, or (b) unreasonably limit or harm the capacity, functionality, reliability, governmental interests or aesthetics of City's Facilities, or (c) violate applicable zoning restrictions or other laws and regulations, or (d) exceed the capacity of the Facilities to include taking into consideration the reserved capacity of the Facilities, or (e) interfere with the City's intended use of the Facilities, and (f) interfere with any other reasonable governmental interest.

**2.4 In-Kind Compensation.** The Parties may by mutual agreement adjust the fees and charges specified in Article 3 to account for in-kind contributions from Licensee in the form of service to the City as is reasonably determined by the City to be valued as at least roughly comparable to the Attachment fees and charges.

**2.5 Reserved Capacity.** Access to space on City Facilities will be made available to Licensee with the understanding that City Facilities may be subject to Reserved Capacity for future governmental use. In such case the City may refuse to permit attachments on such Facilities or may within its discretion permit Attachments, subject to reclaiming its Reserved Capacity in the future. On giving Licensee at least one hundred and eighty (180) calendar days prior notice, the City may reclaim such Reserved Capacity if required for future governmental use. The City may within its reasonable discretion give Licensee the option to remove its Attachment(s) from the affected Facilities or to pay for the cost of any Make-Ready Work needed to expand capacity to accommodate the governmental needs while at the same time maintaining Licensee's Attachments on the affected Facilities. If Licensee is required to remove its Attachments, the City agrees to reasonably cooperate with Licensee to locate a replacement City Facility on which to transfer Licensee's Attachment.

**2.6 No Interest in Property.** No use, however lengthy, of any City Facilities, and no payment of any fees or charges required under this Agreement, shall create or vest in Licensee any easement or other ownership or property right of any nature in any portion of such Facilities. Neither this Agreement, nor any Supplement under this Agreement, shall constitute an assignment of any of the City's rights to City Facilities. Notwithstanding anything in this Agreement to the contrary, Licensee shall, at all times, be and remain a licensee only.

**2.7 Licensee's Right to Attach.** Nothing in this Agreement, other than a Supplement executed by the Parties, shall be construed as granting Licensee any right to attach Licensee's Attachment(s) to or within any specific City Facility or portion of Facilities.

**2.8 City's Rights over Facilities.** The Parties agree that this Agreement does not in any way limit the City's right to locate, operate, maintain or remove its Facilities in the manner that will best enable it to fulfill any governmental requirements.

**2.9 Expansion of Capacity.** The City may take steps as reasonably appropriate, in a competitively neutral manner, to expand Facilities to accommodate Licensee's request for Attachment.

Notwithstanding the foregoing, nothing in this Agreement shall be construed to require the City to install, retain, extend or maintain any Facility or portion of City Facilities for use when such Facilities are not needed for the City's or any other governmental service requirements. Likewise, the City may agree—but is not required—to allow Licensee to provide a substitute for the City's Facility that can accommodate Licensee's Attachment; provided, the Parties agree that City will have ownership of the substitute Facility. (For example, Licensee might provide a replacement light pole that is aesthetically comparable to the City's light pole but has more structural capacity so that it can support Licensee's Attachment.)

**2.10 Other Agreements.** Except as provided herein, nothing in this Agreement shall limit, restrict, or prohibit the City from fulfilling any agreement or arrangement regarding Facilities into which the City has previously entered, or may enter in the future, with others not party to this Agreement, provided that any such future attachments shall not interfere with Licensee's Attachments.

**2.11 No Use After Termination.** Nothing in this Agreement shall be construed to require the City to allow Licensee to use Facilities after the termination of this Agreement.

**2.12 Enclosures.** Nothing in this Agreement shall authorize Licensee to place above-ground pedestals, enclosures or cabinets at the base of any City Facilities upon which Licensee has made authorized Attachments, except as may be permitted under applicable City codes, ordinances, or similar regulations, and Licensee's contract franchise with the City.

### **3. FEES AND CHARGES.**

**3.1 Payment of Fees and Charges.** For authorized Attachments covered under this Agreement, Licensee shall pay to the City the fees and charges specified in the City's fee resolution or ordinances for all similarly-situated providers who have Communications Equipment on or within City Facilities. The current Annual Attachment Fee shall be memorialized in the individual Supplement. In the event of a modification to the City fee resolution or ordinance, the parties agree to enter into an amendment to the Supplements to document the revised Annual Attachment Fee. Licensee's payments shall comply with the terms and conditions specified herein. The above notwithstanding, the Parties may by mutual written agreement adjust the fees and charges specified to account for in-kind contributions from Licensee in the form of service to the City as is reasonably determined by the City to be valued as at least roughly comparable to the fees and charges. Fees and charges will consist of at least the following, provided that nothing herein shall be deemed to prohibit City from adopting and imposing such other reasonable fees and charges as may lawfully be imposed upon Licensee and other similarly-situated providers:

- (a) Annual Attachment Fee – for the annual rental of the City's Facilities. (City resolutions or ordinances may refer to the Annual Attachment Fee for City Conduit as the Annual Conduit Rental Fee.)
- (b) Make-Ready Work Costs – to reimburse the City for costs incurred by the City for any Make-Ready Work done to accommodate the Attachment on or within the City's Facilities.
- (c) Inspection Fees – to reimburse the City for costs incurred with inspections of Licensee's Attachments.

**3.2 Payment Period.** Unless otherwise expressly provided, Licensee shall pay any invoice it receives from the City pursuant to this Agreement within thirty (30) calendar days after the City issues the invoice.

**3.3 Payment of Annual Attachment Fees.**

- (a) The current Annual Attachment Fee shall be memorialized in each individual Supplement. In the event of a modification to the City's fee resolution or ordinance that changes the amount of the Annual Attachment Fee, the Parties agree to enter into an amendment of the Supplement(s) to document the revised Annual Attachment Fee.
- (b) Licensee shall pay all applicable Annual Attachment Fees without requirement for invoice or reminder from the City by January 1 of each year. The initial annual rental period shall commence upon the execution of the applicable Supplement and conclude on December 31 of the same year, and each subsequent annual rental period shall commence on the following January 1 and conclude on December 31 of the subsequent year. When remitting the Annual Attachment Fees, Licensee shall identify each applicable Supplement Number for which payment is being made. As to any Attachments installed during any calendar year, such fee may be prorated based on the number of days in the calendar year in which such Attachment(s) was installed; provided in such event, Licensee shall clearly identify the same and the proration amount when Licensee's payment is made.

**3.4 Refunds.** No fees and charges shall be refunded on account of any termination of a Supplement granted hereunder. Notwithstanding the forgoing, the City shall not continue to charge rent going forward for any Supplement terminated in the previous calendar year, and Licensee shall be entitled to a refund upon discovery of such a billing error.

**3.5 Inventory.** The City shall have the right to require a joint inventory of all Attachments no more frequently than once every three (3) years by the City and Licensee, unless both parties agree to a new inventory schedule. The cost of the inventory shall be shared equally between the City, Licensee and any other participating Attaching Entities, subject to the terms of any agreement with said Attaching Entities.

**3.6 Late Charge and Billing Dispute Resolution.** If the City does not receive payment for any fee, charges or other amount owed within thirty (30) calendar days after it becomes due, Licensee shall pay interest to the City, at the rate of ten percent (10%) per month, on the amount due; provided, however, under no circumstance shall interest under this Agreement exceed the maximum interest allowable under applicable Kansas law. Billing disputes will be resolved in accordance with Section 22.1.

**3.7 Payment for Work.** Licensee will be responsible for payment to the City for all of the actual costs of all work the City or the City's contractors perform pursuant to this Agreement to accommodate Licensee's Attachments. When requested by Licensee, City agrees to provide Licensee with reasonable documentation to determine actual and estimated costs.

**3.8 Advance Payment.** At the discretion of the City, Licensee may be required to pay in advance all reasonable costs, including but not limited to administrative, construction, inspections and Make-Ready Work Estimates, in connection with the initial installation or rearrangement of Licensee's Attachment pursuant to the procedures set forth in Articles 6 and 7 below. If the City does not exercise this option, the Make-Ready Work Estimate will be paid as set forth in Paragraph 7.2.

**3.9 True Up.** Wherever the City, at its discretion, requires advance payment of estimated expenses prior to undertaking an activity on behalf of Licensee and the actual cost of activity exceeds the

advance payment of estimated expenses, Licensee shall pay the City for the difference in cost. To the extent that the actual cost of the activity is less than the estimated cost, the City shall refund to Licensee the difference in cost.

**3.10 Determination of Fees and Charges.** Wherever this Agreement requires Licensee to pay for work done or contracted by the City, the charge for such work shall include all reasonable material, labor, engineering and administrative costs and applicable overhead costs. The City shall bill its services based upon actual costs, and such costs will be determined in accordance with the City's cost accounting systems used for recording capital and expense activities. All such invoices shall include an itemization of dates of work, location of work, labor costs per hour, persons employed and materials used and cost of materials. If Licensee was required to perform work and fails to perform such work necessitating its completion by the City, the City may either charge an additional ten percent (10%) to its costs. When requested by Licensee, the City agrees to provide Licensee with reasonable documentation to determine actual and estimated costs.

**3.11 Work Performed by City.** Wherever this Agreement requires the City to perform any work, Licensee acknowledges and agrees that the City, at its sole discretion, may utilize its employees or contractors, or any combination of the two to perform such work, or to permit Licensee to perform the work. When requested by Licensee, the City agrees to provide Licensee with reasonable documentation to determine actual and estimated costs.

**3.12 Default for Nonpayment.** Nonpayment of any amount due under this Agreement beyond ninety (90) days following receipt of written notice of nonpayment shall constitute a material default of this Agreement.

**3.13 Incremental Property Taxes.** If the personal property, real property or ad valorem taxes payable by the City with respect to City Facilities or lands at a Site(s) are located or the basis on which such taxes are calculated, increase following installation of the Attachment, Licensee shall reimburse the City for the portion of such increase or change attributable to any construction, installation or improvements provided pursuant to this Agreement. Licensee shall be solely responsible for, and shall pay in a timely manner, any personal property, real property or ad valorem taxes or other taxes or fees levied upon or with respect to the Attachment and other Licensee property located on the Site(s) that are billed directly to Licensee by the taxing authorities.

#### **4. SPECIFICATIONS.**

**4.1 Installation/Maintenance of Attachment.** Upon execution of a Supplement pursuant to this Agreement, Licensee's Attachment(s) shall be installed and maintained in accordance with the City's applicable requirements and specifications and all applicable federal, State and local laws, rules and regulations. All of Licensee's Attachments must comply with all Applicable Standards. Licensee shall be responsible for the installation and maintenance of its Attachments. Licensee shall, at its own expense, make and maintain its Attachments in safe condition and good repair, in accordance with all Applicable Standards; and Licensee shall replace, remove, reinforce or repair any defective Attachments (unless otherwise agreed to by the City in writing).

#### **4.2 Authorized Attachment(s) and Installation Methods.**

- (a) The City must approve the Attachment(s) that Licensee is authorized to place on City Facilities. Except as authorized by the City in writing, only the Attachments depicted and described in the approved Application may be attached to any City Facility; provided, however, that different internal components may be

substituted as part of an upgrade of the Communications Equipment (assuming the external appearance remains the same); and further provided, that different Attachments of similar or smaller size may be substituted upon the filing of a description and design of the new devices at least fifteen (15) days in advance of such change and upon approval by the City. Provided, any said upgrade or substitution must maintain the structural integrity of the City's Facility, and Licensee will provide all necessary supporting documentation.

- (b) Licensee shall make all reasonable effort to ensure the design, color, and aesthetics of the Attachment(s) blend with and do not contrast with the City Facility to which it is to be attached.
- (c) In no event may Licensee or any of its subcontractors install or construct new City Facilities or modify or repair existing City Facilities except as may be expressly authorized by this Agreement or by a Supplement, or as is otherwise authorized in writing by the City.
- (d) Nothing in this Agreement shall be construed as a guaranty of the condition of any City Facility in connection with Licensee's Attachments or impose any obligation upon the City to repair or replace an existing City Facility in order to accommodate a request by Licensee to install an Attachment.

**4.3 Tagging.** Licensee shall Tag all of its Communications Equipment in accordance with any applicable federal, State and City regulations upon installation of such Attachment(s).

**4.4 Interference.** Licensee shall not allow its Attachment(s) to impair the ability of the City or any third party to use City Facilities, nor shall Licensee allow its Attachment(s) to interfere with the operation of any City or other governmental Facilities.

- (a) Licensee shall comply with all Federal Communications Commission ("FCC") and other federal, state and local laws, rules, orders and regulations and all directives of the relevant regulatory agencies that are applicable in connection with the installation and operation of Licensee's Attachments.
- (b) In the event that the installation, operation or maintenance of the Attachment(s), whether or not such operation is in compliance with the terms of Licensee's applicable FCC licenses, creates any interference with the operation of the City's or any other governmental entity's communication or other equipment, Licensee shall immediately, at Licensee's sole cost and expense, take such reasonable steps as may be necessary or recommended by the City or regulatory agencies to eliminate such interference. In the event that the installation, operation or maintenance of the Attachment(s) creates any interference with the operation of the pre-existing equipment of third parties using the Site pursuant to an agreement with the City or any other pre-existing uses of electronic equipment, Licensee shall immediately, at Licensee's sole cost and expense, take such reasonable steps as may be necessary to eliminate such interference in accordance with FCC or other applicable regulatory requirements. If Licensee is unable or refuses to eliminate such interference, the City may require Licensee to power down its equipment to eliminate the interference. In the event Licensee is thereafter unable to take necessary action to eliminate such interference within a period of ninety (90) days or such period as the Parties otherwise agree to in

writing, the City may terminate Licensee's use of or right to use the Facility upon which such interfering Attachment is located, and Licensee shall promptly remove the Attachment from the Facility. City agrees to include a provision substantially similar to this Section 4.4(b) in any future agreements with third parties seeking to install wireless equipment on City Facilities.

- (c) Notwithstanding the foregoing, if equipment installed on a Facility by any third party using the Facility pursuant to an agreement with the City subsequent to the installation of the Licensee's Attachment on the Site causes interference, either electronically or physically, with Licensee's previously installed Attachments, Licensee may upon thirty (30) days written notice to the City terminate the affected Supplement. City shall have no responsibility for interference issues among users.

**4.5 Protective Equipment.** Licensee, and its employees and contractors, shall utilize and install adequate protective equipment to ensure the safety of people and facilities.

**4.6 Violation of Specifications.** If Licensee's Attachment(s), or any part thereof, are installed, used or maintained in violation of this Agreement, and Licensee has not corrected the violation(s) within thirty (30) calendar days from receipt of written notice of the violation(s) from the City, the City at its option, may unilaterally correct such conditions. The City will attempt to notify Licensee in writing prior to performing such work whenever practicable. When the City reasonably believes, however, that such violation(s) pose an immediate threat to the safety of any person, interfere with the performance of the City's service obligations or pose an immediate threat to the physical integrity of City Facilities, the City may perform such work and/or take such action as it deems necessary without first giving written notice to Licensee. As soon as practicable thereafter, the City will advise Licensee of the work performed or the action taken. Licensee shall be responsible for all actual and reasonable costs incurred by the City in taking action pursuant to this Paragraph, and shall indemnify the City from liability for all such work, except to the extent of the City's gross negligence or willful misconduct in connection with such liability.

**4.7 Restoration of City Service.** The City's service restoration requirements shall take precedence over any and all work operations of Licensee on City Facilities.

**4.8 Effect of Failure to Exercise Access Rights.** If Licensee does not exercise any access right granted pursuant to this Agreement by the applicable Supplement(s) within one hundred twenty (120) calendar days of the effective date of the Supplement(s), the City may use the space scheduled for Licensee's Attachment(s) for its own needs or other Attaching Entities. In such instances, the City shall endeavor to make other space available to Licensee, upon written Application per Article 6, as soon as reasonably possible and subject to all requirements of this Agreement, including the Make-Ready Work provisions.

## **5. PRIVATE AND REGULATORY COMPLIANCE.**

**5.1 Necessary Authorizations.** Licensee shall be responsible for obtaining from the appropriate public and/or private authority or other appropriate persons any required authorization to construct, operate and/or maintain its Communications Equipment on public and/or private property before it occupies any portion of City Facilities. The City retains the right to require evidence that appropriate authorization has been obtained before any Supplement is finalized. Licensee's obligations under this Article 5 include, but are not limited to, its obligation to obtain all necessary approvals to occupy public/private rights-of-way, including, but not limited to, a franchise, any applicable FCC or



KCC authorization, any ROW Permit, or any applicable zoning or land use approval, and to pay all costs associated therewith. Licensee shall defend, indemnify and reimburse the City for all loss and expense, including reasonable attorneys' fees, that the City may incur as a result of claims by owners of private property, or other persons, that Licensee does not have sufficient rights or authority to attach Licensee's Communications Equipment on or within City Facilities or to provide particular Wireless Services.

**5.2 Lawful Purpose and Use.** Licensee's Attachments must at all times serve a lawful purpose, and the use of such Facilities must comply with all applicable federal, State and local laws, rules and regulations, including but not limited to the City's Use and Occupancy of the Public Right-of-Way Ordinance and amendments thereto, Codified at Chapter 13, Article 5 of the City Code, and the City's zoning and land use ordinances. This Agreement is not a waiver of any City regulatory power or Licensee's obligation to meet any applicable City Code, law, rule or regulation. This Agreement does not limit any rights Licensee may have in accordance with applicable law to install its own poles in the right of way or to attach Licensee's equipment to third-party poles located in the right of way. This Agreement shall in no way limit or waive either party's present or future rights under applicable law. If, after the date of this Agreement, the rights or obligations of either Party are materially preempted or superseded by changes in applicable law, the parties agree to amend the Agreement to reflect such change.

**5.3 No Forfeiture of City's Rights.** No Supplement entered into pursuant to this Agreement shall extend to any Facilities or portions thereof on/in which the attachment of Licensee's Attachment(s) would result in a forfeiture of the City's rights. Any Supplement, which on its face would cover Attachments that would result in forfeiture of the City's rights, is invalid. Further, if any of Licensee's existing Attachments, whether installed pursuant to a valid Supplement or not, would cause such forfeiture, Licensee shall, at its expense, promptly remove its Attachments upon receipt of written notice from the City. If the Attachments in question are not removed within thirty (30) days receipt of the City's written notice, the City may at its option perform such removal at Licensee's expense. Notwithstanding the forgoing, Licensee shall have the right to contest any such forfeiture before any of its rights are terminated under the Agreement provided that Licensee shall indemnify the City for any actual damages that may result during Licensee's challenge.

**5.4 Effect of Consent to Construction/Maintenance.** Consent by the City to the construction or maintenance of any Attachments by Licensee shall not be deemed consent, authorization or an acknowledgment that Licensee has the authority to construct or maintain any other such Attachments. It is Licensee's responsibility to obtain all necessary approvals for each Attachment from all appropriate parties or agencies.

## **6. APPLICATION PROCEDURES.**

### **6.1 Supplement Required.**

- (a) Licensee shall not install any Attachments on or within any City Facilities without first completing an Application pursuant to the applicable City requirements and entering into a Supplement for such Attachment(s) with the City pursuant to this Agreement. Attachments to or rights to occupy or utilize City property not covered by this Agreement, such as the lease and use of City-owned fiber optic capacity or any other City property (including, but not limited to, City offices, parks, swimming pools, community centers, or the like, as these properties are generally not available for third party use) must be separately negotiated.

- (b) Unless otherwise agreeable to the parties, Licensee shall submit an Application for every proposed above-ground Site of Attachment that shall be accompanied by: (i) photos of the subject Facility and surrounding location; (ii) equipment specifications; (iii) a site sketch that depicts the proposed installation specifications such as attachment height, and attachment methods on the subject City Facility(ies); (iv) structural calculations; (v) traffic control plan for any work that includes temporary lane reduction or closure; and (vi) additional information which may be required by City as necessary.

**6.2 Professional Certification.** Unless otherwise waived in writing by the City, as part of the Application process and at Licensee's sole expense, a qualified and experienced professional engineer, or an employee or contractor of Licensee who has been approved by the City, must participate in the Pre-Construction Survey, conduct the Post-Construction Inspection and certify that Licensee's Attachments can be and were installed on or within the identified Facilities in compliance with the standards in Paragraph 4.1 and in accordance with the Supplement. The professional engineer's qualifications must include experience performing such work, or substantially similar work.

**6.3 City Review of Application.** Upon receipt of a properly executed Application, which shall include the Pre-Construction Survey, certified per Paragraph 6.2 above, and detailed plans for the proposed Attachments in a form acceptable to City staff, the City will review the Application and discuss any issues with Licensee, including engineering or Make-Ready Work requirements associated with the Application. The City acceptance of the submitted design documents does not relieve Licensee of full responsibility for any errors and/or omissions in the engineering analysis. Unless otherwise agreed the Application process shall be consistent with the following timeline.

- (a) The City shall review and respond to properly executed and complete Applications within thirty (30) days of receipt; provided, the Parties agree and acknowledge that the grant or denial of Licensee's request may take longer than thirty (30) days if the Parties are communicating and mutually proceeding diligently with the Application in good faith. The City's response will either provide a written explanation as to why the Application is being denied, either in whole or in part, or provide an approval and estimate of the costs of all necessary Make-Ready Work.
- (b) Make-Ready work and access to Conduits shall be provided on a mutually agreeable, reasonable, and timely basis.
- (c) City may toll the time period for completion of Make-Ready Work by written notice in order to respond to severe storms, natural disasters or other emergency situations.

**6.4 Supplement as Authorization to Attach.** The parties shall document the Make-Ready Work required in the applicable Supplement. Upon completion of any necessary Make-Ready Work and receipt of payment for such work, Licensee shall be authorized to make its Attachment(s).

## **7. MAKE-READY WORK/INSTALLATION.**

**7.1 Make-Ready Survey.** When the City receives an attachment or placement request from Licensee, a make-ready survey (the "Make-Ready Survey") may be necessary, at Licensee's cost, to determine the adequacy or the capacity of the City Facilities to accommodate Licensee's Communications Equipment without jeopardizing the safety of the City Facilities or placing the City in violation of

generally applicable zoning or other restrictions. Licensee shall be responsible for performing and paying all actual costs associated with the Make-Ready Survey. The City may perform a field inspection and structural analysis as part of the Make-Ready Survey. The City shall provide reasonable advance notice of such a field inspection and a representative of Licensee has the right to be present for the inspection.

## 7.2 Make-Ready Work.

- (a) Except where the City denies the application, whenever any City Facility to which Licensee seeks attachment or occupancy requires modification or replacement to accommodate both Licensee's Attachment and the existing attachments or equipment of the City and other Attaching Entities, the City, at Licensee's cost, will provide Licensee with a detailed, good faith estimate of Make-Ready Work (the "Make-Ready Estimate") the City believes to be necessary to prepare the City Facilities for Licensee's Attachment. All actual costs for Make-Ready Work will be performed at the sole cost and expense of Licensee. The City will use its best efforts to provide Licensee with the Make-Ready Estimate within thirty (30) days of Licensee's application. The Make-Ready Estimate shall include itemized estimates of the cost of each component of the Make-Ready Work. (See Paragraph 1.12 for defined components of Make-Ready Work.) Any reference to costs or expenses borne by Licensee within Paragraphs 7.1 and 7.2 shall include all third-party out of pocket expenses incurred by the City and may also include administrative time incurred by the City or expenses that third-party Attaching Entities are obligated to bear under pre-existing agreements.
- (b) After receiving the Make-Ready Estimate, if Licensee still desires to make the Attachment, Licensee may within ninety (90) days of receiving the Make-Ready Estimate elect by written notice to the City any of the following alternatives:
  - (i) Offer the City the option to perform such Make-Ready Work as called for in the Make-Ready Estimate (the "Option"), and if the City, in its sole and absolute discretion, agrees to perform such Make-Ready Work pursuant to the Option, Licensee will pay to the City fifty percent (50%) of the fees for Make-Ready Work specified by the Make-Ready Estimate (the "Down Payment"). Licensee shall pay an additional twenty-five percent (25%) of the Make-Ready Estimate when the City has completed one-half of the Make-Ready Work (the "Progress Payment"). Licensee shall pay the remaining twenty-five percent (25%) of the Make-Ready Estimate upon the City's completion of the Make-Ready Work. Notwithstanding this Subparagraph, the City, at its option, may require advanced payment of the entire Make-Ready Estimate per Paragraph 3.8.
  - (ii) Licensee or Licensee's contractors may perform all the Make-Ready Work. The contractors shall be approved by the City to work on or in City Facilities. Approval shall be based upon reasonable and customary criteria employed by the City in the selection of its own contract labor.
  - (iii) Licensee may retain its own contractors to perform part of the Make-Ready Work and utilize the City to perform part of the Make-Ready Work, but only where the City has, in its sole and absolute discretion, agreed to such Option described in Subparagraph 7.2(b)(i). The parties

shall reasonably agree what portion of the Make-Ready Work each party will perform through this joint-build option. In the event Licensee retains contractors to perform part of the Make-Ready Work and utilizes the City to perform part of the Make-Ready Work, Licensee shall adjust the payments described in Subparagraph 7.2(b)(i) to include only the costs of the itemized components of the Make-Ready Estimate to be performed by the City.

- (c) If the City, in its sole and absolute discretion, exercises its Option to perform any Make-Ready Work as described in Subparagraph 7.2.2 (i), the City shall use its best efforts to make sure that necessary Make-Ready Work, including the work necessary to rearrange the Attachments and equipment of other Attaching Entities, is completed within sixty (60) days from Licensee's remittal of the Down Payment. If Make-Ready Work is not completed by the City within the sixty (60) day period, any fees payable by Licensee for Make-Ready Work shall be waived and any Down Payment or Progress Payment in connection with such Make-Ready Work shall be refunded promptly to Licensee, and Licensee may retain its own contractors perform the Make-Ready Work.
- (d) If Licensee submits an application that affects existing Attaching Entities, the City will use commercially reasonable efforts to notify the existing Attaching Entities and coordinate the rearrangements of their Attachments. To the extent third-party equipment is affected by Licensee's application, the City will follow the procedure as described in Paragraphs 7.2.1, 7.2.2 and 7.2.3, but only to the extent such existing Attaching Entities do not elect to perform the rearrangement or are not already obligated to rearrange Attachments and bear the expense of such rearrangement and coordination under a pre-existing separate agreement.

**7.3 Scheduling of Make-Ready Work.** In performing all Make-Ready Work to accommodate Licensee's Attachment, the City will endeavor to include such work in its normal work schedule. In the event Licensee requests that the Make-Ready Work be performed on a priority basis or outside of the City's normal work hours, Licensee agrees to pay any resulting increased costs. Nothing herein shall be construed to require performance of Licensee's work before other scheduled work or City service restoration.

**7.4 Licensee's Installation/Removal/Maintenance Work.**

- (a) All of Licensee's installation, removal and maintenance work shall be performed at Licensee's sole cost and expense, in a good and workmanlike manner, and must not adversely affect the structural integrity of City Facilities or other property or equipment, or other Attaching Entity's facilities or equipment attached thereto. All such work is subject to the insurance requirements of Article 18 of this Agreement.
- (b) All of Licensee's installation, removal and maintenance work performed on or within City Facilities or in the vicinity of other City property, either by its employees or contractors, shall be in compliance with all applicable regulations specified in Paragraph 4.1. Licensee shall assure that any person installing, maintaining, or removing its Attachment(s) is fully qualified and familiar with all Applicable Standards, the provisions of Article 17, and the Specifications required by Article 4.

## **8. TRANSFERS.**

**8.1 Required Transfers of Licensee's Attachments.** If the City reasonably determines that a transfer of Licensee's Attachments is necessary, Licensee agrees to allow such transfer or remove the affected Attachment pursuant to Paragraph 12.2, and the City agrees to reasonably cooperate with Licensee to locate a replacement City Facility on which to transfer Licensee's Attachment. In such instances, the City shall require Licensee to perform such transfer or removal at its own expense within ninety (90) calendar days after receipt of notice from the City. If Licensee fails to transfer its Equipment within said ninety (90) day period, the City shall have the right to transfer Licensee's Equipment using its personnel and/or contractors. The costs of such transfers shall be apportioned as specified under Article 9. The City shall not be liable for damage to Licensee's Equipment except to the extent provided in Paragraph 16.1. The written advance notification requirement of this Paragraph shall not apply to emergency situations, in which case the City shall provide such advance notice as is practical given the urgency of the particular emergency situation. The City shall then provide written notice of any such actions taken within five (5) business days of the occurrence.

## **9. MODIFICATIONS AND/OR REPLACEMENTS.**

**9.1 Licensee's Action Requiring Modification/Replacement.** In the event that any City Facility to which Licensee desires to make Attachment(s) is unable to support or accommodate the additional Equipment in accordance with all Applicable Standards, the City will notify Licensee. If the City is willing to allow a modification or replacement of the City Facility to accommodate Licensee's Attachment, the City will notify Licensee of the necessary Make-Ready Work, and associated costs, to provide an adequate Facility, including but not limited to replacement of the Facility and rearrangement or transfer of the City's equipment, as well as the equipment of other Attaching Entities. Licensee shall be responsible for separately entering into an agreement with other Attaching Entities concerning the allocation of costs for the relocation or rearrangement of such entities' existing Attachments. If Licensee elects to go forward with the necessary changes, Licensee shall pay to the City the actual cost of any Make-Ready Work, performed by the City, per Paragraphs 3.9 and 7.2; provided, the City, at its discretion, may require advance payment of the entire cost. Licensee shall also be responsible for obtaining, and furnishing to the City before the commencement of any Make-Ready Work, agreements between Licensee and the other Attaching Entities concerning the relocation or rearrangement of their Attachments and the costs involved.

**9.2 Treatment of Multiple Requests for Same Facility.** If the City receives Applications for the same Facility from two or more prospective licensees within sixty (60) calendar days of the initial request, and accommodation of both requests is not possible, the City will authorize the earliest complete Application received. If it is possible to accommodate more than one Attachment request through a modification the City will allocate among such licensees the applicable costs associated with such modification or replacement.

**9.3 Allocation of Costs.** The costs for any rearrangement or transfer of Licensee's Attachment or the replacement of a City Facility (including any related costs for tree cutting or trimming or Conduit clearing) shall be allocated to the City and/or Licensee and/or other Attaching Entity on the following basis:

- (a) If the City intends to modify or replace a City Facility solely for its own requirements, it shall be responsible for the costs related to the modification/replacement of the City Facility. Licensee shall be responsible for all costs associated with any necessary modification or relocation of Licensee's Attachment. Prior to making any such modification or replacement of the City

Facility the City shall provide Licensee written notification of its intent in order to allow Licensee a reasonable opportunity to elect to modify, relocate or add to its existing Attachment. Should Licensee so elect, it must seek the City's written permission per this Agreement. The notification requirement of this Paragraph shall not apply to routine maintenance or emergency situations. If Licensee elects to add to or modify its Attachment, Licensee shall bear the total incremental costs incurred by the City in making the space on or within the Facilities accessible to Licensee.

- (b) If the modification or replacement of a Facility is necessitated by the requirements of Licensee, Licensee shall be responsible for the costs related to the modification or replacement of the Facilities and for the costs associated with the transfer or rearrangement of any other Attaching Entity's Communications Equipment as well as those of the City. Licensee shall submit to the City evidence, in writing, that it has made arrangements to reimburse all affected Attaching Entities for the cost to transfer or rearrange such Entities' Equipment prior to the commencement of any Make-Ready Work. The City shall not be obligated in any way to enforce or administer Licensee's responsibility for the costs associated with the transfer or rearrangement of another Attaching Entity's Equipment pursuant to this Paragraph.
- (c) If the modification or the replacement of a Facility is the result of an additional Attachment or the modification of an existing Attachment sought by an Attaching Entity other than the City or Licensee, the Attaching Entity requesting the additional or modified Attachment shall bear the entire cost of the modification or Pole replacement, as well as the costs for rearranging or transferring Licensee's Attachment. Licensee shall cooperate with such third-party Attaching Entity to determine the costs of moving Licensee's Equipment.
- (d) If a Facility must be modified or replaced for other reasons unrelated to the use of the Facility by Attaching Entities (*e.g.*, storm, accident, deterioration), the City shall pay the costs of the modification or replacement of the Facility; provided that, the Licensee shall be responsible for any additional costs or expenses occasioned by or resulting from the use of a substitute pole or other City Facility previously installed by Licensee in order to accommodate its Communications Equipment or meet structural standards attendant thereto. In the alternative, Licensee may replace the City's Facility at Licensee's cost or the City may replace its Facility with the same type of pole, streetlight or Facility which existed prior to the provision of a substitute by Licensee. Under all such circumstances, Licensee shall be responsible for the costs of replacing, rearranging, or transferring its Attachment.

**9.4 City Not Required to Relocate.** No provision of this Agreement shall be construed to require City to relocate its Attachments or modify/replace its Facilities for the benefit of Licensee, provided, however, any denial by the City for modification of the Facility is based on nondiscriminatory standards of general applicability.

## **10. ABANDONMENT OR REMOVAL OF CITY FACILITIES.**

**10.1 Notice of Abandonment or Removal of City Facilities.** If the City desires at any time to abandon, remove or underground any City Facilities to which Licensee's Attachments are attached, it

shall give Licensee notice in writing to that effect at least sixty (60) calendar days prior to the date on which it intends to abandon or remove such City Facilities. Notice may be limited to thirty (30) calendar days if the City is required to remove or abandon its City Facilities as the result of the action of a third party and the greater notice period is not practical. Such notice shall indicate whether the City is offering Licensee an option to purchase the Facilities. If, following the expiration of the applicable notice period, Licensee has not yet removed and/or transferred all of its Attachments therefrom and has not entered into an agreement to purchase City Facilities pursuant to Paragraph 10.2, the City shall have the right, subject to any applicable laws and regulations, to have Licensee's Attachment removed and/or transferred from the Facility at Licensee's expense. The City shall give Licensee fifteen (15) days prior written notice of any such removal or transfer of Licensee's Equipment.

**10.2 Option to Purchase Abandoned Facilities.** Should the City desire to abandon any Facility, the City, in its sole discretion, may grant Licensee the option of purchasing such Facility at a rate negotiated with the City. Licensee must notify the City in writing within thirty (30) calendar days of the date of the City's notice of abandonment that Licensee desires to purchase the abandoned Facility. Thereafter, Licensee must also secure and deliver proof of all necessary governmental approvals and easements allowing Licensee to independently own and access the Facility within forty-five (45) calendar days. Should Licensee fail to secure the necessary governmental approvals, or should the City and Licensee fail to enter into an agreement for Licensee to purchase the Facility prior to the end of the forty-five (45) calendar days, Licensee must remove its Attachments as required under Paragraph 10.1. The City is under no obligation to sell Licensee the City Facilities that it intends to remove or abandon.

## **11. REMOVAL OF LICENSEE'S ATTACHMENTS.**

**11.1 Removal on Expiration/Termination.** At the expiration or other termination of this License Agreement or individual Supplement(s), Licensee shall remove its Attachment(s) from the affected Facilities at its own expense. After removal, Licensee shall restore the City Facilities to their condition immediately prior to the date such Attachments were made, excepting normal wear and tear. If Licensee fails to remove such Equipment within sixty (60) calendar days of expiration or termination or some greater period as allowed by the City, the City shall have the right to have such Equipment removed at Licensee's expense.

**11.2 Licensee Removal.** Licensee may, at any time, remove its Attachment(s) from any City Facility, provided it gives the City at least fourteen (14) days prior written notice. Provided, the City may require Licensee to leave in place any conduit, Innerduct or similar Communications Equipment within a City Conduit in order to prevent damage to City Facilities. After removal, Licensee shall restore the City Facilities to their condition immediately prior to the date such Attachments were made, excepting normal wear and tear.

**11.3 Emergency Removal.** In the event of any emergency that threatens person or property, the City may, in its sole discretion, without prior notice, remove any of Licensee's Attachments. In such event City will contact Licensee as soon as practicable to provide notice of such removal. Such removal shall be at Licensee's sole cost and expense, unless the removal was the result of gross negligence or willful misconduct by the City. The City will give notice to Licensee as soon as practicable under the circumstances.

## **12. TERMINATION OF SUPPLEMENT.**

**12.1 Automatic Termination of Supplement.** Any Supplement issued pursuant to this Agreement shall automatically terminate when Licensee ceases to have authority to construct and operate

its Attachment on public or private property at the Site of the particular Facility covered by the Supplement.

**12.2 Surrender of Supplement.** Licensee may terminate or surrender a Supplement at any time upon written notice to City, and remove its Communications Equipment from the affected Facilities, provided, however, that before commencing any such removal Licensee must obtain the City's written approval of Licensee's plans for removal, including the name of the party performing such work and the date(s) and time(s) during which such work will be completed. All such work is subject to the insurance requirements of Article 18. No refund of any fees or charges will be made upon removal. However, rental fees shall cease for the Attachment at the time Licensee's Communications Equipment is removed and the City Facilities are properly restored (subject to Paragraph 11.2). If Licensee terminates such Supplement pursuant to the provisions of this Article, but fails to remove its Attachments from City Facilities within thirty (30) calendar days thereafter, the City shall have the right to remove Licensee's Attachments at Licensee's expense.

### **13. INSPECTION OF LICENSEE'S ATTACHMENTS.**

**13.1 Inspections.** The City may conduct an inventory and inspection of Attachments at any time. Licensee shall correct all Attachments that are not found to be in compliance with Applicable Standards within thirty (30) calendar days of notification. If it is found that Licensee has made an Attachment without a Supplement, Licensee shall pay all applicable unpaid Annual Attachment Fees and any Make-Ready Costs. If it is found that five percent (5%) or more of Licensee's Attachments are either in non-compliance or not permitted, Licensee shall pay its *pro-rata* share of the costs of the inspection.

**13.2 Notice.** The City will give Licensee reasonable advance written notice of such inspections, except in those instances where safety considerations justify the need for such inspection without the delay of waiting until written notice has been received.

**13.3 No Liability.** Inspections performed under this Article 13, or the failure to do so, shall not operate to impose upon the City any liability of any kind whatsoever or relieve Licensee of any responsibility, obligations or liability whether assumed under this Agreement or otherwise existing.

**13.4 Attachment Records.** Notwithstanding the above inspection provisions, upon the written request of City, Licensee is obligated to furnish the City on an annual basis an up-to-date map depicting the locations of its Attachments in an electronic format specified by the City.

### **14. UNAUTHORIZED OCCUPANCY OR ACCESS.**

**14.1 Removal.** If any of Licensee's Attachments are found occupying any Facility for which no Supplement has been executed, the City may, without prejudice to its other rights or remedies under this Agreement, and upon thirty (30) calendar days' notice to Licensee, remove such Attachment at Licensee's expense and without liability, subject to the alternative dispute provisions of Paragraph 22.1.

**14.2 No Ratification of Unlicensed Use.** No act or failure to act by the City with regard to any unlicensed use shall be deemed as ratification of the unlicensed use and if any Supplement should be subsequently executed, such Supplement shall not operate retroactively or constitute a waiver by the City of any of its rights or privileges under this Agreement or otherwise; provided, however, that Licensee shall be subject to all liabilities, obligations and responsibilities of this Agreement in regards to the unauthorized use from its inception.



**15. REPORTING REQUIREMENTS.** Concurrently with Licensee's Annual Attachment Fee payment, Licensee shall report any Attachment Licensee has removed from City Facilities during the relevant reporting period. The report shall identify the Facility from which the Attachment was removed, describe the removed equipment, and indicate the approximate date of removal. This requirement does not apply where Licensee is terminating a Supplement pursuant to Paragraph 12.2.

**16. LIABILITY AND INDEMNIFICATION.**

**16.1 Liability.** The City reserves to itself the right to maintain and operate its Facilities in such manner as will best enable it to fulfill its governmental service requirements. Licensee agrees to use City's Facilities at Licensee's sole risk. Notwithstanding the foregoing, the City shall exercise reasonable precaution to avoid damaging Licensee's Attachment(s) and shall report to Licensee the occurrence of any such damage caused by its employees, agents or contractors.

**16.2 Indemnification.** Licensee shall defend, indemnify and hold harmless the City and its officials, officers, council members, commissioners, representatives, employees, agents, and contractors (collectively, the "City Indemnitees") against any and all claims, losses, liability, costs, damages, fines, taxes, special charges by others, penalties, payments (including payments made by the City under any Workers' Compensation Laws or under any plan for employees' disability and death benefits), and expenses (including reasonable attorney's fees of the City and all other costs and expenses of litigation) arising from any act, omission, failure, negligence or willful misconduct of Licensee, its employees, contractors, subcontractors or agents, in connection with the construction, maintenance, repair, relocation, transfer, removal or operation by Licensee, or by Licensee's officers, directors, employees, agents or contractors, of Licensee's Attachments, except to the extent the covered claims were caused by the sole gross negligence, recklessness, or willful misconduct of any City Indemnitee.

**16.3 Procedure for Indemnification.**

- (a) The City shall give prompt notice to Licensee of any claim or threatened claim, specifying the factual basis for such claim and the amount of the claim. If the claim relates to an action, suit or proceeding filed by a third party against the City, the City shall give the notice to Licensee no later than fifteen (15) calendar days after the City receives written notice of the action, suit or proceeding.
- (b) The City's failure to give the required notice will not relieve Licensee from its obligation to indemnify the City unless and only to the extent Licensee is materially prejudiced by such failure.

**16.4 Environmental Hazards.** Licensee represents and warrants that its use of City Facilities will not generate any Hazardous Substances, that it will not store or dispose on or about City Facilities or transport to City Facilities any hazardous substances and that Licensee's Attachment(s) will not constitute or contain and will not generate any hazardous substance in violation of federal, state or local law now or hereafter in effect including any amendments. Notwithstanding the foregoing, Licensee shall be permitted to bring and keep on City Facilities equipment commonly used in the telecommunications industry, including without limitation, electrical components and batteries. "Hazardous Substance" shall be interpreted broadly to mean any substance or material designated or defined as hazardous or toxic waste, hazardous or toxic material, hazardous or toxic or radioactive substance, or other similar terms by any federal, state, or local laws, regulations or rules now or hereafter in effect including any amendments. Licensee and its agents, contractors and subcontractors shall defend, indemnify and hold harmless the City and its respective officials, officers, board members, council members, commissioners, representatives, employees, agents and contractors against any and all liability, costs, damages, fines,

taxes, special charges by others, penalties, punitive damages, expenses (including reasonable attorney's fees and all other costs and expenses of litigation) arising from or due to the release, threatened release, or storage of any Hazardous Substances on, under or adjacent to City Facilities attributable to Licensee's use of City Facilities, except to the extent of the City's gross negligence or willful misconduct in connection with such liability. Licensor acknowledges that Licensee shall not be responsible for any contamination at City Facilities to the extent caused in whole or in part by Licensor or a third party.

**16.5 Municipal Liability Limits.** No provision of this Agreement is intended, or shall be construed, to be a waiver for any purpose by the City of any applicable State limits on municipal liability or governmental immunity. No indemnification provision contained in this Agreement under which Licensee indemnifies the City shall be construed in any way to limit any other indemnification provision contained in this Agreement. Nothing herein shall be construed to waive or limit Licensor's immunities, limitation of liability, or defenses under the Kansas Tort Claim Act or other law.

**16.6 Liens.** In no event shall Licensee permit any lien to be filed or to exist upon any City Facilities or other City property as a result of any claim against Licensee. In the event any lien is filed upon any City Facility as a result of any claim against Licensee, Licensee agrees, within 120 days of the filing of such lien, to cause the same to be released of record by payment or posting of a bond in a form and issued by a surety acceptable to the City; provided, however, that Licensee shall have the right to contest in good faith said mechanics' liens, and in such event, may permit the items so contested to remain undischarged and unsatisfied during the period of such contest and any appeal therefrom as long as such lien is bonded over and/or released of record as set forth herein.

## **17. DUTIES, RESPONSIBILITIES, AND EXCULPATION**

**17.1 Duty to Inspect.** Licensee acknowledges and agrees that the City does not warrant the condition or safety of City Facilities, or the premises surrounding the Facilities, and Licensee further acknowledges and agrees that it has an obligation to inspect City Facilities and/or premises surrounding the Facilities, prior to commencing any work on City Facilities or entering the premises surrounding such Facilities.

**17.2 Knowledge of Work Conditions.** By executing this Agreement, Licensee warrants that it has acquainted, or will fully acquaint, itself and its employees and/or contractors and agents with the conditions relating to the work that Licensee will undertake under this Agreement and that it fully understands or will acquaint itself with the Facilities, difficulties and restrictions attending the execution of such work.

**17.3 DISCLAIMER. THE CITY MAKES NO EXPRESS OR IMPLIED WARRANTIES WITH REGARD TO THE CITY'S FACILITIES, ALL OF WHICH ARE HEREBY DISCLAIMED, AND THE CITY MAKES NO OTHER EXPRESS OR IMPLIED WARRANTIES, EXCEPT TO THE EXTENT EXPRESSLY AND UNAMBIGUOUSLY SET FORTH IN THIS AGREEMENT. THE CITY EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**

**17.4 Duty of Competent Supervision and Performance.** Licensee shall ensure that its employees, agents, contractors and subcontractors have the necessary qualifications, skill, knowledge, training and experience to protect themselves, their fellow employees, employees of the City and the general public, from harm or injury while performing work permitted pursuant to this Agreement. In addition, Licensee shall furnish its employees, agents, contractors and subcontractors competent supervision and sufficient and adequate tools and equipment for their work to be performed in a safe manner.

## 18. INSURANCE.

**18.1 Policies Required.** At all times during the term of this Agreement, Licensee shall keep in force and effect all insurance policies as described below:

- (a) **Workers' Compensation and Employers' Liability Insurance.** Statutory workers' compensation benefits in compliance with the statutory requirements of the State of Kansas and employers' liability insurance with a limit of \$4,000,000 each accident/disease/policy limit. This policy shall include a waiver of subrogation in favor of the City. Licensee shall require subcontractors and others not protected under its insurance to obtain and maintain such insurance.
- (b) **Commercial General Liability Insurance.** Policy will be written to provide coverage for, but not limited to, the following: premises and operations, products and completed operations, personal and advertising injury, blanket contractual coverage and independent contractor's coverage with Limits of liability of \$5,000,000 per occurrence for bodily injury and property damage and \$5,000,000 general aggregate, and \$5,000,000 products/completed operations aggregate.
- (c) **Commercial Automobile Liability Insurance.** Commercial automobile liability covering all owned, hired and non-owned vehicles in the amount of \$5,000,000 combined single limit each accident for bodily injury and property damage.
- (d) **Umbrella Liability Insurance.** Coverage is to be in excess of the employers' liability, commercial general liability, and automobile liability insurance required above with limits of \$1,000,000 each occurrence, \$1,000,000 aggregate.
- (e) **Property Insurance.** Each party will be responsible for maintaining property insurance on its own facilities, buildings and other improvements, including all equipment, fixtures, and City structures, fencing or support systems that may be placed on, within or around City Facilities to fully protect against hazards of fire, vandalism and malicious mischief, and such other perils as are covered by policies of insurance commonly referred to and known as "extended coverage" insurance or self-insure such exposures.

**18.2 Qualification; Priority; Contractors' Coverage.** The insurer must be authorized to do business under the laws of the State of Kansas and have an "A-" or better rating in Best's Guide. Such insurance will be primary. All contractors and all of their subcontractors who perform work on behalf of Licensee shall carry substantially the same coverage with substantially the same limits as required of Licensee.

**18.3 Certificate of Insurance; Other Requirements.** Upon the execution of this Agreement and within ten (10) days of each insurance policy expiration date during the term of this Agreement, Licensee will furnish the City with a certificate of insurance ("Certificate"). The Certificate shall reference this Agreement and workers' compensation and property insurance waivers of subrogation required by this Agreement. Upon receipt of notice from its insurer the Licensee shall provide the City thirty (30) calendar days advance written notice of cancellation of insurance during the term of this Agreement. The City, its council members, board members, commissioners, agencies, officers, officials, employees and representatives (collectively, "Additional Insureds") shall be included as Additional Insureds as their respective interests may appear under this Agreement under all of the policies, except workers' compensation and employer's liability, which shall be so stated on the Certificate of Insurance.

All policies, other than workers' compensation, shall be written on an occurrence and not on a claims-made basis. Licensee shall defend, indemnify and hold harmless the City and Additional Insureds from and against payment of any deductible and payment of any premium on any policy required under this Article. Licensee shall obtain Certificates from its agents, contractors and their subcontractors and provide a copy of such Certificates to the City upon request

**18.4 Limits.** The limits of liability set out in this Article 18 may be increased or decreased by mutual written consent of the parties, which consent will not be unreasonably withheld by either party, in the event of any factors or occurrences, including substantial increases in the level of jury verdicts or judgments or the passage of state, federal or other governmental compensation plans, or laws which would materially increase or decrease Licensee's exposure to risk.

**18.5 Prohibited Exclusions.** No policies of insurance required to be obtained by Licensee or its contractors or subcontractors shall contain provisions (1) that exclude coverage of liability assumed by this Agreement with the City except as to infringement of patents or copyrights or for libel and slander in program material, (2) that exclude coverage of liability arising from excavating, collapse, or underground work, (3) that exclude coverage for injuries to the City's employees or agents, or (4) that exclude coverage of liability for injuries or damages caused by Licensee's contractors or the contractors' employees, or agents. This list of prohibited provisions shall not be interpreted as exclusive.

**18.6 Deductible/Self-insurance Retention Amounts.** Licensee shall be fully responsible for any deductible or self-insured retention amounts contained in its insurance program or for any deficiencies in the amounts of insurance maintained.

**19. AUTHORIZATION NOT EXCLUSIVE.** The City shall have the right to grant, renew and extend rights and privileges to others not party to this Agreement by contract or otherwise, to use City Facilities covered by this Agreement. Such rights shall not interfere with the rights granted to Licensee by the specific Supplements issued pursuant to this Agreement.

**20. ASSIGNMENT.**

**20.1 Limitations on Assignment.** Licensee shall not assign its rights or obligations under this Agreement without the prior written consent of the City, which consent shall not be unreasonably withheld, conditioned or delayed. It shall be unreasonable for the City to withhold consent without cause to an assignment of all of Licensee's interests in this Agreement to its Affiliate. Notwithstanding, Licensee may, upon written notice to the City, assign its rights and obligations under this Agreement to (i) any affiliate of Licensee; (ii) any successor in interest to Licensee in connection with any merger, acquisition, or similar transaction; or (iii) any purchaser of all or substantially all of Licensee's assets used to provide Wireless Services to residents and businesses located in the City of Prairie Village, Kansas. An "affiliate" means any entity that now or in the future, directly or indirectly controls, is controlled with or by, or is under common control with Licensee; and "control" shall mean, with respect to: (a) a U.S. corporation, the ownership, directly or indirectly, of fifty percent (50%) or more of the voting power to elect directors thereof; (b) a non-U.S. corporation, if the voting power to elect directors thereof is less than fifty percent (50%), the maximum amount allowed by applicable law; and (c) any other entity, fifty percent (50%) or more ownership interest in said entity, or the power to direct the management of such entity.

**20.2 Obligations of Assignee/Transferee and Licensee.** No assignment or transfer under this Article 20 shall be allowed until the assignee or transferee becomes a signatory to this Agreement and assumes all obligations of Licensee arising under this Agreement. Licensee shall furnish the City with prior written notice of the transfer or assignment, together with the name and address of the transferee or

assignee. Notwithstanding any assignment or transfer, Licensee shall remain fully liable under this Agreement and shall not be released from performing any of the terms, covenants or conditions of this Agreement without the express written consent to the release of Licensee by the City.

**20.3 Sub-licensing.** Without the City's prior written consent, Licensee shall not sub-license or lease to any third party, including but not limited to allowing third parties to place Attachments on or within City Facilities. Any such action shall constitute a material breach of this Agreement. Notwithstanding the foregoing, and subject to the reasonable approval of the City, the installation and use of internal space within Licensee's Attachments for third-party wireless providers utilizing Licensee's Attachments is not subject to this Section 20.3.

**21. FAILURE TO ENFORCE.** Failure of the City or Licensee to take action to enforce compliance with any of the terms or conditions of this Agreement or to give notice or declare this Agreement or any authorization granted hereunder terminated shall not constitute a waiver or relinquishment of any term or condition of this Agreement, but the same shall be and remain at all times in full force and effect until terminated, in accordance with this Agreement.

**22. ISSUE RESOLUTION PROCESS.**

**22.1 Dispute Resolution.** Except as otherwise precluded by law, a resolution of any dispute arising out of, or related to, this Agreement shall first be pursued through good-faith negotiations in order to reach a mutually acceptable resolution. If, after negotiating in good faith for a period of at least thirty (30) days, the parties are unable to resolve the dispute, then all disputes relating to this Agreement, or the breach thereof, the parties shall be entitled to pursue all available remedies at law or equity. Each party will bear its own costs for dispute resolution activity.

**22.2 Confidential Settlement.** Unless the parties otherwise agree in writing, and to the extent permitted under applicable law, communication between the parties under this Article will be treated as confidential information developed for settlement purposes, exempt from discovery, and inadmissible in litigation.

**22.3 Business As Usual.** Unless an emergency condition exists, during any dispute resolution procedure or lawsuit, the parties will continue providing services to each other and performing their obligations under this Agreement.

**23. TERMINATION OF AGREEMENT.**

**23.1** Notwithstanding the City's rights under Article 12, the City shall have the right, pursuant to the procedure set out in Paragraph 23, to terminate this entire Agreement, or any Supplement executed hereunder, whenever Licensee is in default of any material term or condition of this Agreement beyond applicable cure periods, including but not limited to the following circumstances:

- (a) Construction, operation or maintenance of Licensee's Attachment(s) in violation of law or in aid of any unlawful act or undertaking; or
- (b) Construction, operation or maintenance of Licensee's Attachment(s) after any authorization required of Licensee has lawfully been denied or revoked by any governmental or private authority or violation of any other agreement with the City; or

- (c) Construction, operation or maintenance of Licensee's Attachment(s) without the insurance coverage required under Article 18.
- (d) The expiration, termination or revocation of Licensee's franchise or any other required regulatory authorization (as required by Article 5); provided, Licensee shall have a reasonable period of time to obtain the reinstatement of any such authorization.

**23.2** The City will notify Licensee in writing within fifteen (15) calendar days, or as soon as reasonably practicable, of any condition(s) applicable to Paragraph 23.1 above. Licensee shall take immediate corrective action to eliminate any such condition(s) within thirty (30) calendar days, or such longer period mutually agreed to by the parties, and shall confirm in writing to the City that the cited condition(s) has (have) ceased or been corrected, or are in the process of being corrected.

**23.3** If the parties are unable to resolve the dispute and Licensee fails to discontinue or correct such condition(s) and/or fails to give the required confirmation, the City may immediately terminate this Agreement or any Supplements granted hereunder. In the event of termination of this Agreement or any of Licensee's rights, privileges or authorizations hereunder, the City may seek removal of Licensee's Attachments pursuant to the terms of Article 11, with respect to specific Facilities or from the City's entire system. In such instance, Licensee shall remain liable for and pay all fees and charges accrued pursuant to the terms of this Agreement to the City until Licensee's Attachments are actually removed.

**23.4** Licensee will have the right terminate this Agreement if the City is in default of any material term or condition of this Agreement. In such event, Licensee will notify the City in writing within fifteen (15) calendar days, or as soon as reasonably practicable, of any such default. The City shall take immediate corrective action to eliminate any such condition(s) within thirty (30) calendar days, or such longer period mutually agreed to by the parties, and shall confirm in writing to Licensee that the cited condition(s) has (have) ceased or been corrected, or are in the process of being corrected. If the parties are unable to resolve the dispute and the City fails to discontinue or correct such condition(s) and/or fails to give the required confirmation, Licensee may immediately terminate this Agreement or any Supplement(s) granted hereunder. In the event of termination of this Agreement or any Supplement(s), Licensee may remove its Attachments pursuant to the terms of Article 11. In such instance, Licensee shall remain liable for and pay all fees and charges accrued pursuant to the terms of this Agreement to the City until Licensee's Attachments are actually removed.

## **24. TERM OF AGREEMENT.**

**24.1** This Agreement shall be effective for a term of ten (10) years beginning on the Effective Date of this Agreement. Each Supplement shall be effective as of the Effective Date of each Supplement, however the initial term of each Supplement shall be ten (10) years and shall commence on the first day of the month following the date Licensee has commenced installation of its equipment at the Facility under the applicable Supplement ("Commencement Date"). Notwithstanding anything herein, after the expiration of this Agreement, its terms and conditions shall survive and govern with respect to any remaining Supplements in effect until their expiration or termination; provided, that if this Agreement is terminated or expired, and there has not been a Commencement Date under any Supplement, then such Supplement shall be of no further force or effect. Notwithstanding the above-stated term of Agreement, this Agreement is conditioned upon Licensee maintaining a contract franchise with the City, and this Agreement and all Supplements shall terminate upon the termination of Licensee's contract franchise.

**24.2** Upon written request of either party, this Agreement shall be renegotiated at any time in accordance with the requirements of state law upon any of the following events: changes in federal, state,

or local laws, regulations, or orders that materially affect any rights or obligations of either party, including but not limited to the scope of the Agreement granted to Licensee or the compensation to be received by the City hereunder.

**24.3** In the event the parties are actively negotiating in good faith a new Agreement or an amendment to this Agreement upon the termination date of this Agreement, the parties by written mutual agreement may extend the termination date of this Agreement to allow for further negotiations. Such extension period shall be deemed a continuation of this Agreement and not as a new Agreement.

**24.4** Even after the termination of this Agreement, Licensee's responsibility and indemnity obligations shall continue with respect to any claims or demands related to Licensee's Attachments as provided for in Article 16.

**25. AMENDING AGREEMENT.** Notwithstanding other provisions of this Agreement, the terms and conditions of this Agreement shall not be amended, changed or altered except in writing and with approval by authorized representatives of both parties.

**26. NOTICES.**

**26.1** Wherever in this Agreement notice is required to be given by either party to the other, such notice shall be in writing and shall be effective when personally delivered to, or when mailed by certified mail, return receipt requested, with postage prepaid and, except where specifically provided for elsewhere, properly addressed as follows:

To the City:  
City of Prairie Village  
7700 Mission Road  
Prairie Village, Kansas 66208  
Attn: Director of Public Works

To Licensee:  
Mobilitie, LLC  
660 Newport Center Drive  
Suite 200  
Newport Beach, CA 92660  
Attn: Asset Management  
[assetmgmt@mobilitie.com](mailto:assetmgmt@mobilitie.com)  
877-999-7070

With copy to:

Mobilitie, LLC  
660 Newport Center Drive  
Suite 200  
Newport Beach, CA 92660  
Attn: Legal Department  
[legal@mobilitie.com](mailto:legal@mobilitie.com)  
877-999-7070

or to such other address as either party, from time to time, may give the other party in writing.

**26.2** The above notwithstanding the parties may agree to utilize electronic communications such as email for notifications related to the Application and approval process and necessary transfer or Facility modifications.

**26.3** Licensee shall maintain a staffed 24-hour emergency telephone number, not available to the general public, where the City can contact Licensee to report damage to Licensee's facilities or other

situations requiring immediate communications between the parties. Such contact person shall be qualified and able to respond to the City's concerns and requests. Failure to maintain an emergency contact shall eliminate the City's liability to Licensee for any actions that the City deems reasonably necessary given the specific circumstances.

Mobilitie LLC 24/7 Emergency Contact:                      Network Operations Center (NOC)  
877-244-7889  
mnoc@mobilitie.com

27.     **ENTIRE AGREEMENT.** This Agreement supersedes all previous agreements, whether written or oral, between the City and Licensee for placement and maintenance of Licensee's Attachments on or within City Facilities within the geographical service area covered by this Agreement; and there are no other provisions, terms or conditions to this Agreement except as expressed herein.

28.     **SEVERABILITY.** If any provision or portion thereof of this Agreement is or becomes invalid under any applicable statute or rule of law, and such invalidity does not materially alter the essence of this Agreement to either party, such provision shall not render unenforceable this entire Agreement but rather it is the intent of the parties that this Agreement be administered as if not containing the invalid provision.

29.     **GOVERNING LAW.** The validity, performance and all matters relating to the effect of this Agreement and any amendment hereto shall be governed by the laws (without reference to choice of law) of the State of Kansas.

30.     **INCORPORATION OF RECITALS.** The recitals stated above are incorporated into and constitute part of this Agreement.

31.     **PERFORMANCE BOND.** On execution of this Agreement, Licensee shall provide to the City a performance bond or letter of credit in an amount of Fifty Thousand Dollars (\$50,000.00). The bond shall be with an entity and in a form acceptable to the City. The purpose of the bond is to ensure Licensee's performance of all of its obligations under this Agreement and for the payment by Licensee of any claims, liens, taxes, liquidated damages, penalties, fees and charges due to the City which arise by reason of the construction, operation, maintenance or removal of Licensee's Attachments on or about City Facilities.

32.     **FORCE MAJEURE.**

32.1    In the event that either the City or Licensee is prevented or delayed from fulfilling any term or provision of this Agreement by reason of fire, flood, earthquake or like acts of nature, wars, revolution, civil commotion, explosion, acts of terrorism, embargo, acts of the government in its sovereign capacity, material changes of laws or regulations, labor difficulties, including without limitation, strikes, slowdowns, picketing or boycotts, unavailability of equipment of vendor, or any other such cause not attributable to the negligence or fault of the party delayed in performing the acts required by the Agreement, then performance of such acts shall be excused for the period of the unavoidable delay, and any such party shall endeavor to remove or overcome such inability as soon as reasonably possible.

32.2    The City shall not impose any charges on Licensee stemming solely from Licensee's inability to perform required acts during a period of unavoidable delay as described in Paragraph 32.1, provided that Licensee present the City with a written description of such *force majeure* within a reasonable time after occurrence of the event or cause relied on.

33.     **RELATIONSHIP OF PARTIES.** Nothing in this Agreement shall be construed to create an association, joint venture, trust, or partnership, or impose a trust or partnership covenant, obligation, or



liability on or with regard to either Party. Each Party shall be individually responsible for its own covenants, obligations, and liabilities under this Agreement and otherwise.

**34. NO THIRD-PARTY BENEFICIARIES.** Nothing in this Agreement is intended to confer rights on any third-party, as a third-party beneficiary or otherwise.

**35. SURVIVAL.** Any termination of this Agreement shall not release Licensee from any liability or obligations hereunder, whether of indemnity or otherwise, which may have accrued or may be accruing at the time of termination.

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

**CITY OF PRAIRIE VILLAGE, KANSAS**

**MOBILITIE, LLC**

\_\_\_\_\_  
Laura Wassmer, Mayor

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

**ATTEST:**

Title: \_\_\_\_\_

\_\_\_\_\_  
Joyce Hagen Mundy, City Clerk

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Catherine P. Logan, City Attorney

**EXHIBIT A**

[Form of Supplement]

**SUPPLEMENT NO. \_\_\_\_\_  
TO  
MASTER LICENSE AGREEMENT FOR ATTACHMENTS TO CITY FACILITIES**

THIS SUPPLEMENT NO. \_\_\_ TO MASTER LICENSE AGREEMENT FOR ATTACHMENTS TO CITY FACILITIES ("Supplement") is made as of the \_\_\_ day of \_\_\_\_\_, 20\_\_ (the "Effective Date"), between the **City of Prairie Village, Kansas** ("City"), and **Mobilitie, LLC**, a Nevada limited liability company, whose principal place of business is \_\_\_\_\_ ("Licensee").

**1. Master License Agreement.** This Supplement is a Supplement as referenced in that certain Master License Agreement for Attachments to City Facilities between City and Licensee dated \_\_\_\_\_, 201\_\_ (the "Agreement"). All of the terms and conditions of the Agreement are incorporated herein by reference and made a part hereof without the necessity of repeating or attaching the Agreement. In the event of a contradiction, modification or inconsistency between the terms of the Agreement and this Supplement, the terms of the Agreement shall govern. Capitalized terms used in tis Supplement shall have the same meaning described for them in the Agreement unless otherwise indicated herein.

**2. Legal Description and Site Plan for Attachment.** City hereby licenses to Licensee certain spaces on and within City's Facilities located at the Site(s) described below:

Mobilitie Site Number: \_\_\_\_\_

Property Address: \_\_\_\_\_

City Facility Address: \_\_\_\_\_

Electric Service Address: \_\_\_\_\_

Site Plan: Licensee's Attachments are as shown on Exhibit 1, attached hereto and made a part hereof.

**3. Term.** The Effective Date of this Supplement is set forth above; and the Term of this Supplement shall coincide with the Term set forth in Article 24 of the Master License Agreement.

**4. Consideration.** As prescribed by Article 3 of the Master License Agreement, the Annual Attachment Fee for use of the City's Facilities shall commence on the Commencement Date in the amount of \$ \_\_\_\_\_.

**5. Site Specific Terms.** (Include any site-specific terms)

IN WITNESS WHEREOF, the Parties hereto have executed this Supplement effective as of the Effective Date.

**CITY OF PRAIRIE VILLAGE, KANSAS**

**MOBILITIE, LLC**

By: \_\_\_\_\_

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT 1 TO SUPPLEMENT NO.**

[Site Plan of Facilities and Attachments]



## PUBLIC WORKS DEPARTMENT

Council Committee Meeting Date: March 5, 2018

Council Meeting Date: March 5, 2018

### CONSIDER DESIGN AGREEMENT WITH AFFINIS CORPORATION FOR THE DESIGN OF THE 2018 PAVING PROGRAM

#### RECOMMENDATION

Move to approve the design agreement with Affinis Corporation for the design of the 2018 Paving Program in the amount of \$86,410.00.

#### BACKGROUND

Public Works recently requested proposals from firms to provide engineering services for Prairie Village for the next three years. We had 9 firms submit proposals and we interviewed 4 firms Phelps Engineering, BHC Rhodes, Trekk Design Group and Affinis Corporation. Based on their original proposals and the interviews the selection committee chose Affinis Corporation to be the City's construction administration consultant for 2018, 2019, and 2020. Affinis Corporation has been working for the City for the last several years and has performed very well. The selection committee consisted of Serena Schermoly, Steve Noll, Alley Porter, and Melissa Prenger.

This agreement is for the design of the 2018 Paving Program. Construction is anticipated to begin in Summer 2018.

#### FUNDING SOURCE

Funding is available in the 2018 Paving Program. The overall design, inspection, and construction budget in the CIP for these projects is \$3,061,382.00.

#### RELATED TO VILLAGE VISION

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

#### ATTACHMENTS

1. Design Agreement with Affinis
2. Map of 2018 Paving Program

#### PREPARED BY

Melissa Prenger, Sr Project Manager

February 28, 2018

**AGREEMENT FOR PROFESSIONAL ENGINEER**

**For**

**DESIGN SERVICES**

**Of**

**PROJECT PAVP2018- 2018 PAVING PROGRAM**

***THIS AGREEMENT***, made at the Prairie Village, Kansas, this \_\_\_ day of \_\_\_\_\_, by and between the City of Prairie Village, Kansas, a municipal corporation with offices at 7700 Mission Road, Prairie Village, Kansas, 66208, hereinafter called the “**City**”, and Affinis Corp, a corporation with offices at 8900 Indian Creek Parkway, Suite 450, Overland Park, KS, 66210 hereinafter called the “**Consultant**”.

***WITNESSED, THAT WHEREAS***, the City has determined a need to retain a professional engineering firm to provide civil engineering services for the Design of the 2018 Paving Program, hereinafter called the “**Project**”,

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

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

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

## **Article I City Responsibilities**

- A. Project Definition** The City is preparing to design and construct roadway and stormwater improvements throughout the city as part of Paving Program.
- B. City Representative** The City has designated, Melissa Prenger, Public Works Senior Project Manager, to act as the City’s representative with respect to the services to be performed or furnished by the Consultant under this Agreement. Such person shall have authority to transmit instructions, receive information, interpret and define the City’s policies and decisions with respect to the Consultant’s services for the Project.
- C. Existing Data and Records** The City shall make available to the Consultant all existing data and records relevant to the Project such as, maps, plans, correspondence files and other information possessed by the City that is relevant to the Project. Consultant shall not be responsible for verifying or ensuring the accuracy of any information or content supplied by City or any other Project participant unless specifically defined by the scope of work, nor ensuring that such information or content does not violate or infringe any law or other third party rights. However, Consultant shall promptly advise the City, in writing, of any inaccuracies in the information provided or any other violation or infringement of any law or third party rights that Consultant observes. City shall

indemnify Consultant for any infringement claims resulting from Consultant's use of such content, materials or documents.

- D. **Review For Approval** The City shall review all criteria, design elements and documents as to the City requirements for the Project, including objectives, constraints, performance requirements and budget limitations.
- E. **Standard Details** The City shall provide copies of all existing standard details and documentation for use by the Consultant for the project.
- F. **Submittal Review** The City shall diligently review all submittals presented by the Consultant in a timely manner.
- G. The City has funded the 2018 Paving Project which may include the following streets:
  - 1. 64th Terrace, Roe Avenue to Hodges Drive
  - 2. Cedar Street, 71st Street to 71st Terrace
  - 3. 73rd Street Cul-de-sac, Windsor Street to 73rd Street Cul-de-sac
  - 4. 71st Street, Cherokee Drive to Mission Road
  - 5. Cherokee Drive, 71st Street to 75th Street
  - 6. 73rd Street, High Drive to Booth Street
  - 7. 76th Street, Ash Street to Nall Avenue
  - 8. Tomahawk Road, Mission Road to 71st Street
  - 9. Tomahawk Road, 71st Street to Roe Avenue
  - 10. Granada Street, 79th Street to 82nd Street
  - 11. Norwood Drive, 79th Street to Somerset Drive
  - 12. Cedar Street, 83rd Terrace to 85th Street
  - 13. Cedar Drive Cul-de-sac, Cedar Drive Cul-de-sac to Somerset Drive
  - 14. 89th Street, Mission Road to Catalina Street

## Article II Consultant Responsibilities

- A. **Professional Engineering Services** The Consultant shall either perform for or furnish to the City professional engineering services and related services in all phases of the Project to which this Agreement applies as hereinafter provided.
- B. **Prime Consultant** The Consultant shall serve as the prime professional Consultant for the City on this Project.
- C. **Standard Care** The standard of care for all professional consulting services and related services either performed for or furnished by the Consultant under this Agreement will be the care and skill ordinarily used by members of the Consultant's profession, practicing under similar conditions at the same time and in the same locality.
- D. **Consultant Representative** Designate a person to act as the Consultant's representative with respect to the services to be performed or furnished by the Consultant under this Agreement. Such person shall have authority to transmit instructions, receive information, and make decisions with respect to the Consultant's services for the Project.

## Article III Scope of Services

- A. **Design Phase:** Upon receipt of notice to proceed from the City, the Consultant shall provide all consulting services related to this project including, but not limited, to these phases and tasks. The scope is generally defined below.

1. Schedule and attend one startup meeting with City to confirm project goals, schedule, budget and expectations. Review the list of work locations with applicable priorities as provided by the City. Review any criteria changes in the program.
2. Review with City staff, the list of issues based on service requests, work orders, permits issued, Public Works staff experiences, available plans, previous studies, and pertinent information regarding the Project.
3. Schedule and attend up to three (3) utility coordination meetings. Request utility comments, coordinate planned relocations among agencies and verify relocation/adjustment schedule.
4. Conduct field reconnaissance with City to evaluate and identify:
  - a. Design issues.
  - b. Need for drainage improvements.
  - c. Need for full depth pavement repairs.
  - d. Need for sidewalk replacement.
  - e. Location for new sidewalk.
  - f. Need for curb and gutter replacement.
  - g. Need for and limits of driveway replacement.
  - h. Need for which type of ADA ramps.
  - i. Utility locations and conflicts.
  - j. Tree conflicts.
5. Perform topographic and field survey of identified project locations. Areas requiring topographic survey are:

Locations where new sidewalk is to be designed and constructed. Topographic survey shall be on one side of street only, from back of curb to behind right of way line and shall include curb returns at intersections:

  - (a) 64th Terrace, Roe Avenue to Hodges Drive
  - (b) 73rd Street Cul-de-sac, Windsor Street to 73rd Street Cul-de-sac
  - (c) 76th Street, Ash Street to Nall Avenue
  - (d) 89th Street, Mission Road to Catalina Street
6. Gather aerial and topographic data from Johnson County AIMS mapping for all project locations.
7. Record location of existing traffic markings and review for compliance with MUTCD and City standards.
8. Prepare preliminary construction plans (60%).
  - a. Project title sheet.
  - b. General site plan showing and identifying surface features such as street right-of-way, edge of pavement, sidewalks, driveways, boring locations, trees, house outline, address, owner name based on latest AIMS coverage data, irrigation systems, known electronic dog fences and any other pertinent surface feature.
  - c. Plan sheets for street improvements showing all utilities, sanitary sewer, water, gas, electric, telephone, traffic signals, and street lights, as well as all conflicts and test pits. Profiles will be provided for streets when a topographic survey is performed.
  - d. Typical sections.
  - e. Cross sections for streets with a detailed topographic survey.
  - f. City details drawings and other special details pertinent to the project.
  - g. Traffic control plan showing temporary and permanent traffic control measures per MUTCD for various phases of construction.



9. Submit one set (one full size and one half size) of preliminary (60% completion) construction plans for City review.
10. Present one set (half size) of preliminary plans to appropriate governmental agencies and utility companies requesting comments and verification of potential conflicts.
11. Perform field check with City.
12. Schedule, prepare for and attend one (1) public meetings for the project. The City will be responsible for sending notifications to the residents and property owners.
13. Present a detailed opinion of probable construction cost of City defined construction pay items with quantities and current unit costs. Add to the total construction cost, a contingency of 15 percent.
14. Attend and prepare minutes for up to four (4) project meetings and disperse the minutes to City representative and all other attendees within five working days.
15. Prepare final documents base of review and comments from City and other review agencies of the preliminary plans.
16. Prepare final project manual for City review.
17. Submit one half size set of final (95%) plans and specifications for City review.
18. Submit one half-size set of final (95%) plans and specifications to other appropriate governmental agencies and utility companies with identification of significant changes to preliminary design plans.
19. Prepare a final opinion of probable construction cost.
20. Prepare bid documents for the project using the City's standard documents for the Paving Program.
21. Provide one hard copy and electronic copy of any report or plans. Provide files of the plans in PDF Format.

## **B. Bidding Services Phase**

Bidding services will be provided for each program separately and include the following.

1. Provide the City a notice of bid for publication.
2. Post advertisement for bid on electronic plan room (Drexel Technologies) and provide bid documents for reproduction.
3. Via electronic plan room provide all bid documents for potential bidders to purchase.
4. Provide all utilities with bid set of plans and request attendance at pre-bid meeting.
5. Conduct a pre-bid meeting. Prepare minutes of pre-bid meeting and disperse to City representative and all other attendees within five working days.
6. Prepare and distribute addenda prior to bid opening. Assist bidders with questions during bidding.
7. Provide to the City an Engineer's Estimate and bid tab sheet prior to the bid opening.
8. Attend bid opening.
9. Check accuracy of bids, evaluate the bidders and make a recommendation of award to the City.
10. Prepare five sets construction documents including bonds for execution by the contractor and the City.

11. Provide one hard copy and electronic copy of any report or drawings. Provide files of the plans or drawings in PDF Format.

### **C. Construction Services Phase**

Construction services will be provided for each program separately and include the following.

1. Prepare for attend preconstruction meeting with City and Contractor. Prepare and distribute meeting notes.
2. Provide periodic consultation by telephone or email to assist with construction issues.
  - a. Consultation will be initiated by Client and/or Construction Representative.
  - b. Consultant shall provide documentation on invoice that provides a brief description of the issue and/or activity.
  - c. Any consultation resulting from a design error by the Consultant shall be excluded from this scope of work and shall be provided at the expense of the Consultant.
3. Review shop drawings and submittals.
4. Prepare plan revisions as necessitated by conditions encountered in the field during construction, with the exception of traffic control plans.
5. Prepare final record drawings which reflect:
  - a. Minor design changes.
  - b. Changes made in the field by City representatives and are marked on the construction plan set.
6. Submit to the City electronic CAD files and TIFF images of the revised sheets.
7. Attend construction progress meetings as directed/requested by the Client. Four (4) meetings are budgeted.

## **Article IV Time Schedule**

- A. Timely Progress** The Consultant's services under this Agreement have been agreed to in anticipation of timely, orderly and continuous progress of the Project.
- B. Authorization to Proceed** If the City fails to give prompt written authorization to proceed with any phase of services after completion of the immediately preceding phase, the Consultant shall be entitled to equitable adjustment of rates and amounts of compensations to reflect reasonable costs incurred by the Consultant as a result of the delay or changes in the various elements that comprise such rates of compensation.
- C. Default Neither** City nor Consultant shall be considered in default of this Agreement for delays in performance caused by circumstances beyond the reasonable control of the nonperforming party. For purposes of this Agreement, such circumstances include, but are not limited to, abnormal weather conditions; floods; earthquakes; fire; epidemics; war, riots, and other civil disturbances; strikes, lockouts, work slowdowns, and other labor disturbances; sabotage; judicial restraint; and delay in or inability to procure permits, licenses, or authorizations from any local, state, or federal agency for any of the supplies, materials, accesses, or services required to be provided by either City or Consultant under this Agreement. Should such circumstances occur, the consultant shall within a reasonable time of being prevented from performing, give written notice to the City describing the circumstances preventing continued performance and the efforts being made to resume performance of this Agreement.

D. **Completion Schedule** Recognizing that time is of the essence, the Consultant proposes to complete the scope of services as specified in the Scope of Services:

Design Phase	Due by April 20, 2018
Bid Advertisement Date	May 1, 2018
Letting Date	May 18, 2018

## Article V Compensation

A. **Maximum Compensation** The City agrees to pay the Consultant as maximum compensation as defined in Exhibit B for the scope of services the following fees:

2018 Paving Project	
Design Phase	\$ <u>77,370.00</u>
Bidding Services Phase	\$ <u>5,230.00</u>
Construction Services Phase	\$ <u>3,810.00</u>
Total Fee for Paving Project	\$ <u>86,410.00</u>

- B. **Invoices** The compensation will be invoiced by phase, detailing the position, hours and appropriate hourly rates (which include overhead and profit) for Consultant's personnel classifications and the Direct Non-Salary Costs.
- C. **Direct Non-Salary Costs** The term "Direct Non-Salary Costs" shall include the Consultant payments in connection with the Project to other consultants, transportation, and reproduction costs. Payments will be billed to the City at actual cost. Transportation, including use of survey vehicle or automobile will be charged at the IRS rate in effect during the billing period. Reproduction work and materials will be charged at actual cost for copies submitted to the City.
- D. **Monthly Invoices** All invoices must be submitted monthly for all services rendered in the previous month. The Consultant will invoice the City on forms approved by the City. All properly prepared invoices shall be accompanied by a documented breakdown of expenses incurred and description of work accomplished.
- E. **Fee Change** The maximum fee shall not be changed unless adjusted by Change Order mutually agreed upon by the City and the Consultant prior to incurrence of any expense. The Change Order will be for major changes in scope, time or complexity of Project.

## Article VI General Provisions

- A. **Opinion of Probable Cost and Schedule:** Since the Consultant has no control over the cost of labor, materials or equipment furnished by Contractors, or over competitive bidding or market conditions, the opinion of probable Project cost, construction cost or project schedules are based on the experience and best judgment of the Consultant, but the Consultant cannot and does not guarantee the costs or that actual schedules will not vary from the Consultant's projected schedules.
- B. **Quantity Errors:** Negligent quantity miscalculations or omissions because of the Consultant's error shall be brought immediately to the City's attention. The Consultant shall not charge the City for the time and effort of checking and correcting the errors to the City's satisfaction.

- C. Reuse of Consultant Documents:** All documents including the plans and specifications provided or furnished by the Consultant pursuant to this Agreement are instruments of service in respect of the Project. The Consultant shall retain an ownership and property interest upon payment therefore whether or not the Project is completed. The City may make and retain copies for the use by the City and others; however, such documents are not intended or suitable for reuse by the City or others as an extension of the Project or on any other Project. Any such reuse without written approval or adaptation by the Consultant for the specific purpose intended will be at the City's sole risk and without liability to the Consultant. The City shall indemnify and hold harmless the Consultant from all claims, damages, losses and expenses including attorney's fees arising out of or resulting reuse of the documents.
- D. Reuse of City Documents** In a similar manner, the Consultant is prohibited from reuse or disclosing any information contained in any documents, plans or specifications relative to the Project without the expressed written permission of the City.
- E. Insurance** The Consultant shall procure and maintain, at its expense, the following insurance coverage:
1. Workers' Compensation -- Statutory Limits, with Employer's Liability limits of \$100,000 each employee, \$500,000 policy limit;
  2. Commercial General Liability for bodily injury and property damage liability claims with limits of not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate;
  3. Commercial Automobile Liability for bodily injury and property damage with limits of not less than \$1,000,000 each accident for all owned, non-owned and hired automobiles;
  4. Errors and omissions coverage of not less than \$1,000,000. Deductibles for any of the above coverage shall not exceed \$25,000 unless approved in writing by City.
  5. In addition, Consultant agrees to require all consultants and sub-consultants to obtain and provide insurance in identical type and amounts of coverage together and to require satisfaction of all other insurance requirements provided in this Agreement.
- F. Insurance Carrier Rating** Consultant's insurance shall be from an insurance carrier with an A.M. Best rating of A-IX or better, shall be on the GL 1986 ISO Occurrence form or such other form as may be approved by City, and shall name, by endorsement to be attached to the certificate of insurance, City, and its divisions, departments, officials, officers and employees, and other parties as specified by City as additional insureds as their interest may appear, except that the additional insured requirement shall not apply to Errors and Omissions coverage. Such endorsement shall be ISO CG2010 11/85 or equivalent. "Claims Made" and "Modified Occurrence" forms are not acceptable, except for Errors and Omissions coverage. Each certificate of insurance shall state that such insurance will not be canceled until after thirty (30) days' unqualified written notice of cancellation or reduction has been given to the City, except in the event of nonpayment of premium, in which case there shall be ten (10) days' unqualified written notice. Subrogation against City and City's Agent shall be waived. Consultant's insurance policies shall be endorsed to indicate that Consultant's insurance coverage is primary and any insurance maintained by City or City's Agent is non-contributing as respects the work of Consultant.
- G. Insurance Certificates** Before Consultant performs any portion of the Work, it shall provide City with certificates and endorsements evidencing the insurance required by this Article. Consultant agrees to maintain the insurance required by this Article of a minimum of three (3) years following completion of the Project and, during such entire three (3) year period, to continue to name City, City's agent, and other specified interests as additional insureds thereunder.
- H. Waiver of Subrogation** Coverage shall contain a waiver of subrogation in favor of the City, and its subdivisions, departments, officials, officers and employees.

- I. **Consultant Negligent Act** If due to the Consultant's negligent act, error or omission, any required item or component of the project is omitted from the Construction documents produced by the Consultant, the Consultant's liability shall be limited to the difference between the cost of adding the item at the time of discovery of the omission and the cost had the item or component been included in the construction documents. The Consultant will be responsible for any retrofit expense, waste, any intervening increase in the cost of the component, and a presumed premium of 10% of the cost of the component furnished through a change order from a contractor to the extent caused by the negligence or breach of contract of the Consultant or its subconsultants.
- J. **Termination** This Agreement may be terminated by either party upon seven days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party; provided, however, the nonperforming party shall have 14 calendar days from the receipt of the termination notice to cure the failure in a manner acceptable to the other party. In any such case, the Consultant shall be paid the reasonable value of the services rendered up to the time of termination on the basis of the payment provisions of this Agreement. Copies of all completed or partially completed designs, plans and specifications prepared under this Agreement shall be delivered to the City when and if this Agreement is terminated, but it is mutually agreed by the parties that the City will use them solely in connection with this Project, except with the written consent of the Consultant (subject to the above provision regarding Reuse of Documents).
- K. **Termination for Convenience** The City, within its sole discretion, may elect to terminate the Agreement with the Consultant for convenience upon three (3) days written Notice to Consultant. In the event of such termination, Consultant shall cease immediately all operations and shall be compensated for all work performed as of the date of termination in accordance with the terms of payment in this Agreement.
- L. **Controlling Law** This Agreement is to be governed by the laws of the State of Kansas.
- M. **Indemnity** To the fullest extent permitted by law, with respect to the performance of its obligations in this Agreement or implied by law, and whether performed by Consultant or any sub-consultants hired by Consultant, the Consultant agrees to indemnify City, and its agents, servants, and employees against all claims, damages, and losses, including reasonable attorneys' fees and defense costs, caused by the negligent acts, errors, or omissions of the Consultant or its sub-consultants, to the extent and in proportion to the comparative degree of fault of the Consultant and its sub-consultants.
- N. **Severability** Any provision or part of the Agreement held to be void or unenforceable under any law or regulation shall be deemed stricken and all remaining provisions shall continue to be valid and binding upon the City and the Consultant, who agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision. The provisions of this Article shall not prevent this entire Agreement from being void should a provision which is of the essence of this Agreement be determined void.
- O. **Notices** Any notice required under this Agreement will be in writing, addressed to the appropriate party at the address which appears on the signature page to this Agreement (as modified in writing from item to time by such party) and given personally, by registered or certified mail, return receipt requested, by facsimile or by a nationally recognized overnight courier service. All notices shall be effective upon the date of receipt.
- P. **Successors and Assigns** The City and the Consultant each is hereby bound and the partners, successors, executors, administrators, legal representatives and assigns of the City and the Consultant are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrators, legal representatives and assigns of such other party in respect of all covenants and obligations of this Agreement.

- Q. Written Consent to Assign** Neither the City nor the Consultant may assign, sublet, or transfer any rights under the Agreement without the written consent of the other, which consent shall not be unreasonably withheld; provided, Consultant may assign its rights to payment without Owner's consent, and except to the extent that any assignment, subletting or transfer is mandated by law or the effect of this limitation may be restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Agreement.
- R. Duty Owed by the Consultant** Nothing in this Agreement shall be construed to create, impose or give rise to any duty owed by the Consultant to any Contractor, subcontractor, supplier, other person or entity or to any surety for or employee of any of them, or give any rights or benefits under this Agreement to anyone other than the City and the Consultant.

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

**City:**

City of Prairie Village, Kansas

**By:** \_\_\_\_\_

Laura Wassmer, Mayor

**Address for giving notices:**

City of Prairie Village  
Department of Public Works  
3535 Somerset Drive  
Prairie Village, Kansas 66208

Telephone: 913-385-4640

Email: publicworks@pvkansas.com

**ATTEST:**

\_\_\_\_\_  
Joyce Hagen Mundy, City Clerk

**Consultant:**

Affinis Corp

**By** \_\_\_\_\_

  
Clifton M. Speegle, PE

**Address for giving notices:**

Affinis Corp  
8900 Indian Creek Parkway, Suite 450  
Overland Park, KS 66210

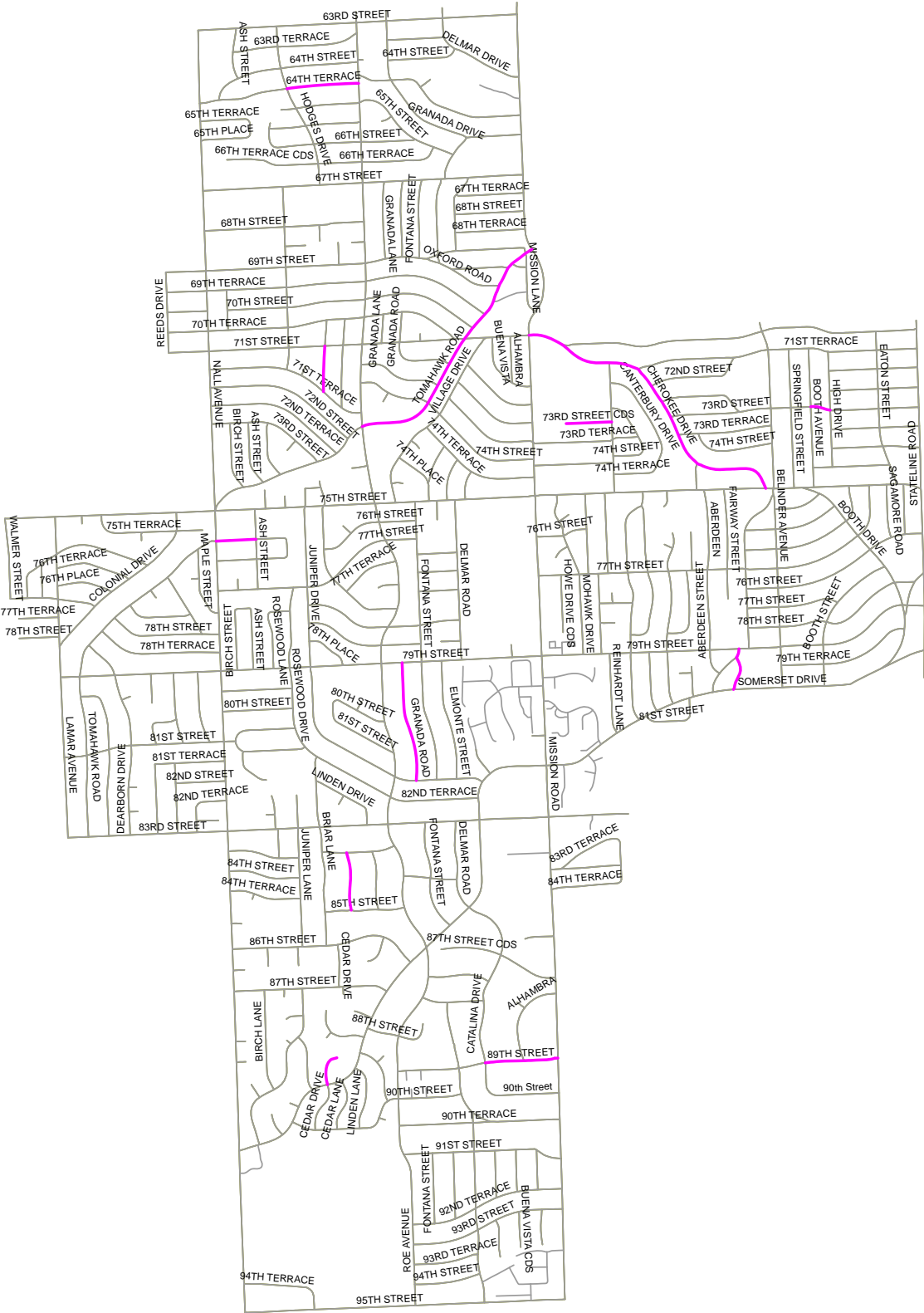
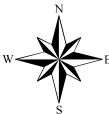
Telephone: 913-239-1110

Email: cspeegle@affinis.us

**APPROVED AS TO FORM BY:**

\_\_\_\_\_  
Catherine P. Logan, City Attorney

# 2018 Paving Program







## PUBLIC WORKS DEPARTMENT

Council Committee Meeting Date: March 5, 2018

Council Meeting Date: March 19, 2018

### CONSIDER CONSTRUCTION ADMINISTRATION AGREEMENT WITH TREKK DESIGN GROUP FOR THE 2018 CONSTRUCTION PROJECTS.

#### RECOMMENDATION

Move to approve the construction administration agreement with TREKK Design Group for 2018 construction projects for \$115,188.00.

#### BACKGROUND

Public Works requested proposals in 2015 from firms to provide construction administration services for Prairie Village in the areas of Right of Way Inspection and Construction Inspection for 2015-2017. Three firms were selected to provide construction administration services, BHC Rhodes, Olsson Associates and TREKK Design Group.

The intent of selecting three firms was to rotate through the firms during the construction seasons as needed to provide inspection. The City has needed and utilized two of the three firms since the selection. This contract will include construction administration services for the 2018 construction projects, primarily the 2018 Paving Program, and can also include the drainage projects and 2018 CARS project.

The total construction cost for the roadway projects will be about \$5,300,000. The fee was negotiated with TREKK to be \$115,188 or 2.2% of construction costs. This is significantly less than our past costs for construction administration since we are now supplementing our staff with assistance during the height of construction season.

#### FUNDING SOURCE

Funding is available in the CIP Project PAVP2018.

#### RELATION TO VILLAGE VISION

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

#### ATTACHMENTS

1. Construction Administration Agreement with TREKK Design Group.

#### PREPARED BY

Melissa Prenger, Sr Project Manager

February 28, 2018

**AGREEMENT FOR PROFESSIONAL CONSULTANT SERVICES**

**For**

**CONSTRUCTION ADMINISTRATION**

**For**

**2018 PAVING PROGRAM AND 2018 CARS PROGRAM**

***THIS AGREEMENT***, made at the Prairie Village, Kansas, this \_\_\_\_\_ day of \_\_\_\_\_, by and between the City of Prairie Village, Kansas, a municipal corporation with offices at 7700 Mission Road, Prairie Village, Kansas, 66208, hereinafter called the “**City**”, and TREKK Design Group, LLC, a Kansas corporation with offices at 1411 E. 104<sup>th</sup> Street, Kansas City, MO, 64131, hereinafter called the “**Consultant**”.

***WITNESSED, THAT WHEREAS***, City has determined a need to retain a professional engineering firm to provide civil engineering services for Construction Administration of 2018 PAVING PROGRAM AND 2018 CARS PROGRAM hereinafter called the “**Project**”,

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

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

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

**ARTICLE I - RESPONSIBILITIES OF THE CITY**

The CITY designates Melissa Prenger, Senior Project Manager as CITY representative with respect to this Agreement. Ms. Prenger shall have the authority to transmit instructions, receive information, interpret and define the policies of the CITY, make decisions relevant to the services of the CONSULTANT.

The CITY shall do the following in a timely manner:

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

## ARTICLE II - RESPONSIBILITIES OF THE CONSULTANT

The CONSULTANT designates Ron Fields as Construction Manager, who shall direct the related construction inspection and administration services in all phases of the Project to which this Agreement applies. The Construction Manager shall serve as the prime professional on this Project and shall be the prime contact with the Senior Project Manager.

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

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

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

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

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

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

The Construction Manager shall have authority to disapprove or reject Contractor's work while it is in progress if, on the basis of such observations, Construction Manager believes that such work will not produce a completed project that conforms generally to the Project Manual or that it will prejudice the integrity of the design concept of the completed project as a functioning whole as indicated in the Project Manual.

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

The Construction Manager shall recommend Change Orders and Field Orders to Senior Project Manager, as appropriate, and prepare Change Orders and Field Orders as required.

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

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

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

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

The Construction Manager shall:

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

any subsequent adjustments allowed by the Project Manual). The responsibilities of Construction Manager are expressly subject to the limitations set forth herein.

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

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

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

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

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

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

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

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

The duties and responsibilities Construction Manager are as follows:

- 1 Attend meetings with Contractor, such as preconstruction conferences, progress meetings, job conferences and other project-related meetings, and prepare and circulate copies of minutes thereof.
- 2 Serve liaison with Contractor, working principally through Contractor's superintendent, assist in providing information regarding the intent of the Project Manual.

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

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

The Construction Manager shall not:

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

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

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

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

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

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

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

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

Typical entries for general information -

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



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

Typical entries for subgrade work -

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

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

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

Typical entries for paving work -

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

Typical entries for storm drains -

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

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

insufficient or inadequate in providing job or public safety at any time, the Construction Manager shall notify the Senior Project Manager.

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

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

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

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

### **ARTICLE III - COMPENSATION**

The CITY agrees to pay the CONSULTANT, at Hourly Rates, to a Maximum Fee of \$115,188.00 for the scope of services as specified herein unless modified by Change Order. CONSULTANT current Hourly Rate Schedule is attached as Exhibit A.

The CONSULTANT may submit an invoice on a monthly basis from an estimate of Services or upon the completion of services. The CONSULTANT shall bill reimbursable expenses, which are beyond all fees for professional services, with a multiplier of 0. Reimbursable items shall be as follows:

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

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

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

#### **ARTICLE IV - GENERAL PROVISIONS**

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

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

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

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

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

**Insurance:** The Consultant shall procure and maintain, at its expense, the following insurance coverage: (a) Workers' Compensation -- Statutory Limits, with Employer's Liability limits of \$100,000

each employee, \$500,000 policy limit; (b) Commercial General Liability for bodily injury and property damage liability claims with limits of not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate; (c) Commercial Automobile Liability for bodily injury and property damage with limits of not less than \$1,000,000 each accident for all owned, non-owned and hired automobiles; (d) errors and omissions coverage of not less than \$1,000,000. Deductibles for any of the above coverage shall not exceed \$25,000 unless approved in writing by City. In addition, Consultant agrees to require all consultants and subconsultants to obtain and provide insurance in identical type and amounts of coverage together and to require satisfaction of all other insurance requirements provided in this Agreement.

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

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

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

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

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

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

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

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

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

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

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

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

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

**CITY:**

CITY OF PRAIRIE VILLAGE, KS

**CONSULTANT:**

TREKK Design Group, LLC

By: \_\_\_\_\_

\_\_\_\_\_

Mayor

By: \_\_\_\_\_

Kimberly Robinett

Managing Member

Address for giving notices:

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

Address for giving notices:

TREKK Design Group, LLC  
1411 E. 104<sup>th</sup> Street  
Kansas City, MO 64131  
816-874-4655

ATTEST:

\_\_\_\_\_  
Joyce Hagen Mundy, City Clerk

APPROVED BY:

\_\_\_\_\_  
Catherine Logan, City Attorney



2018 Fee Estimate Worksheet

Project Name & Number Prairie Village - On Call RPR

EXHIBIT A

WORK TASK DESCRIPTION	Project Manager	Construction Inspector	Administration	Mileage	Direct Expenses		Labor Sub-Total	Direct Exp	Sub-Total	TOTAL
					Quantity	Cost/Unit				
<b>Fee Billing Rate</b>	\$155.00	\$105.00	\$77.00	\$ 0.535			\$ 113,048.00	\$	2,140.00	\$ 115,188.00
Task 1 - Construction Inspection										
Project Administration	40	1,000	24	4000						
Construction Inspection										
<b>TOTAL MAN-HOURS / QUANTITY</b>	40	1000	24	4000						
<b>UNIT RATE</b>	\$155.00	\$105.00	\$77.00	0.54						
<b>TREKK DESIGN GROUP FEE TOTAL</b>	<b>\$ 6,200.00</b>	<b>\$ 105,000.00</b>	<b>\$ 1,848.00</b>	<b>\$ 2,140.00</b>			<b>\$ 113,048.00</b>	<b>\$</b>	<b>2,140.00</b>	<b>\$ 115,188.00</b>



## 2019 Goals and Objectives

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Attached please find the 2019 Goals and Objectives and the budget process.

Lisa will review and reflect on Council Goal-Setting:

- Overall philosophy & approach
- Success factors and challenges
- Items to bring forward or to leave behind
  - 2019 Service / Decision Packages
- Understand revenue constraints

## SUGGESTED MOTION

Recommend the City Council approve the 2019 Goals and Objectives.

**ATTACHMENTS:**    2019 Goals and Objectives  
                              2019 Budget Process Chart

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Prepared By:  
Lisa Santa Maria  
Finance Director  
Date: February 28, 2018





# City of Prairie Village 2019 Goals and Objectives

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## 2019 Council Goal-Setting:

- Budget Process Perspective
  - Serve the Community
  - Run the Organization
  - Manage the Resources
  - Develop Personnel
  
- Overall philosophy & approach
  - Quality of Life
  - Superior Services
  - Community Safety
  - Be mindful of tax burden
  - Invest in Public Realm
  
- Success factors and challenges
  - How do we measure success
  - What are current and future challenges
    - i.e. aging infrastructure
  
- Items to bring forward or to leave behind
  - What is working and what needs to be changed
  - 2019 Service / Decision Packages
  
- Understand revenue constraints
  - What can be accomplished within our revenue constraints

## 2019 GOALS

## • OBJECTIVES

Maintain high quality services and programs

- Manage and plan to meet demand for City services
- Promote sustainable growth and development
- Understand the scope of available options (solutions within the City's sphere of influence or control)

Maintain quality streets, parks and infrastructure

- Maintain a comprehensive plan
- Plan and construct capital projects

Continue strong financial condition

- Maintain AAA bond rating
- Budget for General Fund ending fund balance to be 25% of revenues (excluding transfers)
- Continue to tighten actual budget ratio by reducing budget expenditures (96% estimated) and more reliance on contingency
- Emphasis on Equipment Reserve Fund for non-routine equipment purchases
- Prepare and adopt a fiscally prudent 2019 City Budget

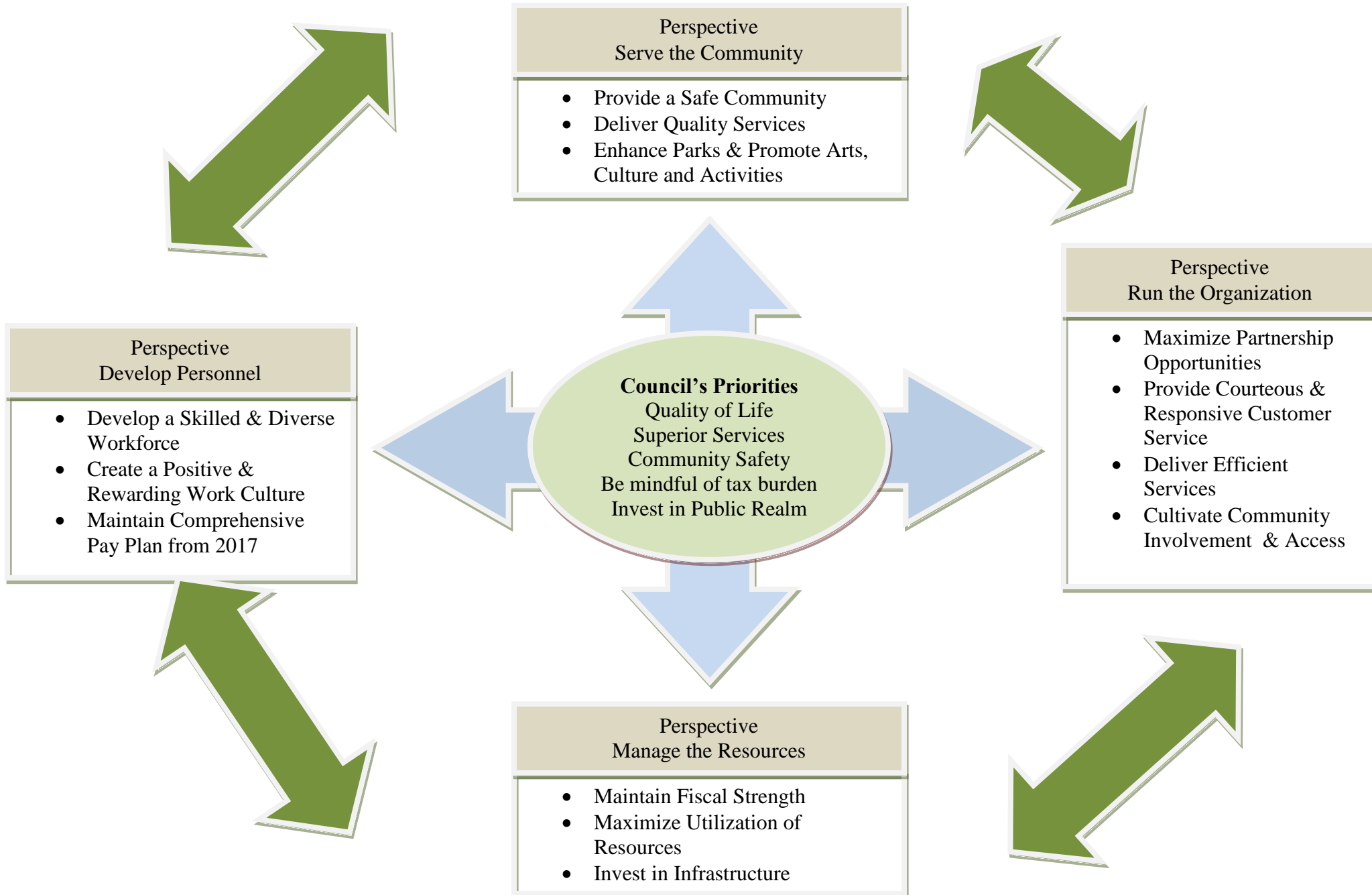
Increase financial transparency

- Communicate with Citizens and key local partners

Increase citizen participation in budget issues

- Communicate with Citizens and key local partners
- Gather information and understand questions to ask and actions the City or partners can take to assist citizens

# Goals and Objectives - 2019 Budget Process



**COUNCIL MEETING AGENDA  
CITY OF PRAIRIE VILLAGE  
Council Chambers  
Monday, March 05, 2018  
7:30 PM**

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

**Northeast Johnson County Chamber Update - Deb Settle**

- 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 - February 20, 2018
- 2. Approve the interlocal agreement with Johnson County for Project REIST0001: Reinhardt & 84th Terrace Drainage Project
- 3. Approve the interlocal agreement with Johnson County for Project REIST0001: Reinhardt & 84th Terrace Drainage Project for engineering design
- 4. Approve easement for Water One facilities in Porter Park adjacent to Roe Avenue right of way
- 5. Approve the interlocal agreement with Johnson County for Project ROAV0004: Roe Avenue - 67th Street to 75th Street.
- 6. Approve the interlocal agreement with Johnson County and the City of Leawood, Kansas for Project MIRD0006: Mission Road from 84th Street to 95th Street

**By Committee**

- 7. Approve policy revisions to CP001: City Committees

VIII. **COMMITTEE REPORTS**

**Council Committee of the Whole**

- COU2018-12 Consider approval of the Mobilitie Franchise Ordinance and Master License Agreement for Attachments to City Facilities (Pole Attachment Agreement)
- COU2018-13 Consider approval of an agreement with Affinis Corporation for the design of the 2018 Paving Program

**Planning Commission**

- PC2018-02 Consider approval of a Special Use Permit for 7930 State Line Road  
Chris Brewster
- PC2018-102 Consider approval of an amendment to the preliminary development plan for 7930 State Line Road  
Chris Brewster

IX. **MAYOR'S REPORT**

X. **STAFF REPORTS**

XI. **OLD BUSINESS**

**Council meeting efficiency - Tucker Poling**

At the conclusion of the February 20th meeting, the following items were continued until March 5 for further consideration:

- Combining CCW and Council meetings into one meeting
- Determine the specifics of the new agenda format
- Action Minutes
- Create a Council policy addressing what is placed on New Business
- Ordinance revisions in Chapter 1 based on possible changes

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](mailto:cityclerk@pvkansas.com)

**CITY COUNCIL  
CITY OF PRAIRIE VILLAGE  
February 20, 2018**

The City Council of Prairie Village, Kansas, met in regular session on Tuesday, February 20, 2018 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: Chad Herring, Jori Nelson, Serena Schermoly, Ronald Nelson, Tucker Poling, Andrew Wang, Sheila Myers, Dan Runion, Courtney McFadden and Ted Odell

Staff present: Tim Schwartzkopf, Chief of Police; Keith Bredehoeft, Public Works Director; Katie Logan, City Attorney; Wes Jordan, City Administrator; Jamie Robichaud, Assistant City Administrator; Alley Porter, Assistant to the City Administrator, Lisa Santa Maria, Finance Director and Joyce Hagen Mundy, City Clerk.

**INTRODUCTION OF STUDENTS & SCOUTS**

Mayor Wassmer welcomed a scout from Troop 387 in attendance for his “Citizenship and the Community” Badge.

**PRESENTATIONS**

**POLICE DEPARTMENT RECOGNITION AWARDS**

Chief Tim Schwartzkopf welcomed family, friends and guests present to recognize and honor the work of Prairie Village Police personnel in two specific incidents. The first supervisory recognition for exemplary service was presented to Dispatchers Tim Kobe

and Miriam Russell, Detective Lacey Daly, Officers Ben Overesch and Curtis Phipps and Sgt. Adam Taylor for their response to an attempted suicide call on August 9, 2017. The second recognition for exemplary service was presented to Detectives Kelsey Houchen, Josh Putthoff, Jason Wakefield and Sergeant Dan Stewart for their response to an incident on October 22, 2017, where a nine-year old girl was asleep in her house when she woke up to find a man standing near her holding a pocket knife. The work of these detectives resulted in the identification of a suspect and charges being filed for aggravated burglary, felony theft and criminal damage to property.

Chief Schwartzkopf congratulated all of the recipients for their exceptional work in these two incidents.

### **PUBLIC PARTICIPATION**

Nathan Kovac, 4112 West 75<sup>th</sup> Street, addressed the City Council regarding the proposed changes to the Council Policy on committees particularly regarding the proposed ability of the Mayor to remove a committee member without approval of the City Council. He felt the check and balance of Council involvement was important for transparency.

With no one else to address the City Council, public participation was closed at 7:46 p.m.

### **CONSENT AGENDA**

Ron Nelson noted a correction to the minutes on page 14 “Tucker Gallagher” should be “Terrence Gallagher” and Mr. Poling noted a correction to the vote on the bottom of page 24 that Mr. Runion should have been recorded as a vote in support.

Dan Runion asked for clarification on the proposed pole attachment fee and if the fees could be changed. Wes Jordan stated these fees apply to the attachment of small cell antennas. They are proposed to bring consistency to fees currently charged by area municipalities. Mr. Jordan noted the fees could be changed.

Mr. Runion confirmed the poles are owned by the City and that any replacement poles would also be owned by the City. Mr. Jordan noted that the first application for placement of small cell antennas would come before the Council at the March 5<sup>th</sup> meeting and that more are expected. Mr. Runion asked when replacement poles would be required. Mr. Jordan responded that if the provider was not able to retrofit its antenna on an existing pole a replacement pole would be required. He added that the City will also be discussing the placement of the equipment cabinets in conjunction with the franchise agreements. David Waters will be at the March 5<sup>th</sup> meeting to present the proposed application and related restrictions that the city is allowed to place on the providers.

Dan Runion moved for the approval of the Consent Agenda for Tuesday, February 20, 2018 as amended:

1. Approval of the regular City Council meeting minutes - February 5, 2018 as corrected
2. Approval of Claims Ordinance #2963
3. Approval of amendment to the City Fee Schedule adding a Small Cell Franchise Fee (Wireless Infrastructure Provider) of 5% of gross receipts; Franchise Fee (Wireless Services Provider) of \$25 per pole/antenna on an annual basis and Pole Attachment Fee of \$45 per pole/antenna per month

A roll call vote was taken with the following members voting “aye”: Herring, J. Nelson, Schermoly, R. Nelson, Poling, Wang, Myers, Runion, McFadden and Odell.

## **COMMITTEE REPORTS**



There were no Committee Reports.

## **MAYOR'S REPORT**

Mayor Wassmer noted she and Mrs. Santa Maria and Mr. Jordan will be meeting with Johnson County Appraiser Paul Welcome on March 2 to receive information on property appraisals in Prairie Village. The city is anticipating increases of 12 to 15 percent. She will have more information for the Council at the March 5<sup>th</sup> meeting.

## **STAFF REPORTS**

Mayor Wassmer announced that Staff Reports were given at the earlier Council Committee of the Whole meeting.

## **OLD BUSINESS**

### **Council Meeting Efficiency**

Tucker Poling stated he is seeking to improve council meeting efficiency and transparency. Under the current process there are two meetings, two meeting times, two separate agendas, two separate packets, two sets of minutes and duplicated agenda items. Mr. Poling reviewed the duplication in the current process. He is proposing to combine the two meetings into one Council meeting with the "Committee" meeting last on the agenda. Most other cities do not have a council committee meeting as well as a City Council meeting.

Mr. Poling also noted the confusion brought on by the two separate meetings to residents. Residents will come to a City Council meeting expecting to hear discussion on a topic only to find out it was discussed at the earlier meeting and the only discussion at the City Council meeting was the actual action taken on the issue. He feels it is the city's

responsibility to make information as easily accessible to residents as possible. The current process is not clear to residents. He believes improvements can be made that will make the process more accessible to residents and thus more transparent.

Mr. Tucker proposed the current two meetings be combined into one meeting. This would eliminate a great deal of duplication. Items would only appear on the agenda once. There would not be duplicated motions and votes. Items currently heard in the committee meeting and brought forward would be heard once at the council meeting under New Business. The Council Committee of the Whole would not be eliminated, but would become a segment of the unified meeting serving as a work session for items that do not require same night action. These items would be considered at the next, or future designated, city council meeting for action. This would align the process with the intended function of a committee - to consider, deliberate and prepare items for final action at a later date.

Mayor Wassmer asked where action would occur at the next city council meeting. Mr. Poling responded under "Committee Reports" or "Old Business". This allows the council the time to deliberate on an issue before taking action. He noted the proposed process is essentially how the Kansas state legislature operates.

Ted Odell stated he appreciated Mr. Poling's passion and thoughtful process. He likes how the committee functions and feels the process has worked over the years. He doesn't view the current process as broken.

Dan Runion asked how the current process came to be. Mayor Wassmer stated that several years ago there were two committees: Policy/Services and Legislative/Finance. They would consider designated items and bring a recommendation to the Council for action. When there was an item of broad interest it was directed to the

Council Committee of the Whole. The recommendations would be brought before the City Council and acted upon. Committee members began to question recommendations feeling that they did not have all the information. The subcommittees were dissolved and everything was brought to the Council Committee of the Whole. Mayor Wassmer stated that she likes the proposal and is supportive.

Wes Jordan stated that he was supportive of the proposal acknowledging the duplication of efforts pointed out by Mr. Poling. He added to the proposal consideration of moving toward action minutes rather than the current detailed minutes. He noted the significant staff time that was spent in preparing and reviewing minutes. He felt staff time could be better and more efficiently used.

City Clerk Joyce Hagen Mundy stated she was supportive of both Mr. Poling's and Mr. Jordan's recommendations. She noted the improvement in staff time with the change to paperless packets, but noted this could be further improved as proposed. The preparation of minutes does take a significant amount of her time, especially if recordings of the meetings are referenced and she would be supportive of action minutes noting that this is what is done by most municipalities. She noted there are pros and cons to the issue, but the cons can be addressed through the availability of the live streamed meeting and overall the efficiencies of action minutes would be a significant improvement.

Chad Herring stated he felt the proposal needs to be given serious discussion. He doesn't feel the proposal changes the function of the Council Committee of the Whole. As Mr. Poling pointed out the proposed process is easier for residents to understand. The only downside he sees is potentially the earlier 6 p.m. start for the City Council meetings and the impact on residents desiring to attend the meeting. He stated he is

generally supportive of the proposal and asked how it would need to be adopted. City Attorney Katie Logan replied it would be adopted by ordinance.

Mr. Herring stated that he did not feel the discussion on action minutes was germane to the proposed change in process and could be acted upon independently. He would like to see the adoption of a docket at the beginning of a meeting. The docket would present any “New Business” items to be added at that time. This prevents the addition of surprise items later in the meeting and gives people time to prepare for the discussion during the meeting. A docket would be presented as an agenda and either approved or amended.

Andrew Wang stated he previously served on both the previous subcommittee structure and current structure. He does not see the current process as broken. He is hearing support from staff for the proposed change and more support for the change to action minutes. He questioned how much efficiency would be gained and how it would be measured.

Mr. Poling replied any measurement of gained efficiencies would be speculative on his part. He does not believe the current process is broken, but he does believe that it could be improved. He doesn't see any reason for the duplication that is occurring. As the ordinances are currently written, changes required would be minor. The Council Committee of the Whole is not being eliminated so there would be no change to Section 1.804. Mayor Wassmer noted the meeting times would need to be changed. Mr. Poling noted currently residents wanting to hear the council discuss items need to come at 6 p.m. He believes residents will appreciate the ability to address the council prior to action being taken.

Ron Nelson stated he supported the proposal. He and Mr. Poling discussed these concerns while attending meetings prior to their election. The proposed action does not indicate that the current process is broken; the proposed changes will bring increased efficiency and transparency.

Ted Odell noted his biggest concern with the proposed process is how “New Business” would be handled. He wants to ensure that council members and residents have sufficient time to consider issues before taking action.

Mayor Wassmer stated New Business would be placed on the agenda allowing everyone to know that it is being acted upon. Information on the items needs to be included in the packet providing the background necessary for action to be taken.

Jori Nelson confirmed that New Business could not be brought up at the meeting with action taken. She noted that currently during council meetings only the motion is stated without providing any background. Ms Nelson advised the Council members to use their microphones as individual’s live streaming the meeting are not able to hear what is being said.

Serena Schermoly stated she supports action minutes and would like to explore having the agenda linked to the live streaming to assist residents in going directly to a specific part of the meeting.

Chad Herring noted the question is how to create good order. The adoption of the docket clarifies what will be acted upon. New Business is acted upon during the Council meeting, while Council Committee items are acted upon at a later meeting. The adoption of the docket and creation of a policy on how items are to be brought forward under New Business would address these concerns. He noted that one option would be to require a

super majority vote to move an item forward the same evening. There needs to be some flexibility.

Mayor Wassmer noted currently items come out from Council Committee of the Whole to the City Council on the same evening.

Chad Herring stated he understands Mr. Odell's concerns. Once the Council meeting adjourns into the Council Committee of the Whole no official action can be taken. Where the items are placed on the agenda determines when it would be voted upon. Sheila Myers confirmed the Council is not required to vote.

Tucker Poling stated there is no change to the function of New Business. The Council Committee of the Whole meets at the conclusion of the Council meeting because you want action taken on these in proper order at a future Council meeting. The committee's function is to discuss, deliberate and work out issues bringing forth a recommendation for action at a future meeting.

Mayor Wassmer asked the Council to take this proposal into consideration and stated it will be discussed further at the next City Council Meeting. She sees the following items needing to be addressed: 1) combination of Council Committee of the Whole meeting with the City Council meeting; 2) development of a policy on the process for placement of items under New Business; 3) consideration of action minutes and 4) the specifics of the layout of the agenda.

Ted Odell asked what changes would need to be made from an ordinance standpoint. Tucker Poling stated Section 1-211 of the city's code addresses rules and order of business. He stated the current code is not being followed and would recommend that it be removed.

## **Village Square**

Jori Nelson stated that she would like to add a 4<sup>th</sup> option to the options being considered for Village Square to do nothing and continue with the existing CIP program for Harmon Park. Mayor Wassmer replied Village Square would be discussed in conjunction with the 2019 budget discussion. Available funds will play a significant role in what action is pursued relative to the Village Square concept. This is part of a larger budget discussion and approval.

Jori Nelson asked what funding was already in the CIP for Harmon Park. Lisa Santa Maria replied \$1.2M is included in the CIP from economic development funds for North Park. Keith Bredehoeft added the skate park is funded in the 2018 budget with construction in 2019. Harmon Park Playground equipment is included in the proposed 2019 CIP. Mayor Wassmer noted park amenities are acted upon annually in the CIP. Ron Nelson stated the options for Village Square are not necessarily A, B or C, but the determination of what amenities are desired.

## **NEW BUSINESS**

Wes Jordan confirmed new council committee assignments are effective immediately. During the transition new chairs should meet with existing chairs to set agendas and discuss committee member reappointments/appointments. Committee reappointments and new committee appointments will be made at the March 19<sup>th</sup> meeting.

## **ANNOUNCEMENTS**

### **Committee meetings scheduled for the next two weeks include:**

VillageFest Committee	02/22/2018	5:30 p.m.
Environment/Recycle Committee	02/28/2018	5:30 p.m.

Council Committee of the Whole  
City Council

03/05/2018  
03/05/2018

6:00 p.m.  
7:30 p.m.

=====  
The Prairie Village Arts Council is pleased to feature a mixed media exhibit in the R.G. Endres Gallery featuring Lorrie Engles, Kim Taggart, Gloria Gale and Chris Langseth during the month of February.

Republic does not observe the Presidents Day holiday. Trash services **will not** be delayed.

Mark your calendar for the 2018 NLC Congressional City Conference in Washington, D.C. March 11-14, 2018.

Mark your calendar for the 2018 State of the County Address on Tuesday, March 27<sup>th</sup>. Let Meghan know if you will be attending.

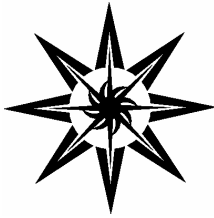
The 2018 Annual Large Item Pick up has been scheduled for Saturday, April 14<sup>th</sup> for homes on 75<sup>th</sup> Street and north of 75<sup>th</sup> Street; homes south of 75<sup>th</sup> Street will be collected on Saturday, April 21<sup>st</sup>.

**ADJOURNMENT**

Ted Odell moved that the City Council meeting be adjourned. The motion was seconded by Jori Nelson and passed unanimously. 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 Meeting Date: March 5, 2018

### CONSIDER INTERLOCAL AGREEMENT WITH JOHNSON COUNTY FOR PRELIMINARY ENGINEERING STUDY FOR REIST0001: REINHARDT & 84TH TERRACE DRAINAGE PROJECT

#### RECOMMENDATION

Move to approve the interlocal agreement with Johnson County for Project REIST0001: Reinhardt & 84th Terrace Drainage Project.

#### BACKGROUND

Johnson County has approved Project REIST0001: Reinhardt & 84th Terrace Drainage Project for inclusion in the Stormwater Management Advisory Council (SMAC) program. An Interlocal Agreement has been received from Johnson County for execution by the City of Prairie Village. This agreement will limit the County share to 75% of the preliminary engineering study's total cost of \$11,802. This project is a joint project with the City of Leawood, Kansas and will be administered by Prairie Village.

This project is a part of the 2017 CIP.

#### FUNDING SOURCE

Funding is available in the CIP project REIST001.

#### RELATION TO VILLAGE VISION

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

#### ATTACHMENTS

1. Interlocal Agreement with Johnson County for PES project DB-11-014

#### PREPARED BY

Melissa Prenger, Sr Project Manager

February 27, 2018

**Agreement between  
Johnson County and the City of Prairie Village  
For a Preliminary Engineering Study of a Stormwater Management Project  
known as 84<sup>th</sup> Street & Reinhardt Stormwater Improvements  
DB-11-014**

This agreement is entered into by and between the Board of County Commissioners of Johnson County, Kansas (the "County") and the City of Prairie Village (the "City") pursuant to K.S.A. 12-2908.

**Recitals**

1. Pursuant to K.S.A. 19-3311, by Resolution No. 38-90, the County has established a county-wide retailer's sales tax for the purpose of providing funds for stormwater management projects, and by Resolution No 76-90, created a Stormwater Management Advisory Council to identify and recommend projects for inclusion in the Stormwater Management Program.
2. The County has established a Stormwater Management and Flood Control Fund for the purpose of funding Stormwater Management Program projects.
3. The County, by Resolution No. 66-92, as modified by Resolution No 034-94, adopted the Johnson County Stormwater Management Policy and the Administrative Procedures for the Johnson County Stormwater Management Program ("Policy and Procedures") to promote interlocal cooperation between the County and the participating municipalities in stormwater management activities.
4. In accordance with the Policy and Procedures, the City has requested that the County participate in the funding for the preliminary engineering study ("Preliminary Study") for the stormwater management project identified as 84<sup>th</sup> Street & Reinhardt Stormwater Improvements (the "Project"), which meets the minimum requirements, and the County is willing to provide such funding upon the terms and conditions set forth in this agreement.

## **Agreement**

In and for the consideration of the mutual covenants contained in this agreement and the mutual benefits to be derived from the Project, the City and the County agree as follows:

1. **Policy and Procedures.** The City acknowledges receipt of the Policy and Procedures. The City and County agree that the Preliminary Study shall be undertaken in accordance with the terms and provisions of the Policy and Procedures provided, however, in the event a conflict exists between any provision of the Policy and Procedures and any provision of this agreement, the terms and conditions of this agreement shall control.
2. **Preliminary Engineering Study.** The City shall provide the Stormwater Management Program Manager, or his/her designee (“Manager”) with a Preliminary Study that satisfies the requirements set forth in the Policy and Procedures. The Preliminary Study shall be performed by qualified engineering professionals or by qualified City personnel, or both, subject to the provisions of this agreement and the Policy and Procedures. In general, the Preliminary Study shall define the proposed scope of the Project, analyze the impact of the Project on upstream and downstream property, suggest alternative solutions or approaches to stormwater control, and must establish a preliminary estimate for design and construction costs. The costs and expenses incurred by the City in connection with the Preliminary Study shall be reimbursable, subject to the limitations on reimbursement contained in the Policy and Procedures and in this agreement.
3. **Estimated Cost of Preliminary Study.** The parties acknowledge and agree that the City has established an estimated total cost for the Preliminary Study of Eleven Thousand Eight Hundred Two Dollars (\$11,802) based upon City staff's estimates and assumptions.
4. **Notice to Affected Municipalities.** The City shall contact upstream and downstream municipalities as defined in the Policy and Procedures and shall inform such municipalities of the nature and scope of the Project. The City shall notify the County of any objection to the Project that is received by the City from an upstream or downstream municipality. The City agrees that it shall provide the upstream and downstream municipalities with an opportunity to review and comment upon the Preliminary Study prior to submitting the Preliminary Study to the County.
5. **Administration.** It is acknowledged and agreed that the City shall enter into all contracts relating to the Preliminary Study in its own name and not as the agent of the County. The City agrees to be solely responsible for the administration of all contracts for the Preliminary Study. Any contract disputes shall be resolved by the City at the City's sole cost and expense.

The City shall require adequate indemnity covenants and evidence of insurance from engineering service providers for loss or damage to life or property arising out of the engineering service provider's negligent acts or omissions. The required insurance coverage and limits shall be established by the City but shall not, in any event, be less than \$1,000,000 professional liability coverage for engineering service providers. The City may, in the exercise of its reasonable judgment, permit any insurance policy required by this agreement to contain a reasonable and customary deductible or co-insurance provision.

6. **County Contribution Toward Costs.** The County shall reimburse the City from the Stormwater Management and Flood Control Fund for expenditures made by the City for the Preliminary Study as follows:

Not more than once each calendar month, the City may submit to the County a request for payment, invoice, or statement satisfactory in form and content to the Manager detailing total Preliminary Study costs and expenses, in line-item detail, for the preceding calendar month ("Payment Request") and for year-to-date.

The City's Payment Request shall list, by category, those particular expenditures that are reimbursable according to the Policy and Procedures, The City represents and warrants that each Payment Request shall seek reimbursement for only those expenditures that the City determines, in good faith, to be reimbursable by the County. The Manager may require the City to supplement the Payment Request as needed to satisfy the Manager, at his/her discretion, that the Payment Request accurately reflects properly reimbursable costs and expenses.

The County agrees to make payment to the City within thirty days following the Manager's approval and acceptance of a properly documented Payment Request in an amount equal to seventy-five percent (75%) of the Payment Request.

7. **Limitation of Liability.** To the extent permitted by law and subject to the provisions of the Kansas Tort Claims Act, including but not limited to maximum liability and immunity provisions, the City agrees to indemnify and hold the County, its officials, and agents harmless from any cost, expense, or liability not expressly agreed to by the County which result from the negligent acts or omissions of the City or its employees or which result from the City's compliance with the Policy and Procedures.

This agreement to indemnify shall not run in favor of or benefit any liability insurer or third party.

8. **Notice Addresses.** Any notice required or permitted by this agreement shall be deemed properly given upon deposit in the U.S. mail, postage prepaid and addressed as follows:

**If to the County:**

Mr. Kent Lage, P.E.  
Urban Services Manager  
Johnson County Public Works  
1800 W. Old 56 Highway  
Olathe, KS 66061

**If to the City:**

Keith Bredehoeft, P.E.  
Public Works Director  
City of Prairie Village  
3535 Somerset Drive  
Prairie Village, KS 66208

9. **Effective Date.** Regardless of the date(s) the parties execute the agreement, the effective date of this agreement shall be \_\_\_\_\_ provided the agreement has been fully executed by both parties.

**Board of County Commissioners of  
Johnson County, Kansas**

**City of Prairie Village**

\_\_\_\_\_  
Ed Eilert, Chairman

\_\_\_\_\_  
Laura Wassmer, Mayor

Attest:

Attest:

\_\_\_\_\_  
Linda W. Barnes  
Deputy County Clerk

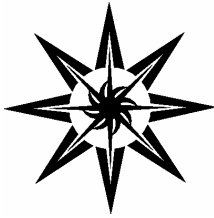
\_\_\_\_\_  
City Clerk

Approved as to Form:

Approved as to Form:

\_\_\_\_\_  
Robert A. Ford  
Assistant County Counselor

\_\_\_\_\_  
City Attorney



## PUBLIC WORKS DEPARTMENT

Council Meeting Date: March 5, 2018

### CONSIDER INTERLOCAL AGREEMENT WITH JOHNSON COUNTY FOR ENGINEERING DESIGN FOR REIST0001: REINHARDT & 84TH TERRACE DRAINAGE PROJECT

#### RECOMMENDATION

Move to approve the interlocal agreement with Johnson County for Project REIST0001: Reinhardt & 84th Terrace Drainage Project for engineering design.

#### BACKGROUND

Johnson County has approved Project REIST0001: Reinhardt & 84th Terrace Drainage Project for inclusion in the Stormwater Management Advisory Council (SMAC) program. An Interlocal Agreement has been received from Johnson County for execution by the City of Prairie Village. This agreement will limit the County share to 75% of the engineering design cost of \$156,710. This project is a joint project with the City of Leawood, Kansas and will be administered by Prairie Village.

This project is a part of the 2017 CIP.

#### FUNDING SOURCE

Funding is available in the CIP project REIST001.

#### RELATION TO VILLAGE VISION

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

#### ATTACHMENTS

1. Interlocal Agreement with Johnson County for design of project DB-11-014

#### PREPARED BY

Melissa Prenger, Sr Project Manager

February 27, 2018

**Agreement between  
Johnson County and the City of Prairie Village  
For Design of a Stormwater Management Project known as  
84<sup>th</sup> Street & Reinhardt Stormwater Improvements  
DB-11-014**

This agreement is entered into by and between the Board of County Commissioners of Johnson County, Kansas (the "County") and the City of Prairie Village (the "City") pursuant to K.S.A. 12-2908.

**Recitals**

1. Pursuant to K.S.A. 19-3311, by Resolution No. 38-90, the County has established a county-wide retailer's sales tax for the purpose of providing funds for stormwater management projects, and by Resolution No. 76-90, created a Stormwater Management Advisory Council to identify and recommend projects for inclusion in the Stormwater Management Program.
2. The County has established a Stormwater Management and Flood Control Fund for the purpose of funding Stormwater Management Program projects.
3. The County, by Resolution No. 66-92, as modified by Resolution No. 034-94, adopted the Johnson County Stormwater Management Policy and the Administrative Procedures for the Johnson County Stormwater Management Program ("Policy and Procedures") to promote interlocal cooperation between the County and the participating municipalities in stormwater management activities.
4. The County has established a Five-Year Master Plan consisting of a list of proposed stormwater management projects that meet the established criteria for funding from the Stormwater Management and Flood Control Fund. The County, upon the recommendation of the Stormwater Management Advisory Council, has selected certain projects from the Five Year Master Plan to be included in the County's Project Priority List which contemplates the timely design and construction of those selected projects.
5. In accordance with the Policy and Procedures, the City has requested that the County participate in the funding for the design of the stormwater management project identified as 84<sup>th</sup> Street & Reinhardt Stormwater Improvements (the "Project Design"), which Project is on the County's Project Priority List, and the County is willing to provide such funding upon the terms and conditions set forth in this agreement.



## **Agreement**

In and for the consideration of the mutual covenants contained in this agreement and the mutual benefits to be derived from the Project, the City and the County agree as follows:

1. **Policy and Procedures.** The City acknowledges receipt of the Policy and Procedures. The City and County agree that the Project Design shall be undertaken, designed, and administered in accordance with the terms and provisions of the Policy and Procedures provided, however, in the event a conflict exists between any provision of the Policy and Procedures and any provision of this agreement, the terms and conditions of this agreement shall control.
  
2. **Design Costs.** The parties acknowledge and agree that this agreement only obligates the parties to proceed with design of the Project. For budget and accounting purposes, the estimated cost of the Project Design is One Hundred Fifty Six Thousand Seven Hundred Ten Dollars (\$156,710).
  
3. **Engineering and Design Services.** The City shall be responsible for the selection of qualified engineering professionals to provide engineering services for the design of the Project. The City may provide engineering services, in whole or in part, for the Project Design utilizing qualified City personnel. The City agrees to provide to the County for review the identity and the qualifications of engineering professionals and City personnel under consideration by the City prior to entering into any binding contract for engineering services and prior to permitting any City personnel to perform engineering services relating to the Project Design. The County shall have the right, but not the obligation, to comment upon the qualifications or suitability of the engineering professionals and City personnel. Upon the request of the County Engineer, the City agrees to provide additional information or clarification, if available, regarding the qualifications of the engineering professionals or City personnel.

It shall be the City's duty and obligation to select only qualified engineering professionals and to permit only qualified City personnel to perform Project Design related services. The parties agree that the County has no obligation to comment upon, evaluate, or object to the qualifications of any engineering professional or City personnel and the County's failure to do so shall not be deemed an approval of the engineering professional or the City personnel.

In the event the County Engineer determines that the City's selection of an engineering professional or City personnel is not in the best interests of the Project, the County Engineer may request the City to reconsider its selection. Upon such request, the City shall either select a different engineering professional or City personnel, as the case may be, or shall seek a reconsideration by the County Engineer. In the event the City and the County cannot agree upon the selection, either party may terminate this agreement upon fifteen days notice to the other, and from and after the date of such termination, neither party shall have any further duties or obligations under this agreement.

Within sixty days from the date of the termination of this agreement as provided in this Paragraph, the City shall provide the County with a final accounting of Project Design costs and the County's share of such costs whereupon the County shall reimburse the City as provided in this agreement subject to any limitations on reimbursement set forth in the Policy and Procedures and this agreement.

4. **Estimated Project Cost.** The parties acknowledge and agree that the County Stormwater Management Program has established an estimated total design cost of the Project of One Hundred Fifty Six Thousand Seven Hundred Ten Dollars (\$156,710) based upon engineering and design assumptions that the Preliminary Study may or may not confirm. The parties shall, upon the completion of the Preliminary Study, analyze and consider the proposed scope and conceptual design of the Project as set forth in the Preliminary Study. If the parties cannot agree upon the scope or conceptual design of the Project, then either party may terminate this agreement upon fifteen days notice to the other. Upon such termination, the City shall be reimbursed by the County for costs and expenses incurred in connection with the Preliminary Study subject to the limitations set forth in the Policy and Procedures and in this agreement.
5. **Option to Terminate.** In the event the Preliminary Study reveals that the estimated cost of Project Design exceeds either City or County expectations, the City and the County each shall have the option of terminating this agreement as set forth in this Paragraph.

The City agrees to notify the County whether it desires to terminate this agreement within thirty days following the delivery of the Preliminary Study to the County. Within thirty days after the City gives its notice of intent to terminate this agreement to the County, the County may, at its option, elect to contribute a higher percentage of the estimated Project Design costs sufficient to allow the Project Design to continue, in which event this agreement shall not terminate but shall continue in full force and effect except that the County's obligation for Project Design costs shall be increased accordingly.

Within forty-five days after the date the Preliminary Study is received by the County, the County agrees to either:

- a. Notify the City of the County's intent to terminate this agreement and re-prioritize the Project, or;
- b. Authorize the City to proceed with the preparation of the "Preliminary Project Plans and Specifications" (as defined in this agreement).

Within thirty days after the County gives its notice of intent to terminate this agreement to the City, the City may, at its option, elect to contribute a higher percentage of the estimated Project Design sufficient to allow the Project Design to continue, in which event this agreement shall not terminate but shall continue in full force and effect except that the City's obligation for Project costs shall be increased accordingly. If the City does not elect to participate in a higher percentage of the estimated Project Design costs, this agreement shall automatically terminate on the thirty-first day following the date on which the County gave its notice of intent to terminate this agreement.

Within sixty days from the date of the termination of this agreement as provided in this Paragraph, the City shall provide the County with a final accounting of Project Design costs and the County's share of such costs whereupon the County shall reimburse the City subject to the limitations set forth in the Policy and Procedures and in this agreement.

Upon the termination of this agreement as provided in this Paragraph, the Project shall be re-prioritized according to the Policy and Procedures.

6. **Notice to Affected Municipalities.** The City shall contact all upstream and downstream municipalities that possibly may be adversely affected by the Project and shall inform such municipalities of the nature and scope of the Project. The City shall notify the County of any objection to the Project that is received by the City from any upstream or downstream municipality. The City agrees that it shall provide the upstream and downstream municipalities with an opportunity to review and comment upon the Preliminary Study prior to submitting the Preliminary Study to the County. The City shall keep the municipalities informed during the design, planning, and construction phases of the Project.
  
7. **Project Plans and Specifications.** Within \_\_\_\_\_ days following the County's notice to proceed with the preparation of "Preliminary Plans and Specifications" (as defined below), the City shall provide the County with a copy of the preliminary plans and specifications for the Project which shall include, without limitation, all proposed and draft engineering and construction documents, plans, drawings, construction schedules, cost estimates, and bid and contract documents ("Preliminary Plans and Specifications"). The County may, at its option, provide written comments and suggestions to the City regarding the proposed Preliminary Plans and Specifications and shall do so, if at all, within forty-five days from the date of receipt by the County of the Preliminary Plans and Specifications. Any comment, suggestion, approval, or disapproval by the County with respect to the Preliminary Plans and Specifications, or any portion thereof, shall be for the sole benefit of the City for its use and consideration in preparing its "Final Plans and Specifications" for the Project which shall include, without limitation, all final engineering and construction documents, plans, drawings, construction schedules, cost estimates, and bid and contract documents. It is expressly understood and agreed that the County's approval or disapproval of the Preliminary or Final Plans and Specifications shall not be considered, nor argued by the City in any court or proceeding, as a representation or warranty that the Plans and Specifications comply with or meet engineering or design principles or criteria or any applicable law.

The City shall submit its Final Plans and Specifications to the County for review within \_\_\_\_\_ days from the expiration of the forty-five day Preliminary Plans and Specifications review period. It is acknowledged and agreed by the parties that the County's role, and the purpose of the County's review, is to satisfy itself, to the extent practical, that the Project, as designed, is likely to meet the stormwater control desired and contemplated by Stormwater Management Program. As part of the County's review of the Preliminary and Final Plans and Specifications provided for in this agreement, the City agrees to and shall submit to the County for review a copy of the proposed construction contract or contracts for the Project.

In the event the City and the County cannot agree upon the Preliminary or the Final Plans and Specifications, either party may terminate this agreement upon fifteen days notice to the other and from and after the date of such termination neither party shall have any further duties or obligations under this agreement. In the event of such termination, the City shall be entitled to reimbursement for actual costs and expenses incurred in the preparation of the Preliminary Study and the Preliminary and Final Plans and Specifications, subject to any limitations on reimbursement contained in the Policy and Procedures or this agreement.

8. **Administration of Project.** It is acknowledged and agreed that the City shall enter into all contracts relating to the Project Design in its own name and not as the agent of the County. The City agrees to be solely responsible for the administration of all contracts for the Project Design. Any contract disputes shall be resolved by the City at the City's sole cost and expense.

The City shall require adequate indemnity covenants and evidence of insurance from engineering service providers for loss or damage to life or property arising out of the engineering service provider's negligent acts or omissions. The required insurance coverage and limits shall be established by the City but shall not, in any event, be less than \$1,000,000 professional liability coverage for engineering service providers. The City may, in the exercise of its reasonable judgment, permit any insurance policy required by this agreement to contain a reasonable and customary deductible or co-insurance provision.

9. **County Contribution Toward Project Costs.** The County shall reimburse the City from the Stormwater Management and Flood Control Fund for expenditures made by the City for the Project Design as follows:

Not more than once each calendar month, the City shall submit to the County a request for payment, invoice, or statement satisfactory in form and content to the County Engineer detailing total Project Design costs and expenses, in line-item detail, for the preceding calendar month ("Payment Request") and for year-to-date.

The City's Payment Request shall list, by category, those particular expenditures that are reimbursable according to the Policy and Procedures. The City represents and warrants that each Payment Request shall seek reimbursement for only those expenditures that the City determines, in good faith, to be reimbursable by the County. The County Engineer may require the City to supplement the Payment Request as needed to satisfy the County Engineer, at his discretion, that the Payment Request accurately reflects properly reimbursable costs and expenses.

The County agrees to make payment to the City within thirty days following the County Engineer's approval and acceptance of a properly documented Payment Request in an amount equal to seventy-five percent (75%) of the Payment Request.

10. **Limitation of Liability.** To the extent permitted by law and subject to the provisions of the Kansas Tort Claims Act, including but not limited to maximum liability and immunity provisions, the City agrees to indemnify and hold the County, its officials, and agents harmless from any cost, expense, or liability not expressly agreed to by the County which result from the negligent acts or omissions of the City or its employees or which result from the City's compliance with the Policy and Procedures.
  
11. ***Only if the City has proposed a Project design that contemplates a deviation from the American Public Works Association (APWA) specifications contained in Section 5600 Storm Drainage Systems and Facilities, shall the following provisions apply:***
  - a. The City represents that it has determined that APWA Section 5600 specifications are not feasible, are impractical, or cannot be met without an expenditure of funds that, in the City's opinion, significantly exceeds the anticipated Project benefit.
  - b. The City represents that, based upon its own analysis, the APWA Section 5600 specifications set forth on the attached Exhibit \_\_\_\_\_ are not feasible, are impractical, or cannot be met without an expenditure of funds that significantly exceeds the anticipated Project benefit.
  - c. The City acknowledges and agrees that the costs of "flood proofing" any structure within the Project area shall not be a reimbursable expense under the Stormwater Management Program but shall be borne solely by the City. "Flood proofing," for purposes of this section, means any method by which a structure's windows, doors, or other openings are covered or sealed in an effort to prevent flood water entering the structure through such openings.
  - d. The City acknowledges that it has, in its sole and absolute discretion, determined to deviate from APWA Section 5600 specifications by approving a Project design that may result in seven inches or more of water flooding over a street or roadway during a 100 year storm event. The City hereby represents that:
  - e. The City has concluded that the relevant APWA Section 5600 specifications are not feasible, are impractical, or cannot be met without an expenditure of funds that, in the City's opinion, significantly exceeds the anticipated benefit.
  - f. The City agrees to and shall develop an emergency plan to protect life and property at the anticipated flooded crossing point during a 100-year storm or other high-water event.
  - g. The City represents that it has endeavored to advise its citizens in and near the Project area of the City's proposed deviation from APWA Section 5600 specifications and its alternative plans to protect life and property at the flooded crossing point during a 100 year storm or other high-water event.

- h. The City agrees to and shall take appropriate measures to protect the public at low-water crossings, which are allowed to exist as part of the City's Project.
- i. The City acknowledges that it is deviating from the APWA Section 5600 specifications upon its discretion based upon its own investigation, analysis, and risk assessment and without reliance upon SMAC or the Board of County Commissioners, or their respective employees or agents. To the extent permitted by law and subject to the maximum liability provisions of the Kansas Tort Claims Act the City expressly agrees to and shall hold SMAC and the Board of County Commissioners, and their respective employees and agents, harmless from any property loss, property damage, personal injury, or death arising out of the construction of the Project.

The City also agrees that notwithstanding any assistance, advice, technical consulting, or engineering services provided by SMAC or the Board of County Commissioners, or the failure to provide any such assistance, advice, technical consulting, or engineering services, the City shall bear the sole and absolute responsibility for the Project's design, construction, maintenance, and repair.

12. **Notice Addresses.** Any notice required or permitted by this agreement shall be deemed properly given upon deposit in the U.S. mail, postage prepaid and addressed as follows:

**If to the County:**

Kent Lage, P.E.  
Urban Services Manager  
Johnson County Public Works  
1800 W. Old 56 Highway  
Olathe, Kansas 66061

**If to the City:**

Keith Bredehoeft, P.E.  
Public Works Director  
City of Prairie Villiage  
3535 Somerset Drive  
Prairie Village, KS 66208

In addition, any notice required or permitted by this agreement may be sent by telecopier or hand delivered and shall be deemed properly given upon actual receipt by the addressee.

13. **Effective Date.** Regardless of the date(s) the parties execute the agreement, the effective date of this agreement shall be \_\_\_\_\_ provided the agreement has been fully executed by both parties.

**Board of County Commissioners  
of Johnson County, Kansas**

**City of Prairie Village**

\_\_\_\_\_  
Ed Eilert, Chairman

\_\_\_\_\_  
Laura Wassmer, Mayor

Attest:

Attest:

\_\_\_\_\_  
Linda W. Barnes  
Interim Clerk of the Board

\_\_\_\_\_  
City Clerk

Approved as to Form:

Approved as to Form:

\_\_\_\_\_  
Robert A. Ford  
Assistant County Counselor

\_\_\_\_\_  
City Attorney



## PUBLIC WORKS DEPARTMENT

Council Meeting Date: March 5, 2018

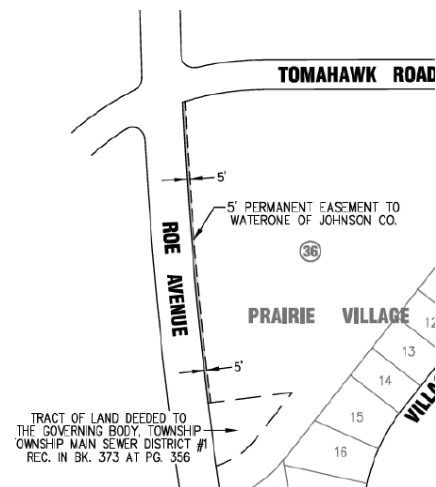
### CONSIDER EASEMENT FOR WATER ONE FACILITIES IN PORTER PARK ADJACENT TO ROE AVENUE RIGHT OF WAY

#### RECOMMENDATION

Move to authorize Mayor to sign the easement for WaterOne facilities.

#### BACKGROUND

WaterOne is relocating their facilities along Roe Avenue in advance of our roadway project this year. As in all urban areas, the utility corridors are tight and WaterOne is balancing their location between two sanitary sewer lines on the east side of Roe Avenue between the bridge and Tomahawk. This location will place their line at the edge of the right of way line. In order to have space for installation and maintenance, they have requested a five foot easement adjacent to the right of way line.



#### FUNDING SOURCE

There is no funding impact.

#### ATTACHMENTS

1. Easement and exhibit for WaterOne facilities in Porter Park

#### PREPARED BY

Melissa Prenger, Sr Project Manager

February 27, 2018



**WaterOne**  
10747 Renner Boulevard  
Lenexa, KS 66219-9624

**073-043**  
TD-17064

**GRANT OF A PERMANENT EASEMENT**

KNOW ALL BY THESE PRESENTS that **THE CITY OF PRAIRIE VILLAGE, KANSAS**, the Grantor herein, for and in consideration of the sum of One Dollar (\$1.00), the receipt whereof is hereby acknowledged, and other good and valuable considerations, including the installation of a public water main, does by these presents grant and convey unto **WATER DISTRICT NO. 1 OF JOHNSON COUNTY (KANSAS)**, a quasi-municipal corporation, the Grantee herein, its successors and assigns, a permanent easement and right-of-way, across, over, and under the following described land, to wit:

**A strip of land 5.00 feet in width across Block 36, "PRAIRIE VILLAGE", a subdivision of land in the City of Prairie Village, Johnson County, Kansas, lying North of the North line of a tract of land deeded to The Governing Body, Mission Township Main Sewer District #1, recorded as Kansas Special Warranty Deed recorded in Book 373 at Page 356 on December 2, 1955, said strip adjoining the East right-of-way line of Roe Avenue, as now established.**

The rights reserved to Water District No. 1 of Johnson County (Kansas) as the Grantee herein, and hereinafter called the "DISTRICT" and the rights reserved to the Grantor are as follows, to wit:

The DISTRICT, its successors and assigns, shall have the right to perpetually survey and test soil conditions; to excavate, fill, regrade, construct, rebuild, remove and relocate within said easement water distribution or transmission main or mains and all related equipment, together with the right of access to and from such easement for its employees, agents, contractors, vehicles, materials and equipment. The DISTRICT shall have the right to remove, trim and clear away any interfering trees, rocks, shrubs, roots, limbs or surfacing materials, but within a reasonable time after completion of any such activity by the DISTRICT it shall completely fill and sufficiently tamp any excavation

to an appropriate elevation to prevent settling, with any fence or improved surface restored to its former condition, grass areas reseeded and any cultivated, established lawn resodded, without the obligation of maintenance, all surplus soil, rock and debris completely removed from the premises, and compensation paid for any damages caused to growing crops.

Except for the "zone of non-interference" as hereinafter defined, and subject to the other terms and conditions of this instrument, the rights of the DISTRICT shall be non-exclusive in the following respects:

The Grantor, its licensees, tenants, other easement holders, and the successors and assigns of the Grantor, may cultivate and fully use and enjoy the land within the easement, provided that such use shall not interfere with or jeopardize the construction, installation, maintenance, repair, operation, final grade or other activities of the DISTRICT granted or authorized by the terms of this Grant, and further provided that no permanent above-ground or subterranean structures, materials, stockpiling, or building shall be erected, constructed or stored on the easement, except that non municipal improvements such as roads, drives, parking lots (subject to limitations set forth herein), drainage facilities, whether paved or otherwise surfaced curbs, walks, overhead utility wires, underground utility conduit, pipes and sewers which are non-conflicting and outside of the zone of non-interference, and fences crossing at approximately right angles may be constructed, maintained and utilized by the Grantor, its licensees, tenants, and other easement holders, and the successors and assigns of the Grantor. In the event of parking lot construction in the easement area, dedicated parking spaces or areas within five (5) feet horizontally from the water main as constructed are prohibited.

In the event future public right-of-way expands over the easement described herein and the public entity expanding the right-of-way declines to relocate DISTRICT facilities outside an area of public improvements such as extensive landscaping, paving, private streets and other extraordinary improvements, the DISTRICT shall not be obligated to restore any existing aboveground improvements or aboveground improvements hereafter installed or constructed by public entity, its licensees, tenants, other easement holders, or the successors and assigns of public entity.

The rights of the DISTRICT shall be exclusive within the "zone of non-interference" defined as that subterranean area immediately adjoining each of the DISTRICT'S mains of a pipe size of sixteen (16) inches and smaller comprising a rectangular corridor along the variable course of the pipe extending vertically from two (2) feet below the pipe perimeter bottom, and two (2) feet horizontally from both lateral sides of the pipe perimeter, as installed. For mains of pipe sizes larger than sixteen (16) inches, the "zone of non-interference" is defined as that subterranean area immediately adjoining each such main comprising a rectangular corridor along the variable course of the pipe extending vertically from two (2) feet below the pipe perimeter bottom and four (4) feet horizontally from both lateral sides of the pipe

perimeter, as installed. In the case of multiple pipes within the same easement where the zones of non-interference are contiguous or overlap, the outer boundaries of such contiguous or overlapping zones comprise an enlarged single zone. No excavations or installations of any kind shall be made by any utility or other excavator or installer within such zone of non-interference without the prior express written consent of the DISTRICT.

After completion of the initial construction of its water distribution or transmission main or mains, the DISTRICT, in exercising any right whatsoever herein acquired, may temporarily excavate or cut through any road, drive, surface, fence, curb, walk or other structure permitted herein, but shall as soon as reasonably possible replace and repair such fence or improved surface or other permitted structure to its former condition without the obligation of maintenance, reseed grass areas and resod cultivated, established lawn, and shall pay to the owner or its tenants, compensation for any damage caused to growing crops. The DISTRICT may also require the owner of any other permitted future structure or conduit, whether located above or below the ground surface within the easement, to adjust, move, support or protect such structure or conduit to permit the DISTRICT to exercise its rights herein acquired, but free of expense to the DISTRICT.

Notwithstanding the foregoing and anything else in this instrument to the contrary, the rights of DISTRICT under this instrument shall be subject to the prior rights of any easement holders that acquired rights to any part of the above described real estate prior to the date of recording of this instrument. Furthermore, nothing herein shall be deemed to limit or prohibit the existence of, or require the removal of, any improvements that existed as of the date of recording of this instrument.

Notwithstanding anything herein to the contrary, to the extent permitted by Kansas law and subject to any limitations or defenses provided DISTRICT under the Kansas Tort Claims Act, by acceptance and use of this Easement, DISTRICT agrees to defend, indemnify, and hold harmless the Grantor, its officers, agents, and employees, from and against any and all costs, damage to property of Grantor, or any other person or property, arising out of or in any way resulting from DISTRICT'S activities (or that of DISTRICT's agents or contractors) or exercise of its respective rights granted hereunder. This covenant shall run with the land.

All persons acquiring rights to any part of the above described real estate from and after the date of recording of this instrument shall take subject to the prior rights of the DISTRICT in designating easements for its distribution or transmission main or mains as certified by the subsequent recording of a legal description of the course and width of the easement.

TO HAVE AND TO HOLD, unto the said DISTRICT, its successors and assigns with all of the rights, privileges, appurtenances, and immunities thereto appertaining and belonging so long as used for the purposes herein described.

*[Signature Page Follows Directly]*

IN WITNESS WHEREOF, the said Grantor has executed this instrument this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**THE CITY OF PRAIRIE VILLAGE, KANSAS**

By: \_\_\_\_\_  
Laura Wassmer, Mayor

ATTESTED:

APPROVED AS TO FORM:

\_\_\_\_\_  
Joyce Hagen Mundy, City Clerk

\_\_\_\_\_  
Catherine P. Logan, City Attorney

ACKNOWLEDGEMENT

STATE OF KANSAS )

)ss:

COUNTY OF JOHNSON )

BE IT REMEMBERED, that on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, the undersigned, a Notary Public in and for the County and State aforesaid, personally appeared Laura Wassmer and Joyce Hagen Mundy, on behalf of **The City of Prairie Village, Kansas**, who are personally known to me to be the same persons who executed the foregoing instrument of writing, and duly acknowledged the execution of the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

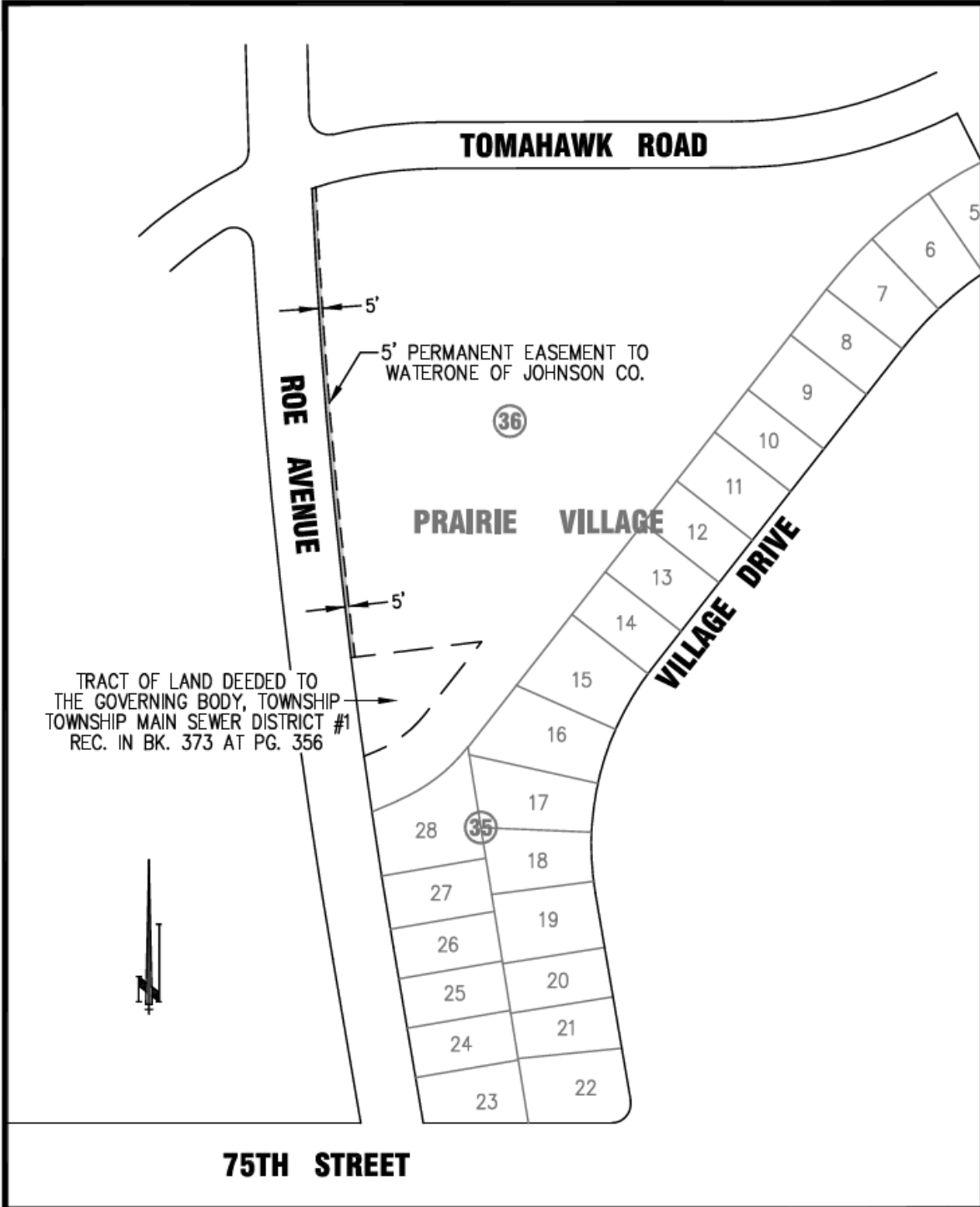
\_\_\_\_\_  
NOTARY PUBLIC SIGNATURE

\_\_\_\_\_  
PLEASE PRINT NAME

My appointment expires:

\_\_\_\_\_

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<b>PLAT OF EASEMENT</b>			
<b>BLOCK 36, PRAIRIE VILLAGE TOMAHAWK ROAD AND ROE AVENUE</b>			
DRAWN BY: <i>R.L.F.</i>	DATE: 1/26/18	SCALE: 1" = 200'	JOB NO. TD17064



## PUBLIC WORKS DEPARTMENT

Council Meeting Date: March 5, 2018

### CONSIDER INTERLOCAL AGREEMENT WITH JOHNSON COUNTY FOR PROJECT ROAV0004: ROE AVENUE- 67TH STREET TO 75TH STREET

#### RECOMMENDATION

Move to approve the interlocal agreement with Johnson County for Project ROAV0004: Roe Avenue - 67th Street to 75th Street.

#### BACKGROUND

Johnson County has approved Project ROAV0004: Roe Avenue - 67th Street to 75th Street rehabilitation project. An Interlocal Agreement has been received from Johnson County for execution by the City of Prairie Village. This agreement will limit the County share to 50% of the project's construction costs or \$863,000. The County's funding for this project comes from the County Assistance Road System (CARS) Program.

This project is a part of the 2018 CIP.

#### FUNDING SOURCE

Funding is available in the 2018 CIP.

#### RELATION TO VILLAGE VISION

- CFS3a. Ensure streets and sidewalks are in good condition by conducting maintenance and repairs as needed.*
- TR1a. Provide sidewalks in new and existing areas to allow for continuous pedestrian movement around Prairie Village.*
- TR1b. Ensure that infrastructure improvements meet the needs of all transportation users.*

#### ATTACHMENTS

1. Interlocal Agreement with Johnson County (320001183).

#### PREPARED BY

Melissa Prenger, Sr Project Manager

February 28, 2018

**Agreement between Johnson County, Kansas,  
and the City of Prairie Village, Kansas, for the Public Improvement of  
Roe Avenue from 67th Street to 75th Street  
(320001183)**

THIS AGREEMENT, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2018 by and between the Board of County Commissioners of Johnson County, Kansas ("Board") and the City of Prairie Village, Kansas, ("City").

WITNESSETH:

WHEREAS, the parties have determined that it is in the best interests of the general public in making certain public improvements to Roe Avenue from 67th Street to 75th Street (the "Project"); and

WHEREAS, the laws of the State of Kansas authorize the parties to this Agreement to cooperate in undertaking the Project; and

WHEREAS, the governing bodies of each of the parties have determined to enter into this Agreement for the purpose of undertaking the Project, pursuant to K.S.A. 12-2908 and K.S.A. 68-169, and amendments thereto; and

WHEREAS, the Project has been approved, authorized, and budgeted by the Board as an eligible project under the County Assistance Road System ("CARS") Program; and

WHEREAS, the Board has, by County Resolution No. 106-90, authorized its Chairman to execute any and all Agreements for County participation in any CARS Program project which has been approved and authorized pursuant to the Policies and Guidelines adopted by the Board and for which funding has been authorized and budgeted therefore; and

WHEREAS, the governing body of the City did approve and authorize its Mayor to execute this Agreement by official vote on the \_\_\_\_\_ day of \_\_\_\_\_, 2018.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter contained, and for other good and valuable consideration, the parties agree as follows:

1. **Purpose of Agreement.** The parties enter into this Agreement for the purpose of undertaking the Project to assure a more adequate, safe and integrated roadway network in the developing and incorporated areas of Johnson County, Kansas.

2. **Estimated Cost and Funding of Project**

a. The estimated cost of the Project (“Project Costs”), a portion of which is reimbursable under this Agreement, is One Million Eight Hundred Fifty Thousand Dollars (\$1,850,000).

b. Project Costs include necessary costs and expenses of labor and material used in the construction of the Project and construction inspection and staking for the Project.

c. The Project Costs shall be allocated between the parties as follows:

i. The Board shall provide financial assistance for the Project in an amount up to but not exceeding Fifty Percent (50%) of the Project Costs. However, the Board's financial obligation under this Agreement shall be limited to an amount not to exceed Eight Hundred Sixty Three Thousand Dollars (\$863,000). For purposes of this Agreement, Project Costs shall not include any portion of costs which are to be paid by or on behalf of any state or federal governmental entity or for which the City may be reimbursed through any source other than the general residents or taxpayers of the City. Further, it is understood and agreed by the parties hereto that the Board shall not participate in, nor pay any portion of, the Costs incurred for or related to the following:

1. Land acquisition, right-of-way acquisition, or utility relocation;
2. Legal fees and expenses, design engineering services, Project administration, or financing costs;



3. Taxes, licensing or permit fees, title reports, insurance premiums, exactions, recording fees, or similar charges;
4. Project overruns;
5. Project scope modifications or major change orders which are not separately and specifically approved and authorized by the Board; and;
6. Minor change orders which are not separately and specifically approved and authorized by the Director of Public Works & Infrastructure of Johnson County, Kansas ("Public Works Director"). Minor change orders are those which do not significantly alter the scope of the Project and which are consistent with the CARS Program Policies and Guidelines and administrative procedures thereto adopted by the Board.

It is further understood and agreed that notwithstanding the designated amount of any expenditure authorization or fund appropriation, the Board shall only be obligated to pay for the authorized percentage of actual construction costs incurred or expended for the Project under appropriate, publicly bid, construction contracts. The Board will not be assessed for any improvement district created pursuant to K.S.A. 12-6a01 et seq., and amendments thereto, or any other improvement district created under the laws of the State of Kansas.

- ii. The City shall pay One Hundred Percent (100%) of all Project Costs not expressly the Board's obligation to pay as provided in this Agreement.

3. **Financing**

- a. The Board shall provide financial assistance, as provided in Paragraph 2.c. above, towards the cost of the Project with funds budgeted, authorized, and appropriated by the Board and which are unencumbered revenues that are on-hand in deposits of Johnson County, Kansas. This paragraph shall not be construed as limiting the ability of the Board to finance its portion of the costs and expenses of the Project through the issuance of bonds or any other legally authorized method.
- b. The City shall pay its portion of the Project Costs with funds budgeted, authorized, and appropriated by the governing body of the City.

4. **Administration of Project.** The Project shall be administered by the City, acting by and through its designated representative who shall be the City public official designated as Project Administrator. The Project Administrator shall assume and perform the following duties:

- a. Cause the making of all contracts, duly authorized and approved, for retaining consulting engineers to design and estimate the Project Costs.
- b. Submit a copy of the plans and specifications for the Project to the Johnson County Public Works Director for review, prior to any advertisement for construction bidding, together with a statement of estimated Project Costs which reflects the Board's financial obligation under the terms of this Agreement. The Public Works Director or his designee shall review the copy of the plans and specifications for the Project and may, but shall not be obligated to, suggest changes or revisions to the plans and specifications.
- c. If required by applicable state or federal statutes, solicit bids for the construction of the Project by publication in the official newspaper of the City. In the solicitation of bids, the appropriate combination of best bids shall be determined by the City.
- d. Cause the making of all contracts and appropriate change orders, duly authorized and approved, for the construction of the Project.
- e. Submit to the Public Works Director a statement of actual costs and expenses in the form of a payment request, with attached copies of all invoices and supporting materials, on or before the tenth day of each month following the

month in which costs and expenses have been paid. The Public Works Director shall review the statement or payment request to determine whether the statement or payment request is properly submitted and documented and, upon concurrence with the Finance Director of Johnson County, Kansas, (“Finance Director”) cause payment to be made to the City of the Board's portion of the Project Costs within thirty (30) days after receipt of such payment request. In the event federal or state agencies require, as a condition to state or federal participation in the Project, that the Board make payment prior to construction or at times other than set forth in this subsection, the Public Works Director and the Finance Director may authorize such payment.

- f. Except when doing so would violate a state or federal rule or regulation, cause a sign to be erected in the immediate vicinity of the Project upon commencement of construction identifying the Project as part of the CARS Program. The form and location of the sign shall be subject to the review and approval of the Public Works Director.

Upon completion of the construction of the Project, the Project Administrator shall submit to each of the parties a final accounting of all Project Costs incurred in the Project for the purpose of apportioning the same among the parties as provided in this Agreement. It is expressly understood and agreed that in no event shall the final accounting obligate the parties for a greater proportion of financial participation than that set out in Paragraph 2.c. of this Agreement. The final accounting of Project Costs shall be submitted by the Project Administrator no later than sixty (60) days following the completion of the Project construction.

It is further understood and agreed by the City that to the extent permitted by law and subject to the provisions of the Kansas Tort Claims Act including but not limited to maximum liability and immunity provisions, the City agrees to indemnify and hold the County, its officials, and agents harmless from any cost, expense, or liability not expressly agreed to by the County which result from the negligent acts or omissions of the City or its employees or which result from the City's compliance with the Policy and Procedures.

This agreement to indemnify shall not run in favor of or benefit any liability insurer or third party.

In addition, the City of Prairie Village shall, and hereby agree to, insert as a special provision of its contract with the general contractor ("Project Contractor") chosen to undertake the Project construction as contemplated by this Agreement the following paragraphs:

The Project Contractor shall defend, indemnify and save the Board of County Commissioners of Johnson County, Kansas and the City of Prairie Village harmless from and against all liability for damages, costs, and expenses arising out of any claim, suit, action or otherwise for injuries and/or damages sustained to persons or property by reason of the negligence or other actionable fault of the Project Contractor, his or her sub-contractors, agents or employees in the performance of this contract.

The Board of County Commissioners of Johnson County, Kansas shall be named as an additional insured on all policies of insurance issued to the Project Contractor and required by the terms of his/her agreement with the City.

**5. Acquisition of Real Property for the Project**

- a. The Board shall not pay any costs for acquisition of real property in connection with the Project.
- b. The City shall be responsible for the acquisition of any real property, together with improvements thereon, located within the City's corporate boundaries, which is required in connection with the Project; such real property acquisition may occur by gift, purchase, or by condemnation as authorized and provided by the Eminent Domain Procedure Act, K.S.A. 26-201 et seq. and K.S.A. 26-501 et seq., and any such acquisition shall comply with all federal and state law requirements.

6. **Duration and Termination of Agreement**

- a. The parties agree that this Agreement shall remain in full force and effect until the completion of the Project, unless otherwise terminated as provided for in Paragraph 6.b. herein below. The Project shall be deemed completed and this Agreement shall be deemed terminated upon written certification to each of the parties by the Project Administrator that the Project has been accepted as constructed. The City shall provide a copy of the Project Administrator's certification to both the Public Works Director and the Finance Director within thirty (30) days of the Project Administrator's determination that the Project is complete.
- b. It is understood and agreed that the Public Works Director shall review the status of the Project annually on the first day of March following the execution of this Agreement to determine whether satisfactory progress is being made on the Project by the City. In the event that the Public Works Director determines that satisfactory progress is not being made on the Project due to the City's breach of this Agreement by not meeting the agreed upon project deadlines or otherwise not complying with the terms of this Agreement, the Public Works Director is authorized to notify the City that it shall have thirty (30) days from receipt of such notification to take steps to cure the breach (the "Cure Period"). It is further understood and agreed that the Board shall have the option and right to revoke funding approval for the Project and terminate this Agreement should the Board find, based upon the determination of the Public Works Director, that satisfactory progress is not being made on the Project and that the City has not taken sufficient steps to cure the breach during the Cure Period. Should the Board exercise its option as provided herein, it shall send written notice of the same to the City and the Board shall have no further liability or obligation under this Agreement.

7. **Placing Agreement in Force.** The attorney for the City shall cause sufficient copies of this Agreement to be executed to provide each party with a duly executed copy of this Agreement for its official records.

IN WITNESS WHEREOF, the above and foregoing Agreement has been executed by each of the parties hereto and made effective on the day and year first above written.

**Board of County Commissioners of  
Johnson County, Kansas**

**City of Prairie Village, Kansas**

---

Ed Eilert, Chairman

---

Laura Wassmer, Mayor

Attest:

Attest:

---

Linda W. Barnes  
Clerk of the Board

---

City Clerk

Approved as to form:

Approved as to form:

---

Robert A. Ford  
Assistant County Counselor

---

City Attorney



## PUBLIC WORKS DEPARTMENT

Council Meeting Date: March 5, 2018

### CONSIDER INTERLOCAL AGREEMENT WITH JOHNSON COUNTY AND THE CITY OF LEAWOOD, KANSAS FOR PROJECT MIRD0006: MISSION ROAD FROM 84TH STREET TO 95TH STREET

#### RECOMMENDATION

Move to approve the interlocal agreement with Johnson County and the City of Leawood, Kansas for Project MIRD0006: Mission Road from 84th Street to 95th Street.

#### BACKGROUND

Johnson County has approved Project MIRD0006: Mission Road from 84th Street to 95th Street rehabilitation project. An Interlocal Agreement has been received from Johnson County for execution by the City of Prairie Village and the City of Leawood, Kansas. This agreement will limit the County share to 50% of the project's construction costs or \$592,000. The County's funding for this project comes from the County Assistance Road System (CARS) Program. This project is a joint project with the City of Leawood, Kansas and will be administered by Prairie Village.

This project is a part of the 2018 CIP.

#### FUNDING SOURCE

Funding is available in the 2018 CIP.

#### RELATION TO VILLAGE VISION

- CFS3a. Ensure streets and sidewalks are in good condition by conducting maintenance and repairs as needed.*
- TR1a. Provide sidewalks in new and existing areas to allow for continuous pedestrian movement around Prairie Village.*
- TR1b. Ensure that infrastructure improvements meet the needs of all transportation users.*

#### ATTACHMENTS

1. Interlocal Agreement with Johnson County (320001184).

#### PREPARED BY

Melissa Prenger, Sr Project Manager

February 28, 2018

**Agreement among Johnson County, Kansas,  
the City of Prairie Village, Kansas, and  
the City of Leawood, Kansas, for the Public Improvement of Mission Road  
from 84th Street to 95th Street  
(320001184)**

THIS AGREEMENT, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2018, by and among the Board of County Commissioners of Johnson County, Kansas ("Board"), the City of Prairie Village, Kansas ("Prairie Village"), and the City of Leawood, Kansas ("Leawood"). Prairie Village and Leawood are collectively referred to as the "Cities".

WITNESSETH:

WHEREAS, the parties have determined that it is in the best interests of the general public in making certain public improvements to Mission Road from 84th Street to 95th Street (the "Project"); and

WHEREAS, the laws of the State of Kansas authorize the parties to this Agreement to cooperate in undertaking the Project; and

WHEREAS, the governing bodies of each of the parties have determined to enter into this Agreement for the purpose of undertaking the Project, pursuant to K.S.A. 12-2908 and K.S.A. 68-169, and amendments thereto; and

WHEREAS, the Project has been approved, authorized, and budgeted by the Board as an eligible project under the County Assistance Road System ("CARS") Program; and

WHEREAS, the Board has, by County Resolution No. 106-90, authorized its Chairman to execute any and all Agreements for County participation in any CARS Program project which has been approved and authorized pursuant to the Policies and Guidelines adopted by the Board and for which funding has been authorized and budgeted therefore; and

WHEREAS, the governing body of Prairie Village did approve and authorize its Mayor to execute this Agreement by official vote of said body on the \_\_\_\_\_ day of \_\_\_\_\_, 2018.

WHEREAS, the governing body of Leawood did approve and authorize its Mayor to execute this Agreement by official vote of said body on the \_\_\_\_\_ day of \_\_\_\_\_, 2018.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter contained, and for other good and valuable consideration, the parties agree as follows:



1. **Purpose of Agreement.** The parties enter into this Agreement for the purpose of undertaking the Project to assure a more adequate, safe, and integrated roadway network in the developing and incorporated areas of Johnson County, Kansas.

2. **Estimated Cost and Funding of Project**

a. The estimated cost of the Project (“Project Costs”), a portion of which is reimbursable under this Agreement is One Million One Hundred Eighty Four Thousand Dollars (\$1,184,000).

b. Project Costs include necessary costs and expenses of labor and material used in the construction of the Project and construction inspection and staking for the Project.

c. The Project Costs shall be allocated between the parties as follows:

i. The Board shall provide financial assistance for the Project in an amount up to but not exceeding Fifty Percent (50%) of the Project Costs. However, the Board's financial obligation under this Agreement shall be limited to an amount not to exceed Five Hundred Ninety Two Thousand Dollars (\$592,000). For purposes of this Agreement, Project Costs shall not include any portion of costs which are to be paid by or on behalf of any state or federal governmental entity or for which the Cities may be reimbursed through any source other than the general residents or taxpayers of the Cities. Further, it is understood and agreed by the parties hereto that the Board shall not participate in, nor pay any portion of, the Costs incurred for or related to the following:

1. Land acquisition, right-of-way acquisition, or utility relocation;
2. Legal fees and expenses, design engineering services, Project administration, or financing costs;
3. Taxes, licensing or permit fees, title reports, insurance premiums, exactions, recording fees, or similar charges;

4. Project overruns;
5. Project scope modifications or major change orders which are not separately and specifically approved and authorized by the Board; and
6. Minor change orders which are not separately and specifically approved and authorized by the Director of Public Works & Infrastructure of Johnson County, Kansas ("Public Works Director"). Minor change orders are those which do not significantly alter the scope of the Project and which are consistent with the CARS Program Policies and Guidelines and administrative procedures thereto adopted by the Board.

It is further understood and agreed that notwithstanding the designated amount of any expenditure authorization or fund appropriation, the Board shall only be obligated to pay for the authorized percentage of actual construction costs incurred or expended for the Project under appropriate, publicly bid, construction contracts. The Board will not be assessed for any improvement district created pursuant to K.S.A. 12-6a01 et seq., and amendments thereto, or any other improvement district created under the laws of the State of Kansas.

- ii. The Cities shall pay One Hundred Percent (100%) of all Project Costs not expressly the Board's obligation to pay as provided in this Agreement.

### 3. **Financing**

- a. The Board shall provide financial assistance, as provided in Paragraph 2.c. above, towards the cost of the Project with funds budgeted, authorized, and appropriated by the Board and which are unencumbered revenues that are on-hand in deposits of Johnson County, Kansas. This paragraph shall not be construed as limiting the ability of the Board to finance its portion of the costs

and expenses of the Project through the issuance of bonds or any other legally authorized method.

- b. The Cities shall pay their portion of the Project Costs with funds budgeted, authorized, and appropriated by the governing bodies of the Cities.

4. **Administration of Project.** The Project shall be administered by Prairie Village acting by and through its designated representative who shall be the Cities' public official designated as Project Administrator. The Project Administrator shall assume and perform the following duties:

- a. Cause the making of all contracts, duly authorized and approved, for retaining consulting engineers to design and estimate the necessary costs and expenses of the Project Costs.
- b. Submit a copy of the plans and specifications for the Project to the Public Works Director for review prior to any advertisement for construction bidding, together with a statement of estimated Project Costs which reflects the Board's financial obligation under the terms of this Agreement. The Public Works Director or his designee shall review the plans and specifications for the Project and may, but shall not be obligated to, suggest changes or revisions to the plans and specifications.
- c. If required by applicable state or federal statutes, solicit bids for the construction of the Project by publication in the official newspaper of the City of Prairie Village. If the Project is located in more than one city, then the Project Administrator shall be responsible for determining proper publication. In the solicitation of bids, the appropriate combination of best bids shall be determined by the Project Administrator.
- d. Cause the making of all contracts and appropriate change orders, duly authorized and approved, for the construction of the Project.
- e. Submit to the Public Works Director a statement of actual costs and expenses, in the form of a payment request, with attached copies of all invoices and supporting materials, on or before the tenth day of each month following the month in which costs and expenses have been paid. The Public Works Director shall review the statement or payment request to determine whether the statement or payment request is properly submitted and documented and,

upon concurrence with the Finance Director of Johnson County, Kansas (“Finance Director”), cause payment to be made to the Project Administrator of the Board's portion of the Project Costs within thirty (30) days after receipt of such statement or payment request. In the event federal or state agencies require, as a condition to state or federal participation in the Project, that the Board make payment prior to construction or at times other than set forth in this subsection, the Public Works Director and Finance Director may authorize such payment.

- f. Except when doing so would violate a state or federal rule or regulation, cause a sign to be erected in the immediate vicinity of the Project upon commencement of construction identifying the Project as part of the CARS Program. The form and location of the sign shall be subject to the review and approval of the Public Works Director.

Upon completion of the construction of the Project, the Project Administrator shall submit to each of the parties a final accounting of all costs and expenses incurred in the Project for the purpose of apportioning the same among the parties as provided in this Agreement. It is expressly understood and agreed that in no event shall the final accounting obligate the parties for a greater proportion of financial participation than that set out in Paragraph 2.c. of this Agreement. The final accounting of Project Costs shall be submitted by the Project Administrator no later than sixty (60) days following the completion of the Project construction.

It is further understood and agreed by the City that to the extent permitted by law and subject to the provisions of the Kansas Tort Claims Act including but not limited to maximum liability and immunity provisions, the City agrees to indemnify and hold the County, its officials, and agents harmless from any cost, expense, or liability not expressly agreed to by the County which result from the negligent acts or omissions of the City or its employees or which result from the City's compliance with the Policy and Procedures.

This agreement to indemnify shall not run in favor of or benefit any liability insurer or third party.

In addition, the Cities shall, and hereby agree to, insert as a special provision of its contract with the general contractor ("Project Contractor") chosen to undertake the Project construction as contemplated by this Agreement the following paragraphs:

The Project Contractor shall defend, indemnify and save the Board of County Commissioners of Johnson County, Kansas and the City harmless from and against all liability for damages, costs, and expenses arising out of any claim, suit, action or otherwise for injuries and/or damages sustained to persons or property by reason of the negligence or other actionable fault of the Project Contractor, his or her sub-contractors, agents or employees in the performance of this contract.

The Board of County Commissioners of Johnson County, Kansas shall be named as an additional insured on all policies of insurance issued to the Project Contractor and required by the terms of his/her agreement with the City.

**5. Acquisition of Real Property for the Project**

- a. The Board shall not pay any costs for acquisition of real property in connection with the Project.
- b. Each City shall be responsible for the acquisition of any real property, together with improvements thereon, located within such City's corporate boundaries, which is required in connection with the Project; such real property acquisition may occur by gift, purchase, or by condemnation as authorized and provided by the Eminent Domain Procedure Act, K.S.A. 26-201 et seq. and K.S.A. 26-501 et seq., and any such acquisition shall comply with all federal and state law requirements.

6. **Duration and Termination of Agreement**

- a. The parties agree that this Agreement shall remain in full force and effect until the completion of the Project, unless otherwise terminated as provided for in Paragraph 6.b. herein below. The Project shall be deemed completed and this Agreement shall be deemed terminated upon written certification to each of the parties by the Project Administrator that the Project has been accepted as constructed. The Project Administrator shall provide a copy of the Project Administrator's certification to both the Public Works Director and the Finance Director within thirty (30) days of the Project Administrator's determination that the Project is complete.
- b. It is understood and agreed that the Public Works Director shall review the status of the Project annually on the first day of March following the execution of this Agreement to determine whether satisfactory progress is being made on the Project. In the event that the Public Works Director determines that satisfactory progress is not being made on the Project due to one or both of the Cities' breach of this Agreement by not meeting the agreed upon project deadlines or otherwise not complying with the terms of this Agreement, the Public Works Director is authorized to notify the City that has breached the Agreement that it shall have thirty (30) days from receipt of such notification to take steps to cure the breach (the "Cure Period"). It is further understood and agreed that the Board shall have the option and right to revoke funding approval for the Project and terminate this Agreement should the Board find, based upon the determination of the Public Works Director, that satisfactory progress is not being made on the Project and that the Cities have not taken sufficient steps to cure the breach during the Cure Period. Should the Board exercise its option as provided herein, it shall send written notice of the same to the Cities and the Board shall have no further liability or obligation under this Agreement.

7. **Placing Agreement in Force.** The attorney for the Cities shall cause sufficient copies of this Agreement to be executed to provide each party hereto with a duly executed copy of this Agreement for its official records.

IN WITNESS WHEREOF, the above and foregoing Agreement has been executed by each of the parties hereto and made effective on the day and year first above written.

**Board of County Commissioners of  
Johnson County, Kansas**

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Ed Eilert, Chairman

Attest:

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Linda W. Barnes  
Clerk of the Board

Approved as to form:

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Robert A. Ford  
Assistant County Counselor

**City of Prairie Village, Kansas**

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Laura Wassmer, Mayor

Attest:

---

City Clerk

Approved as to form:

---

City Attorney

**City of Leawood, Kansas**

---

Peggy J. Dunn, Mayor

Attest:

---

City Clerk

Approved as to form:

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City Attorney



## ADMINISTRATION

Council Committee Meeting Date: February 20, 2018  
City Council Meeting Date: March 5, 2018

COU2018-11

Consider Approval of Policy Revisions to CP001: City Committees

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### BACKGROUND:

The Committee of the Whole approved revisions to CP-001 at the February 20 meeting. In addition to the revisions presented at the last meeting, there were additional revisions that were approved and are now reflected in the attached revised policy. Those changes included increasing the finance committee from four to six members and adding that preference will be given to Prairie Village residents to serve on the Planning Commission.

### RECOMMENDATION

Move to approve the revisions to CP-001 - City Committees.

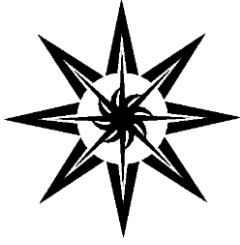
### ATTACHMENTS

1. CP001 - City Committees (red-lined copy with suggested revisions)
2. CP001 - City Committees (clean copy with suggested revisions incorporated)
3. Committee Information Table

### PREPARED BY

Jamie Robichaud  
Assistant City Administrator  
Date: February 28, 2018





City Council Policy: CP001 - City Committees

Effective Date: ~~June 5, 2017~~ March 5, 2018

Amends: CP001 - dated June ~~1, 2015~~ 5, 2017

Approved By: Governing Body

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## I. PURPOSE

To establish public committees which will allow citizen involvement and provide recommendations to the Governing Body.

## II. RESPONSIBILITY

- a. Except as otherwise provided herein, the Mayor, with the consent of the City Council, will be responsible for appointing members to serve on the committees established by this policy.
- ~~b.~~ The Mayor will appoint a City Council Member to serve as ~~both a voting member and~~ Committee Chair and a City Council Member to serve as Vice-Chair for the Parks and Recreation Committee, Environmental Committee, Prairie Village Arts Council, Insurance Committee, and Finance Committee. Both Council Members will be voting members. all committees except the Planning Commission/Board of Zoning Appeals, Environmental Committee, Arts Council, VillageFest Committee, and JazzFest Committee.
- ~~b-c.~~ The Mayor will appoint a City Council Member to serve as a voting member of the Police Pension Board of Trustees without the consent of the City Council, and will appoint one additional voting member to the Police Pension Board of Trustees, with the consent of the City Council.
- ~~e-d.~~ The Mayor will appoint a City Council Member as a nonvoting "Council Liaison" to the ~~Environmental Committee, Arts Council, VillageFest Committee, and JazzFest Committee and Tree Board.~~ e.
- ~~e-e.~~ The Mayor will appoint a City Council Member as a "Council Liaison" nonmember observer to the Planning Commission/Board of Zoning Appeals.
- ~~e-f.~~ Vacancies ~~which occur in these committees~~ will be filled for the unexpired term by appointment by the Mayor with the consent of the City Council, where applicable.
- ~~f-g.~~ Each Council Member, Committee Chair, and Council Liaison (except Council Liaison to the Planning Commission/Board of Zoning Appeals) will set direction, attend meetings, communicate the Governing Body's direction, priorities, and policies, prepare committee budget, in consultation with City staff, manage city resource requests, including the budget and staff time, and report back any necessary information and recommendations to and from the City Council.
- ~~g-h.~~ City staff will attend meetings, ~~when necessary, and will be responsible for, take meeting minutes if necessary, publicize~~ publicizing meeting notices, providing budget and policy oversight, and assisting with committee objectives, as needed. Committees will normally be responsible for taking their own minutes and submitting them to the Staff Liaison, once approved by the Committee.
- ~~h-i.~~ All committee meetings, including subcommittee meetings and special meetings, are considered open meetings if a quorum is present, as defined by Kansas Open Meetings Act.
- ~~i-j.~~ Committee meetings will be held on public property unless permission is granted from the Mayor and Committee Chair.

### III APPOINTMENT PROCESS

The following process is outlined as a guide for committee appointments. Minor adjustments may be made by the Mayor and City Administrator.

- a. Advertise opportunities in October and November in the Village Voice, City website, news release, etc.
- b. Applications are due by December 1<sup>st</sup>; online applications preferred. All applications will be sent to the City Council.
- c. Committee Chair, Council Liaison, and City staff representative discuss incumbents, attendance and contributions to the committee along with applications and vacancies, and may interview candidates. The Committee Chair and Council Liaison for each committee, except the Planning Commission/Board of Zoning Appeals, will recommend appointments to the Mayor.
- d. For Planning Commission/Board of Zoning Appeals, the selection committee will consist of the Mayor, Planning Commission Council Liaison, Assistant City Administrator, Planning Consultant, and Council President. The selection committee will recommend appointments to the Mayor.
- e. Mayor will make the final determination of recommended appointees for all committees.
- f. Mayor will forward the applications for the recommended appointees to the City Council at least one week prior to the City Council meeting at which the recommended appointments will be considered. This will provide council members additional time to review the applications prior to the recommendation being included in the agenda packet.
- g. Mayoral appointment of Council members to serve on committees, as directed by this policy, will typically become effective the second meeting in February.
- h. Applicants who are not selected or approved will be notified by City administration.
- i. Appointments will typically be presented and voted on by the second City Council meeting in February.
- j. In the event of vacancies after the regular annual appointments, the applicants who submitted applications in October and November will be first considered, and vacant positions will be re-advertised, if needed.
- j.k. All appointed Committee Members and non-appointed Volunteers must sign a liability and photo waiver prior to serving on a Committee or volunteering for the City.—

### IV. REMOVAL PROCESS

The following process is outlined as a guide for the removal of a committee member. This does not apply to the members of the Planning Commission, whose removal is governed by Ord. 1901; PVMC 16, Article 1 and the adopted bylaws of the Planning Commission.

Appointees serve at the pleasure of the Governing Body. A committee member may be removed prior to the expiration of his or her term by the Mayor, with the consent of the City Council, the recommendation of the Council Liaison and City Administrator, with final approval by the Mayor. All committee members are expected to attend meetings and are subject to the City's ethics code. This removal process applies to appointed committee members and non-appointed committee volunteers.

### V. COMMITTEE GUIDELINES

- a. Length of Terms - All committee terms will be two years, except for Planning Commission and Civil Service Commission, who, by code, serve for three years, and Committee Chairs, and Council Liaisons, and youth representatives, who serve for a one-year term. all committee member terms will be two years. All committee members and youth representatives will serve without compensation.—
- b. Attendance - All committee members must attend a majority 75% of the meetings held in a calendar year. A member who does not meet attendance requirements may be subject to removal prior to the end of the appointed term. Members who are unable to attend a meeting must notify the Committee Chair or Staff Liaison in advance to ensure a

[quorum will be present.](#)

- c. City Operation Committees include the Insurance Committee, Police Pension Board/Employee Retirement Committee, Finance Committee, Tree Board, Parks and Recreation Committee, and the Civil Service Commission.
- d. Event Committees include the JazzFest Committee and the VillageFest Committee, which are responsible for specific city-sponsored events.
- e. Lifestyle Committees include the Environmental Committee and the Arts Council.
- f. Statutory Committees include the Planning Commission, Board of Zoning Appeals, and the Board of Code Appeals as required by Kansas Statutes.
- g. Committee Resources - City Council reviews and approves the committee budget each year. No committee is allowed to lend or transfer given funds to another committee or another organization without staff approval except The Prairie Village Foundation. The committee budget is for specific items or events, which are the responsibility of that committee. If additional funds are needed, committee representatives must make a request to the City Council. No committee may use its funds to contribute funding support to another organization outside of required membership dues without specific City Council approval.
- h. If a committee desires additional staff time for an event, initiative, or program, that request will be communicated to the City Administrator through the Committee Chair or Council Liaison. Any significant new program or proposal that requires staff time or additional funding will need to come before the City Council to determine if and where it fits on the priority list and obtain City Council approval before the committee may proceed.
- i. Special meetings may be called by the Committee Chair, with approval of the Mayor, along with required public notification.
- j. A quorum for each committee is a majority of the then sitting, voting members of each committee.
- k. [Notice of all meetings must be posted on the City's website.](#)

## **POLICY**

There are established public committees with the following requirements for membership, meetings and duties:

### **1. Insurance Committee**

- a. The Insurance Committee will consist of a voting Chair and Vice-Chair, each a City Council Member appointed by the Mayor without the consent of the City Council. The Mayor, with the consent of the City Council, appoints three other voting members who have an insurance background.
- b. The Insurance Committee will meet during the day as needed and adjourn no later than 6:00 p.m.
- c. The Insurance Committee will monitor and discuss insurance issues relating to the City, and ~~to~~ recommend insurance bid award, when applicable.

### **2. Police Pension Board of Trustees//Employee Retirement Board**

- a. The Police Pension Board of Trustees//Employee Retirement Board will consist of three voting members. One member will be a council member who is appointed by the Mayor, without the consent of the City Council. One member will be appointed by the Mayor, with the consent of the City Council. a Chair, who is a City Council Member appointed by the Mayor without the consent of the City Council, one additional voting member appointed by the Mayor with the consent of the City Council, and One voting member will be designated by the Police Department employees, with a term of service until the appointment of successor.
- b. The Police Pension Board of Trustees//Employee Retirement Board will meet as needed during the day and adjourn no later than 6:00 p.m.
- c. The Board has the powers and duties as designated in the Prairie Village, Kansas Police Department Revised Retirement Plan.

### 3. Finance Committee

- a. The Finance Committee will consist of ~~four~~six voting members, including a Chair and Vice-Chair, who are City Council Members, appointed by the Mayor without the consent of the City Council.
- b. The Finance Committee will meet as needed during the day and adjourn no later than 6:00 p.m.
- c. The Finance Committee will counsel and recommend policies and activities to the Governing Body and as directed by the Governing Body, including but not limited to, management of financial resources, financial/investment policies and provide direction and guidance to staff on financial issues.

### 4. Tree Board

- a. The Tree Board will consist of nine voting members appointed by the Mayor with the consent of the City Council, which includes a Chair ~~appointed~~elected by the Committee at least every two years. A City Council Member will be appointed by the Mayor, without the consent of the City Council, to serve as the non-voting Council Liaison. All voting members are appointed by the Mayor with the consent of the City Council.
- b. The Tree Board will meet bi-monthly, as needed, at 6:00 p.m. ~~during the day and adjourn no later than 6:00 p.m.~~
- c. The Tree Board will study, investigate, assess, counsel and recommend to the Governing Body, and as directed by the Governing Body, a policy relating to trees, shrubs and other plantings upon city-owned property; to promote and preserve the beautification of the City; to provide the protection of the public health and safety; and to protect and encourage the preservation of trees, shrubs and plantings. (Ord. 1911, 1927 & 207)

### 5. Parks and Recreation Committee

- a. The Parks & Recreation Committee will consist of voting members who serve as Chair and Vice-Chair, each a ~~City Council Member~~ appointed by the Mayor without the consent of the City Council. Ten other voting members who include one from each ward, two at-large, a tennis representative, and a swim representative are appointed by the Mayor with the consent of the City Council. There ~~will~~may be two non-voting youth representatives.
- b. The Parks & Recreation Committee will normally meet at 6:30 p.m. six times per year.
- c. The Park & Recreation Committee will counsel and recommend policies and activities to the Governing Body, and as directed by the Governing Body, including, but not limited to, recreational activities in the parks, intergovernmental agreements pertaining to park and recreation facilities, use of park system facilities, development of park system facilities, short and long-range plans for city parks, operations and activities related to the park system. (Ord. 1541 & 1875)

### 6. Police Civil Service Commission

- a. The Police Civil Service Commission will consist of five voting members appointed by the Mayor with the consent of the City Council. A Chair will be designated by the Mayor, without the consent of the City Council. ~~selected by the Commission.~~ Members will not hold any other public office of the City.
- b. The Civil Service Commission will meet as needed and adjourn no later than 6:00 p.m.
- c. The Civil Service Commission responsibilities, as established in PVMC 1-807 & 1-808, including, ~~but not limited to~~, assisting in determining qualifications and fitness of applicants for the position of commissioned police officer, for promotion of officers; and further will serve as an appeals board for commissioned officers. (Ord. 1468 & 1614).

## 7. JazzFest

- a. The JazzFest Committee is an open committee and the volunteer committee members are not appointed by the Mayor. A City Council Member will be appointed by the Mayor, without the consent of the City Council, to serve as the non-voting Council Liaison. A Chair will be appointed —by the Mayor without the consent of the City Council.
- b. The JazzFest Committee will meet at 5:30 p.m. as needed.
- c. The JazzFest Committee will coordinate and host the annual JazzFest event.

## 8. VillageFest

- a. The VillageFest Committee is an open committee and the volunteer committee members are not appointed by the Mayor. A City Council Member will be appointed by the —Mayor, without the —consent of the City Council, to serve as the non-voting Council Liaison. A Chair will be appointed —by the Mayor without the consent of the City Council.
- b. The VillageFest Committee will meet at 5:30 p.m. as needed.
- c. The VillageFest Committee will coordinate and host the annual VillageFest event.

## 9. Prairie Village Arts Council

- a. The Prairie Village Arts Council will consist of a voting Chair and Vice-Chair, each a City Council Member appointed by the Mayor without the consent of the City Council. Twelve additional voting members appointed by the Mayor, with consent of the City Council, will also serve on the Committee. ~~twelve voting members appointed by the Mayor, with the consent of the City Council, which includes a Chair appointed by the Committee. A City Council Member will be appointed by the Mayor, without the consent of the City Council, to serve as the non-voting Council Liaison.~~ There will may be two non-voting youth representatives.
- b. The Prairie Village Arts Council will meet at 5:30 p.m. every other each month, as needed.
- c. The Prairie Village Arts Council will counsel and implement policies and activities to the Governing Body and as directed by the Governing Body, including, but not limited to, ~~promotion~~ and development of the arts in Prairie Village, and development of cultural activities for the city.

## 10. Environment/Recycle Committee

- a. The Environment/Recycle Committee will consist of a voting Chair and Vice-Chair, each a City Council Member appointed by the Mayor without the consent of the City Council. ~~Twelve~~ additional voting members shall be appointed by the Mayor, with the consent of the City Council, ~~which includes a Chair appointed by the Committee.~~ There will may be two non-voting youth representatives.
- b. The Environment/Recycle Committee will normally meet at 5:30 p.m. every other month.
- c. The Environment/Recycle Committee will implement policies and activities as directed by the Governing Body, including, but not limited to, maintaining and enhancing air quality, reducing waste disposal in landfills, increasing awareness of the need to conserve natural resources and generally educating the public on methods to protect the environment.

## 11. Planning Commission/Board of Code & Zoning Appeals

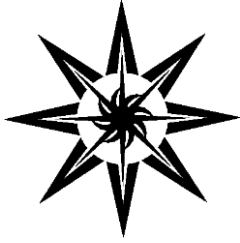
- a. The Planning Commission/Board of Code & Zoning Appeals will consist of seven voting members including a Chair, Vice-Chair and five other voting members all residing in or within seven-three (37) miles of Prairie Village. Preference will be given to Prairie Village residents. All voting members are appointed by the Mayor with the consent of the City Council. The Chair and Vice-Chair will be elected once per year

by the Commission, with different leadership elected for the Board of Code & Zoning Appeals. The term of appointment on the committee will be three years. A Council Liaison appointed by the Mayor, without the consent of the City Council, ~~will attend~~ meetings as a nonmember observer.

- b. The Planning Commission will meet on the First Tuesday of the month at 7 p.m. The Board of Code & Zoning Appeals will meet as needed at 6:30 p.m. on the First Tuesday of the month.
- c. The duties of the Planning Commission are described in PVMC Chapter XVI covering such responsibilities as Comprehensive Plan, subdivision & zoning regulations, approval of plats. (Ord. 1901; PVMC 16, Article 1 and their adopted bylaws). The duties of the Board of Zoning Appeals are described in PVMC 19.54 covering the hearing of requests for variances to the zoning regulations and appeals of an interpretation of the zoning regulations (Ord. 1409; PVMC 19.54).

## 12. **Ad Hoc Committee**

- a. The Mayor will appoint a voting Chair and voting members to serve on Ad Hoc Committees, as needed, and without the consent of the City Council. Meetings of the committee will be held as designated by the Mayor, the Governing Body and/or the Chair of the committee. These committees will continue to meet as long as necessary, but will not be considered permanent committees.
- b. The Committee will discuss issues as requested by the Mayor and/or the Governing Body. Ad Hoc Committees will be established by the Mayor to discuss a particular subject and make recommendations related to the subject matter to the Mayor and Council.



City Council Policy: CP001 - City Committees

Effective Date: March 5, 2018

Amends: CP001 - dated June 5, 2017

Approved By: Governing Body

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## I. PURPOSE

To establish public committees which will allow citizen involvement and provide recommendations to the Governing Body.

## II. RESPONSIBILITY

- a. Except as otherwise provided herein, the Mayor, with the consent of the City Council, will be responsible for appointing members to serve on the committees established by this policy.
- b. The Mayor will appoint a City Council Member to serve as Committee Chair and a City Council Member to serve as Vice-Chair for the Parks and Recreation Committee, Environmental Committee, Prairie Village Arts Council, Insurance Committee, and Finance Committee. Both Council Members will be voting members.
- c. The Mayor will appoint a City Council Member to serve as a voting member of the Police Pension Board of Trustees without the consent of the City Council, and will appoint one additional voting member to the Police Pension Board of Trustees, with the consent of the City Council.
- d. The Mayor will appoint a City Council Member as a nonvoting "Council Liaison" to the VillageFest Committee, JazzFest Committee and Tree Board.
- e. The Mayor will appoint a City Council Member as a "Council Liaison" nonmember observer to the Planning Commission/Board of Zoning Appeals.
- f. Vacancies will be filled for the unexpired term by appointment by the Mayor with the consent of the City Council, where applicable.
- g. Each Council Member, Committee Chair, and Council Liaison (except Council Liaison to the Planning Commission/Board of Zoning Appeals) will set direction, attend meetings, communicate the Governing Body's direction, priorities, and policies, prepare committee budget, in consultation with City staff, manage city resource requests, including the budget and staff time, and report back any necessary information and recommendations to and from the City Council.
- h. City staff will attend meetings, when necessary, and will be responsible for publicizing meeting notices, providing budget and policy oversight, and assisting with committee objectives, as needed. Committees will normally be responsible for taking their own minutes and submitting them to the Staff Liaison, once approved by the Committee.
- i. All committee meetings, including subcommittee meetings and special meetings, are considered open meetings if a quorum is present, as defined by Kansas Open Meetings Act.
- j. Committee meetings will be held on public property unless permission is granted from the Mayor and Committee Chair.

## III. APPOINTMENT PROCESS

The following process is outlined as a guide for committee appointments. Minor adjustments may be made by the Mayor and City Administrator.

- a. Advertise opportunities in October and November in the Village Voice, City website, news release, etc.

- b. Applications are due by December 1; online applications preferred. All applications will be sent to the City Council.
- c. Committee Chair Council Liaison and City staff representative discuss incumbents, attendance and contributions to the committee along with applications and vacancies, and may interview candidates. The Committee Chair and Council Liaison for each committee, except the Planning Commission/Board of Zoning Appeals, will recommend appointments to the Mayor.
- d. For Planning Commission/Board of Zoning Appeals, the selection committee will consist of the Mayor, Planning Commission Council Liaison, Assistant City Administrator, Planning Consultant, and Council President. The selection committee will recommend appointments to the Mayor.
- e. Mayor will make the final determination of recommended appointees for all committees.
- f. Mayor will forward the applications for the recommended appointees to the City Council at least one week prior to the City Council meeting, at which the recommended appointments will be considered. This will provide council members additional time to review the applications prior to the recommendation being included in the agenda packet.
- g. Mayoral appointment of Council members to serve on committees, as directed by this policy, will typically become effective the second meeting in February.
- h. Applicants who are not selected or approved will be notified by City administration.
- i. Appointments will typically be presented and voted on by the second City Council meeting in February.
- j. In the event of vacancies after the regular annual appointments, the applicants who submitted applications in October and November will be first considered, and vacant positions will be re-advertised, if needed.
- k. All appointed Committee Members and non-appointed Volunteers must sign a liability and photo waiver prior to serving on a Committee or volunteering for the City.

#### IV. **REMOVAL PROCESS**

The following process is outlined as a guide for the removal of a committee member. This does not apply to the members of the Planning Commission, whose removal is governed by Ord. 1901; PVMC 16, Article 1 and the adopted bylaws of the Planning Commission.

Appointees serve at the pleasure of the Governing Body. A committee member may be removed prior to the expiration of his or her term by the recommendation of the Council Liaison and City Administrator, with final approval by the Mayor. All committee members are expected to attend meetings and are subject to the City's ethics code. This removal process applies to appointed committee members and non-appointed committee volunteers.

#### V. **COMMITTEE GUIDELINES**

- a. Length of Terms - All committee terms will be two years, except for Planning Commission and Civil Service Commission, who, by code, serve for three years, and Committee Chairs, Council Liaisons, and youth representatives, who serve for a one-year term.. All committee members and youth representatives will serve without compensation.
- b. Attendance - All committee members must attend 75% of meetings held in a calendar year. A member who does not meet attendance requirements may be subject to removal prior to the end of the appointed term. Members who are unable to attend a meeting must notify the Committee Chair or Staff Liaison in advance to ensure a quorum will be present.
- c. City Operation Committees include the Insurance Committee, Police Pension Board/Employee Retirement Committee, Finance Committee, Tree Board, Parks and Recreation Committee, and the Civil Service Commission.
- d. Event Committees include the JazzFest Committee and the VillageFest Committee, which are responsible for specific city-sponsored events.



- e. Lifestyle Committees include the Environmental Committee and the Arts Council.
- f. Statutory Committees include the Planning Commission, Board of Zoning Appeals, and the Board of Code Appeals as required by Kansas Statutes.
- g. Committee Resources - City Council reviews and approves the committee budget each year. No committee is allowed to lend or transfer given funds to another committee or another organization without staff approval except The Prairie Village Foundation. The committee budget is for specific items or events, which are the responsibility of that committee. If additional funds are needed, committee representatives must make a request to the City Council. No committee may use its funds to contribute funding support to another organization outside of required membership dues without specific City Council approval.
- h. If a committee desires additional staff time for an event, initiative, or program, that request will be communicated to the City Administrator through the Committee Chair or Council Liaison. Any significant new program or proposal that requires staff time or additional funding will need to come before the City Council to determine if and where it fits on the priority list and obtain City Council approval before the committee may proceed.
- i. Special meetings may be called by the Committee Chair, with approval of the Mayor, along with required public notification.
- j. A quorum for each committee is a majority of the then sitting, voting members of each committee.
- k. Notice of all meetings must be posted on the City's website.

## **POLICY**

There are established public committees with the following requirements for membership, meetings and duties:

### **1. Insurance Committee**

- a. The Insurance Committee will consist of a voting Chair and Vice-Chair, each a City Council Member appointed by the Mayor without the consent of the City Council. The Mayor, with the consent of the City Council, appoints three other voting members who have an insurance background.
- b. The Insurance Committee will meet during the day as needed and adjourn no later than 6:00 p.m.
- c. The Insurance Committee will monitor and discuss insurance issues relating to the City and recommend insurance bid award, when applicable.

### **2. Police Pension Board of Trustees/Employee Retirement Board**

- a. The Police Pension Board of Trustees/Employee Retirement Board will consist of three voting members. One member will be a council member who is appointed by the Mayor, without the consent of the City Council. One member will be appointed by the Mayor, with the consent of the City Council. One voting member will be designated by the Police Department employees, with a term of service until the appointment of successor.
- b. The Police Pension Board of Trustees/Employee Retirement Board will meet as needed during the day and adjourn no later than 6:00 p.m.
- c. The Board has the powers and duties as designated in the Prairie Village, Kansas Police Department Revised Retirement Plan.

### **3. Finance Committee**

- a. The Finance Committee will consist of six voting members, including a Chair and Vice-Chair, who are City Council Members, appointed by the Mayor without the consent of the City Council.
- b. The Finance Committee will meet as needed during the day and adjourn no later than 6:00 p.m.
- c. The Finance Committee will counsel and recommend policies and activities to the Governing Body and as directed by the Governing Body, including but not limited to,

management of financial resources, financial/investment policies and provide direction and guidance to staff on financial issues.

#### **4. Tree Board**

- a. The Tree Board will consist of nine voting members appointed by the Mayor with the consent of the City Council, which includes a Chair elected by the Committee at least every two years. A City Council Member will be appointed by the Mayor, without the consent of the City Council, to serve as the non-voting Council Liaison. All voting members are appointed by the Mayor with the consent of the City Council.
- b. The Tree Board will meet bi-monthly, as needed, at 6:00 p.m.
- c. The Tree Board will study, investigate, assess, counsel and recommend to the Governing Body, and as directed by the Governing Body, a policy relating to trees, shrubs and other plantings upon city-owned property; to promote and preserve the beautification of the City; to provide the protection of the public health and safety; and to protect and encourage the preservation of trees, shrubs and plantings. (Ord. 1911, 1927 & 207)

#### **5. Parks and Recreation Committee**

- a. The Parks & Recreation Committee will consist of voting members who serve as Chair and Vice-Chair, each a City Council Member appointed by the Mayor without the consent of the City Council. Ten other voting members who include one from each ward, two at-large, a tennis representative, and a swim representative are appointed by the Mayor with the consent of the City Council. There may be two non-voting youth representatives.
- b. The Parks & Recreation Committee will normally meet at 6:30 p.m. six times per year.
- c. The Park & Recreation Committee will counsel and recommend policies and activities to the Governing Body, and as directed by the Governing Body, including, but not limited to, recreational activities in the parks, intergovernmental agreements pertaining to park and recreation facilities, use of park system facilities, development of park system facilities, short and long-range plans for city parks, operations and activities related to the park system. (Ord. 1541 & 1875)

#### **6. Police Civil Service Commission**

- a. The Police Civil Service Commission will consist of five voting members appointed by the Mayor with the consent of the City Council. A Chair will be designated by the Mayor, without the consent of the City Council. Members will not hold any other public office of the City.
- b. The Civil Service Commission will meet as needed and adjourn no later than 6:00 p.m.
- c. The Civil Service Commission responsibilities, as established in PVMC 1-807 & 1-808, including, but not limited to, assisting in determining qualifications and fitness of applicants for the position of commissioned police officer, for promotion of officers; and further will serve as an appeals board for commissioned officers. (Ord. 1468 & 1614).

## **7. JazzFest**

- a. The JazzFest Committee is an open committee and the volunteer committee members are not appointed by the Mayor. A City Council Member will be appointed by the Mayor, without the consent of the City Council, to serve as the non-voting Council Liaison. A Chair will be appointed by the Mayor without the consent of the City Council.
- b. The JazzFest Committee will meet at 5:30 p.m. as needed.
- c. The JazzFest Committee will coordinate and host the annual JazzFest event.

## **8. VillageFest**

- a. The VillageFest Committee is an open committee and the volunteer committee members are not appointed by the Mayor. A City Council Member will be appointed by the Mayor, without the consent of the City Council, to serve as the non-voting Council Liaison. A Chair will be appointed by the Mayor without the consent of the City Council.
- b. The VillageFest Committee will meet at 5:30 p.m. as needed.
- c. The VillageFest Committee will coordinate and host the annual VillageFest event.

## **9. Prairie Village Arts Council**

- a. The Prairie Village Arts Council will consist of a voting Chair and Vice-Chair, each a City Council Member appointed by the Mayor without the consent of the City Council. Twelve additional voting members appointed by the Mayor, with consent of the City Council, will also serve on the Committee. There may be two non-voting youth representatives.
- b. The Prairie Village Arts Council will meet at 5:30 p.m. each month, as needed.
- c. The Prairie Village Arts Council will counsel and implement policies and activities to the Governing Body and as directed by the Governing Body, including, but not limited to, promotion and development of the arts in Prairie Village and development of cultural activities for the city.

## **10. Environment/Recycle Committee**

- a. The Environment/Recycle Committee will consist of a voting Chair and Vice-Chair, each a City Council Member appointed by the Mayor without the consent of the City Council. Twelve additional voting members shall be appointed by the Mayor, with the consent of the City Council. There may be two non-voting youth representatives.
- b. The Environment/Recycle Committee will normally meet at 5:30 p.m. every other month.
- c. The Environment/Recycle Committee will implement policies and activities as directed by the Governing Body, including, but not limited to, maintaining and enhancing air quality, reducing waste disposal in landfills, increasing awareness of the need to conserve natural resources and generally educating the public on methods to protect the environment.

## **11. Planning Commission/Board of Code & Zoning Appeals**

- a. The Planning Commission/Board of Code & Zoning Appeals will consist of seven voting members including a Chair, Vice-Chair and five other voting members all residing in or within three (3) miles of Prairie Village. Preference will be given to Prairie Village residents. All voting members are appointed by the Mayor with the consent of the City Council. The Chair and Vice-Chair will be elected once per year by the Commission, with different leadership elected for the Board of Code & Zoning Appeals. The term of appointment on the committee will be three years. A Council Liaison appointed by the Mayor, without the consent of the City Council, will attend meetings as a nonmember observer.
- b. The Planning Commission will meet on the First Tuesday of the month at 7 p.m. The

Board of Code & Zoning Appeals will meet as needed at 6:30 p.m. on the First Tuesday of the month.

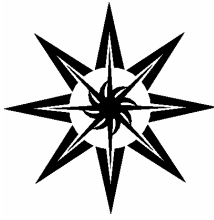
- c. The duties of the Planning Commission are described in PVMC Chapter XVI covering such responsibilities as Comprehensive Plan, subdivision & zoning regulations, approval of plats. (Ord. 1901; PVMC 16, Article 1 and their adopted bylaws). The duties of the Board of Zoning Appeals are described in PVMC 19.54 covering the hearing of requests for variances to the zoning regulations and appeals of an interpretation of the zoning regulations (Ord. 1409; PVMC 19.54).

**12. Ad Hoc Committee**

- a. The Mayor will appoint a voting Chair and voting members to serve on Ad Hoc Committees, as needed, and without the consent of the City Council. Meetings of the committee will be held as designated by the Mayor, the Governing Body and/or the Chair of the committee. These committees will continue to meet as long as necessary, but will not be considered permanent committees.
- b. The Committee will discuss issues as requested by the Mayor and/or the Governing Body. Ad Hoc Committees will be established by the Mayor to discuss a particular subject and make recommendations related to the subject matter to the Mayor and Council.

**Committee Information Table**

Committee Name	Meeting Frequency	Meeting Day and Start Time	# of Staff Who Attend	Average Length of Meetings	Chair (Council Member or Volunteer)	Scope of Responsibilities
Arts Council	Twice per month (1 event and 1 meeting)	Wednesday before second Friday of the month; 5:30 p.m.	2 staff members for regular meetings; up to 10 employees for larger events, such as State of the Arts	2 - 3 hours	Volunteer	Select art to be displayed in art gallery each month; Host monthly art exhibits on second Fridays; Plan State of the Arts and Future of the Arts Events, plan the annual photography contest; display at JazzFest; assist with Prairie Village Arts Fair
Planning Commission/BZA	Once per month	First Tuesday of the month; 7:00 p.m. for Planning Commission; 6:30 p.m. for BZA	3 to 4 staff members depending on topic; plus planning consultant and occasionally city attorney	2 - 3 hours	Volunteer	Reviews development within the City; makes recommendations to the City council on special use permits, rezoning, and preliminary development plans; updates and makes recommendations to the City Council on the Comprehensive Land Use plan
Environmental Committee and Environmental/Recycling Subcommittee	9 times per year for committee; once per month for subcommittee	Fourth Wednesdays; 5:30 p.m. for whole committee; second Thursday of the month for subcommittee; 5:30 p.m.	1 (at least 6 meetings per year, but attend as needed) for whole committee; 0 at subcommittee	1.5 hours for whole committee; 1 - 1.5 hours for subcommittee	Volunteer for whole committee; no chair for subcommittee	Plans Earth Fair, Community Forum, Community Garden, and Booth at VillageFest, sets agendas, invites speakers, etc.
Parks & Rec Committee	At least 6 times per year	Second Wednesday of the month; 6:30 p.m.	2 (one city hall and one public works)	1.5 - 2 hours	Council Member	Recommends policies and activities to the Governing Body regarding recreational activities in the parks, development of park system facilities, short and long-range plans for city parks, and operations and activities related to the park system
Finance Committee	2 -3 times per year, or as needed	Varies	2 (sometimes more when needed)	2 - 3 hours	Council Member	Provides financial oversight for the City. Typical task areas include budgeting and financial planning, financial reporting, and the creation and monitoring of internal controls and accountability policies. Staff would like to see the finance committee be more involved in vetting the budget and budget decision packages.
Insurance Committee	4 - 6 times per year	Varies	2 (sometimes more when needed)	2 - 3 hours	Council Member	Review and monitor Workers Compensation and Property & Casualty coverage; typical task areas should include vetting out insurance proposals and monitoring the budget.
Police Pension Board	4 times per year	Thursday; 2:00 p.m.	3-4 employees	1-2 hours	No Chair	Make decisions regarding the pension plan, investments, and retiree approvals.
Civil Service Commission	4 - 6 times per year, as needed	Varies	0	Varies (1 hour - all day)	Volunteer	Assists with hiring and promotion process for commissioned police officers
Tree Board	Once per month	First Wednesday; 6:00 p.m.	1 staff member	1 hour	Volunteer	Provide input to staff on City tree issues; Promotes tree knowledge and info to residents; meets Tree City USA requirements; organizes annual Arbor Day Event, Fall Seminar, and new Tree Planting Initiative; conducts special tree projects as needed.
VillageFest	Once per month, January - July	Fourth Thursday; 5:30 p.m.	1 -3 staff members per meeting; day of event = large contingency of employees	1 hour	Volunteer	15 volunteers who plan the annual VillageFest on July 4. Each committee member spearheads one component of the event and leads the coordination of that aspect
JazzFest	Once per month, January - October	Meeting day varies; 5:30 p.m.	1 - 2 staff members per meeting; day of event = large contingency of employees	1 hour	Volunteer	Plans the annual JazzFest event in September of each year
Neighborhood Design Phase 2 Ad Hoc Committee	Once per month	5:00 p.m. start time; meeting day varies	2 staff members plus planning consultant	2 hours	No Chair	Reviewing zoning regulations in regards to neighborhood design; compiling recommendations for changes to Planning Commission and City Council
Village Square Ad Hoc Committee	Varies	Meeting day varies; 5:30 p.m.	3 staff members	1.5 - 2 hours	Council Member	Developing a conceptual plan for Harmon and Santa Fe Parks to build upon the 2009 Parks Master Plan
Prairie Village Foundation	Twice per year, plus 4 special events	5:30 p.m. semi-annually	3 staff members at meetings; each event requires more staff to work	2-3 hours	Volunteer	The committee members plan and execute four special events: Back to School with a Firefighter, Shop with a Cop, Gingerbread House Party, and the Mayor's Holiday Tree Lighting. The committee also allocates donated funds to different organizations throughout the metro area
Bicycle/Pedestrian Plan Ad Hoc Committee	Varies	Meeting day varies; 5:30 p.m.	3 staff members	1.5 hours	No Chair	Updating the bicycle/pedestrian master plan



## PUBLIC WORKS DEPARTMENT

Council Meeting Date: March 5, 2018  
REGULAR AGENDA

COU2018-12:        **Mobilitie Franchise Ordinance and Master License Agreement for Attachments to City Facilities (Pole Attachment Agreement)**

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### RECOMMENDATIONS:

**RECOMMEND THE CITY COUNCIL APPROVE ORDINANCE NO. 2376 GRANTING A FRANCHISE TO MOBILITIE, LLC, TO OPERATE WITHIN THE CITY RIGHT-OF-WAY AS A WIRELESS INFRASTRUCTURE PROVIDER.**

**RECOMMEND THE CITY COUNCIL APPROVE A MASTER LICENSE AGREEMENT FOR ATTACHMENTS TO CITY FACILITIES WITH MOBILITIE, LLC.**

### BACKGROUND:

In 2016, the Kansas Legislature passed, and Governor Brownback signed into law, the Kansas New Wireless Deployment Act, codified at K.S.A. 66-2019 (the "Act"). The Act provides both "wireless service providers" (such as Verizon, AT&T, and Sprint—typical "carriers" of wireless services) and "wireless infrastructure providers" (companies that build out networks and then lease the facilities to the wireless service providers themselves) with expanded rights to use the City's public rights-of-way for the installation of wireless and "small cell" facilities, including poles and antenna.

Mobilitie, LLC ("Mobilitie") operates as a wireless infrastructure provider, building out a network of small cell facilities and then leasing them to providers, oftentimes Sprint. Typical examples of Mobilitie installations may include the following:



Mobilitie has approached the City about installing its facilities on one existing City pole located at approximately 75th Street and Ash Street. Public Works staff is currently reviewing the application and supporting materials provided by Mobilitie, to determine conformity with the City's right-of-way regulations. That particular project is not part of this specific agenda item, but staff expects it would be the first Mobilitie project in the City, and a typical example of small cell installations.

### **Franchise Ordinance and Franchise Fees.**

Among the most important pieces of the Act is that wireless services providers and wireless infrastructure providers "shall have the right to construct, maintain and operate wireless support structures, utility poles, small cell wireless facilities or distributed antenna systems along, across, upon, under or above the public right-of-way." K.S.A. 66-2019(d)(2)(A). However, it has been the City's position (one that is shared by neighboring cities) that, under K.S.A. 12-2001, the City must still grant a "franchise" to both wireless services providers and wireless infrastructure providers. At its simplest, a franchise is the mechanism or vehicle through which the right to operate in the right-of-way is granted. (One exception to this is that "video service providers," such as Google, are governed by a different set of statutes.)

Accordingly, Staff and legal counsel have been negotiating an appropriate franchise agreement with Mobilitie (the "Franchise"), presented as Ordinance No. 2376 (K.S.A. 12-2001(b)(1) specifies that "[a]ll contracts granting or giving any such original franchise, right or privilege, or extending or renewing or amending any existing grant, right, privilege or franchise, to engage in such an activity shall be made by ordinance, and not otherwise".) This Franchise would govern and apply to all applications which Mobilitie may make to the City—the City Council would not be approving every separate right-of-way permit handled by the Public Works Department and issued pursuant to this Franchise.

The form recommended for approval is based on, and is generally consistent with, the form utilized by the City of Overland Park, Kansas, when it granted Mobilitie a franchise in 2015. The key provisions of the Franchise are:

- The Franchise grants Mobilitie the right to construct and maintain its facilities in the public right-of-way, subject to the terms of the Franchise and subject to other requirements of applicable law (including but not limited to the City's right-of-way regulations).
- As required by law, the authority to occupy the public right-of-way must be granted in a competitively neutral and nondiscriminatory basis.
- Mobilitie would pay a franchise fee of five percent (5.00%) of its gross receipts from every physical facility/pole/antenna that it maintains within the City, and then leases out to wireless service providers (such as Sprint).

This 5.00% was approved separately by the City Council on February 20, 2018.

- The Franchise contains standard and appropriate indemnity and insurance provisions. The Franchise also requires that Mobilitie maintain a performance bond to better ensure the appropriate and timely performance of Mobilitie's work in the right-of-way.
- The Franchise would be effective for an initial term of ten (10) years, as required by the Act. *See* K.S.A. 66-2019(f)(10). The Franchise would automatically renew for successive one (1) year terms.
- The Franchise recognizes that Mobilitie (like other providers) may rely on confidentiality protections (primarily as to trade secrets) under the Kansas open records act, the code of civil procedure, and statutes applicable to the Kansas Corporation Commission. However, the Franchise states that Mobilitie will hold the City harmless from any penalties the City may face should the City not disclose such information.

A wireless services provider (such as Sprint) that is utilizing the facilities of a wireless infrastructure provider (such as Mobilitie) would not be required to obtain its own separate franchise from the City. Meaning, where Mobilitie owns the antenna or equipment, and all Sprint has are the necessary proprietary circuits so that Mobilitie's antenna will function for Sprint, the City would not require that Sprint have a separate wireless franchise. This is the current situation in Overland Park where a company called "Extenet" owns antennas in the rights-of-way and lease them to Verizon. As a contrasting example, Verizon is now planning to install its own antennas (in both Overland Park and in Prairie Village, and other cities) and bypass using a wireless infrastructure provider like Extenet or Mobilitie. In that situation, the City would require that Verizon (the wireless services provider) have its own wireless franchise because it will directly own the antenna/equipment.

#### **Master License Agreement (aka Pole Attachment Agreement).**

Wireless service providers and wireless infrastructure providers may also request that the City allow them to attach to City-owned facilities located within the public right-of-way (such as streetlights or utility poles). These may include small cell antennas, radios, electric panels, and cables. In some cases (such as Mobilitie's current proposal), antennae and other facilities may be added to existing City poles; in others, providers may replace existing poles with new ones that better accommodate the needed facilities. And, again, under the Act, a wireless services provider or wireless infrastructure provider generally "shall have the right to construct, maintain and operate wireless support structures, utility poles, small cell wireless facilities or distributed antenna systems along, across, upon, under or above the public right-of-way." K.S.A. 66-2019(d)(2)(A).

However, the Franchise does not cover the actual connection of facilities to City-owned poles. Rather, the Franchise only applies to the use of the right-of-way itself (that is, the



right to use the public right-of-way, as opposed to requiring that facilities be installed within private easements instead). For a "pole attachment" situation, municipalities in Johnson County typically utilize a "master license agreement" or "pole attachment agreement" with the providers (the "Agreement").

As with the Franchise, City Staff and legal counsel have worked with other Johnson County municipalities to develop an overall consistent form of Agreement. As with the Franchise, the Agreement is built primarily on the form utilized by the City of Overland Park in recent years. The key provisions of the Agreement are as follows:

- The Agreement operates as a "master" agreement, applicable to any attachments that Mobilitie might make to City-owned poles (and to any replacement poles that Mobilitie might install, which would become the property of the City). Specific attachments would be documented by numbered "Supplements" to the Agreement.
- The term of the Agreement would be ten (10) years, provided, that each Supplement (for each particular application) would also be for a term of ten (10) years, such that the Agreement would survive, but only as to any remaining Supplements. Mobilitie would be required to remove its attachments upon expiration or other termination of the Agreement or applicable Supplement.
- The Agreement does not necessarily require that attachments to City facilities be allowed. For example, facilities must have sufficient capacity, must not interfere with other governmental purposes, and must not violate applicable right-of-way or zoning regulations. The City may also consider aesthetic issues. However, the City must treat requestors in a competitively-neutral and non-discriminatory manner and, given the provisions of the Act, could not likely use these factors as pretexts to reject all applications. Further, location on existing City facilities may be preferable to the installation of new poles under the Act.
- As previously discussed with and approved by the City Council, Mobilitie would pay a "per pole" attachment fee of \$45.00 per month (\$540 per year). These would payable yearly, in advance (when new poles are installed, the prorated amount for the remainder of the year would be paid in advance).
- City Public Works staff would review all applications for attachments in accordance with applicable right-of-way and other regulations, and other appropriate installation standards. Staff would be authorized to approve and execute Supplements to the Agreement upon approval of permits for the attachments.
- The Agreement requires that Mobilitie make all reasonable effort to ensure the design, color, and aesthetics of its attachments blend with and do not contrast with City facilities. Again, aesthetics may be subjective, and

enforcement of City preferences may be limited, to some degree, by the requirements of the Act.

- The Agreement contemplates that there may be situations where, due to load capacity, or to better handle aesthetic concerns, poles may be replaced entirely. Such work would be the responsibility of Mobilitie, and the City would become the owner of the replacement pole. (See Section 9 of the Agreement.)
- The Agreement contains provisions for removal of facilities after the expiration or termination of the Agreement. The Agreement further addresses abandoned City facilities.
- The Agreement contains standard and appropriate indemnity and insurance provisions.
- Because Mobilitie is a wireless infrastructure provider (not a wireless services provider itself), the Agreement does allow Mobilitie to sub-license and use the "internal space" of its attachments to third-party wireless providers without further approval from the City.

**ATTACHMENTS:**

Ordinance No. 2376 Granting a Franchise to Mobilitie, LLC, to Operate Within the City Right-of-Way as a Wireless Infrastructure Provider.

Master License Agreement for Attachments to City Facilities with Mobilitie, LLC.

**PREPARED BY:**

David E. Waters  
Lathrop Gage LLP

Keith Bredehoeft  
Public Works Director

Date: February 22, 2018



## PUBLIC WORKS DEPARTMENT

Council Committee Meeting Date: March 5, 2018

Council Meeting Date: March 5, 2018

### CONSIDER DESIGN AGREEMENT WITH AFFINIS CORPORATION FOR THE DESIGN OF THE 2018 PAVING PROGRAM

#### RECOMMENDATION

Move to approve the design agreement with Affinis Corporation for the design of the 2018 Paving Program in the amount of \$86,410.00.

#### BACKGROUND

Public Works recently requested proposals from firms to provide engineering services for Prairie Village for the next three years. We had 9 firms submit proposals and we interviewed 4 firms Phelps Engineering, BHC Rhodes, Trekk Design Group and Affinis Corporation. Based on their original proposals and the interviews the selection committee chose Affinis Corporation to be the City's construction administration consultant for 2018, 2019, and 2020. Affinis Corporation has been working for the City for the last several years and has performed very well. The selection committee consisted of Serena Schermoly, Steve Noll, Alley Porter, and Melissa Prenger.

This agreement is for the design of the 2018 Paving Program. Construction is anticipated to begin in Summer 2018.

#### FUNDING SOURCE

Funding is available in the 2018 Paving Program. The overall design, inspection, and construction budget in the CIP for these projects is \$3,061,382.00.

#### RELATED TO VILLAGE VISION

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

#### ATTACHMENTS

1. Design Agreement with Affinis
2. Map of 2018 Paving Program

#### PREPARED BY

Melissa Prenger, Sr Project Manager

February 28, 2018

**AGREEMENT FOR PROFESSIONAL ENGINEER**

**For**

**DESIGN SERVICES**

**Of**

**PROJECT PAVP2018- 2018 PAVING PROGRAM**

***THIS AGREEMENT***, made at the Prairie Village, Kansas, this \_\_\_ day of \_\_\_\_\_, by and between the City of Prairie Village, Kansas, a municipal corporation with offices at 7700 Mission Road, Prairie Village, Kansas, 66208, hereinafter called the “**City**”, and Affinis Corp, a corporation with offices at 8900 Indian Creek Parkway, Suite 450, Overland Park, KS, 66210 hereinafter called the “**Consultant**”.

***WITNESSED, THAT WHEREAS***, the City has determined a need to retain a professional engineering firm to provide civil engineering services for the Design of the 2018 Paving Program, hereinafter called the “**Project**”,

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

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

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

**Article I City Responsibilities**

- A. Project Definition** The City is preparing to design and construct roadway and stormwater improvements throughout the city as part of Paving Program.
- B. City Representative** The City has designated, Melissa Prenger, Public Works Senior Project Manager, to act as the City’s representative with respect to the services to be performed or furnished by the Consultant under this Agreement. Such person shall have authority to transmit instructions, receive information, interpret and define the City’s policies and decisions with respect to the Consultant’s services for the Project.
- C. Existing Data and Records** The City shall make available to the Consultant all existing data and records relevant to the Project such as, maps, plans, correspondence files and other information possessed by the City that is relevant to the Project. Consultant shall not be responsible for verifying or ensuring the accuracy of any information or content supplied by City or any other Project participant unless specifically defined by the scope of work, nor ensuring that such information or content does not violate or infringe any law or other third party rights. However, Consultant shall promptly advise the City, in writing, of any inaccuracies in the information provided or any other violation or infringement of any law or third party rights that Consultant observes. City shall

indemnify Consultant for any infringement claims resulting from Consultant's use of such content, materials or documents.

- D. **Review For Approval** The City shall review all criteria, design elements and documents as to the City requirements for the Project, including objectives, constraints, performance requirements and budget limitations.
- E. **Standard Details** The City shall provide copies of all existing standard details and documentation for use by the Consultant for the project.
- F. **Submittal Review** The City shall diligently review all submittals presented by the Consultant in a timely manner.
- G. The City has funded the 2018 Paving Project which may include the following streets:
  - 1. 64th Terrace, Roe Avenue to Hodges Drive
  - 2. Cedar Street, 71st Street to 71st Terrace
  - 3. 73rd Street Cul-de-sac, Windsor Street to 73rd Street Cul-de-sac
  - 4. 71st Street, Cherokee Drive to Mission Road
  - 5. Cherokee Drive, 71st Street to 75th Street
  - 6. 73rd Street, High Drive to Booth Street
  - 7. 76th Street, Ash Street to Nall Avenue
  - 8. Tomahawk Road, Mission Road to 71st Street
  - 9. Tomahawk Road, 71st Street to Roe Avenue
  - 10. Granada Street, 79th Street to 82nd Street
  - 11. Norwood Drive, 79th Street to Somerset Drive
  - 12. Cedar Street, 83rd Terrace to 85th Street
  - 13. Cedar Drive Cul-de-sac, Cedar Drive Cul-de-sac to Somerset Drive
  - 14. 89th Street, Mission Road to Catalina Street

## Article II Consultant Responsibilities

- A. **Professional Engineering Services** The Consultant shall either perform for or furnish to the City professional engineering services and related services in all phases of the Project to which this Agreement applies as hereinafter provided.
- B. **Prime Consultant** The Consultant shall serve as the prime professional Consultant for the City on this Project.
- C. **Standard Care** The standard of care for all professional consulting services and related services either performed for or furnished by the Consultant under this Agreement will be the care and skill ordinarily used by members of the Consultant's profession, practicing under similar conditions at the same time and in the same locality.
- D. **Consultant Representative** Designate a person to act as the Consultant's representative with respect to the services to be performed or furnished by the Consultant under this Agreement. Such person shall have authority to transmit instructions, receive information, and make decisions with respect to the Consultant's services for the Project.

## Article III Scope of Services

- A. **Design Phase:** Upon receipt of notice to proceed from the City, the Consultant shall provide all consulting services related to this project including, but not limited, to these phases and tasks. The scope is generally defined below.

1. Schedule and attend one startup meeting with City to confirm project goals, schedule, budget and expectations. Review the list of work locations with applicable priorities as provided by the City. Review any criteria changes in the program.
2. Review with City staff, the list of issues based on service requests, work orders, permits issued, Public Works staff experiences, available plans, previous studies, and pertinent information regarding the Project.
3. Schedule and attend up to three (3) utility coordination meetings. Request utility comments, coordinate planned relocations among agencies and verify relocation/adjustment schedule.
4. Conduct field reconnaissance with City to evaluate and identify:
  - a. Design issues.
  - b. Need for drainage improvements.
  - c. Need for full depth pavement repairs.
  - d. Need for sidewalk replacement.
  - e. Location for new sidewalk.
  - f. Need for curb and gutter replacement.
  - g. Need for and limits of driveway replacement.
  - h. Need for which type of ADA ramps.
  - i. Utility locations and conflicts.
  - j. Tree conflicts.
5. Perform topographic and field survey of identified project locations. Areas requiring topographic survey are:

Locations where new sidewalk is to be designed and constructed. Topographic survey shall be on one side of street only, from back of curb to behind right of way line and shall include curb returns at intersections:

  - (a) 64th Terrace, Roe Avenue to Hodges Drive
  - (b) 73rd Street Cul-de-sac, Windsor Street to 73rd Street Cul-de-sac
  - (c) 76th Street, Ash Street to Nall Avenue
  - (d) 89th Street, Mission Road to Catalina Street
6. Gather aerial and topographic data from Johnson County AIMS mapping for all project locations.
7. Record location of existing traffic markings and review for compliance with MUTCD and City standards.
8. Prepare preliminary construction plans (60%).
  - a. Project title sheet.
  - b. General site plan showing and identifying surface features such as street right-of-way, edge of pavement, sidewalks, driveways, boring locations, trees, house outline, address, owner name based on latest AIMS coverage data, irrigation systems, known electronic dog fences and any other pertinent surface feature.
  - c. Plan sheets for street improvements showing all utilities, sanitary sewer, water, gas, electric, telephone, traffic signals, and street lights, as well as all conflicts and test pits. Profiles will be provided for streets when a topographic survey is performed.
  - d. Typical sections.
  - e. Cross sections for streets with a detailed topographic survey.
  - f. City details drawings and other special details pertinent to the project.
  - g. Traffic control plan showing temporary and permanent traffic control measures per MUTCD for various phases of construction.

9. Submit one set (one full size and one half size) of preliminary (60% completion) construction plans for City review.
10. Present one set (half size) of preliminary plans to appropriate governmental agencies and utility companies requesting comments and verification of potential conflicts.
11. Perform field check with City.
12. Schedule, prepare for and attend one (1) public meetings for the project. The City will be responsible for sending notifications to the residents and property owners.
13. Present a detailed opinion of probable construction cost of City defined construction pay items with quantities and current unit costs. Add to the total construction cost, a contingency of 15 percent.
14. Attend and prepare minutes for up to four (4) project meetings and disperse the minutes to City representative and all other attendees within five working days.
15. Prepare final documents base of review and comments from City and other review agencies of the preliminary plans.
16. Prepare final project manual for City review.
17. Submit one half size set of final (95%) plans and specifications for City review.
18. Submit one half-size set of final (95%) plans and specifications to other appropriate governmental agencies and utility companies with identification of significant changes to preliminary design plans.
19. Prepare a final opinion of probable construction cost.
20. Prepare bid documents for the project using the City's standard documents for the Paving Program.
21. Provide one hard copy and electronic copy of any report or plans. Provide files of the plans in PDF Format.

## **B. Bidding Services Phase**

Bidding services will be provided for each program separately and include the following.

1. Provide the City a notice of bid for publication.
2. Post advertisement for bid on electronic plan room (Drexel Technologies) and provide bid documents for reproduction.
3. Via electronic plan room provide all bid documents for potential bidders to purchase.
4. Provide all utilities with bid set of plans and request attendance at pre-bid meeting.
5. Conduct a pre-bid meeting. Prepare minutes of pre-bid meeting and disperse to City representative and all other attendees within five working days.
6. Prepare and distribute addenda prior to bid opening. Assist bidders with questions during bidding.
7. Provide to the City an Engineer's Estimate and bid tab sheet prior to the bid opening.
8. Attend bid opening.
9. Check accuracy of bids, evaluate the bidders and make a recommendation of award to the City.
10. Prepare five sets construction documents including bonds for execution by the contractor and the City.

11. Provide one hard copy and electronic copy of any report or drawings. Provide files of the plans or drawings in PDF Format.

### **C. Construction Services Phase**

Construction services will be provided for each program separately and include the following.

1. Prepare for attend preconstruction meeting with City and Contractor. Prepare and distribute meeting notes.
2. Provide periodic consultation by telephone or email to assist with construction issues.
  - a. Consultation will be initiated by Client and/or Construction Representative.
  - b. Consultant shall provide documentation on invoice that provides a brief description of the issue and/or activity.
  - c. Any consultation resulting from a design error by the Consultant shall be excluded from this scope of work and shall be provided at the expense of the Consultant.
3. Review shop drawings and submittals.
4. Prepare plan revisions as necessitated by conditions encountered in the field during construction, with the exception of traffic control plans.
5. Prepare final record drawings which reflect:
  - a. Minor design changes.
  - b. Changes made in the field by City representatives and are marked on the construction plan set.
6. Submit to the City electronic CAD files and TIFF images of the revised sheets.
7. Attend construction progress meetings as directed/requested by the Client. Four (4) meetings are budgeted.

## **Article IV Time Schedule**

- A. Timely Progress** The Consultant's services under this Agreement have been agreed to in anticipation of timely, orderly and continuous progress of the Project.
- B. Authorization to Proceed** If the City fails to give prompt written authorization to proceed with any phase of services after completion of the immediately preceding phase, the Consultant shall be entitled to equitable adjustment of rates and amounts of compensations to reflect reasonable costs incurred by the Consultant as a result of the delay or changes in the various elements that comprise such rates of compensation.
- C. Default Neither** City nor Consultant shall be considered in default of this Agreement for delays in performance caused by circumstances beyond the reasonable control of the nonperforming party. For purposes of this Agreement, such circumstances include, but are not limited to, abnormal weather conditions; floods; earthquakes; fire; epidemics; war, riots, and other civil disturbances; strikes, lockouts, work slowdowns, and other labor disturbances; sabotage; judicial restraint; and delay in or inability to procure permits, licenses, or authorizations from any local, state, or federal agency for any of the supplies, materials, accesses, or services required to be provided by either City or Consultant under this Agreement. Should such circumstances occur, the consultant shall within a reasonable time of being prevented from performing, give written notice to the City describing the circumstances preventing continued performance and the efforts being made to resume performance of this Agreement.



D. **Completion Schedule** Recognizing that time is of the essence, the Consultant proposes to complete the scope of services as specified in the Scope of Services:

Design Phase	Due by April 20, 2018
Bid Advertisement Date	May 1, 2018
Letting Date	May 18, 2018

## Article V Compensation

A. **Maximum Compensation** The City agrees to pay the Consultant as maximum compensation as defined in Exhibit B for the scope of services the following fees:

2018 Paving Project	
Design Phase	\$ <u>77,370.00</u>
Bidding Services Phase	\$ <u>5,230.00</u>
Construction Services Phase	\$ <u>3,810.00</u>
Total Fee for Paving Project	\$ <u>86,410.00</u>

- B. **Invoices** The compensation will be invoiced by phase, detailing the position, hours and appropriate hourly rates (which include overhead and profit) for Consultant's personnel classifications and the Direct Non-Salary Costs.
- C. **Direct Non-Salary Costs** The term "Direct Non-Salary Costs" shall include the Consultant payments in connection with the Project to other consultants, transportation, and reproduction costs. Payments will be billed to the City at actual cost. Transportation, including use of survey vehicle or automobile will be charged at the IRS rate in effect during the billing period. Reproduction work and materials will be charged at actual cost for copies submitted to the City.
- D. **Monthly Invoices** All invoices must be submitted monthly for all services rendered in the previous month. The Consultant will invoice the City on forms approved by the City. All properly prepared invoices shall be accompanied by a documented breakdown of expenses incurred and description of work accomplished.
- E. **Fee Change** The maximum fee shall not be changed unless adjusted by Change Order mutually agreed upon by the City and the Consultant prior to incurrence of any expense. The Change Order will be for major changes in scope, time or complexity of Project.

## Article VI General Provisions

- A. **Opinion of Probable Cost and Schedule:** Since the Consultant has no control over the cost of labor, materials or equipment furnished by Contractors, or over competitive bidding or market conditions, the opinion of probable Project cost, construction cost or project schedules are based on the experience and best judgment of the Consultant, but the Consultant cannot and does not guarantee the costs or that actual schedules will not vary from the Consultant's projected schedules.
- B. **Quantity Errors:** Negligent quantity miscalculations or omissions because of the Consultant's error shall be brought immediately to the City's attention. The Consultant shall not charge the City for the time and effort of checking and correcting the errors to the City's satisfaction.

- C. Reuse of Consultant Documents:** All documents including the plans and specifications provided or furnished by the Consultant pursuant to this Agreement are instruments of service in respect of the Project. The Consultant shall retain an ownership and property interest upon payment therefore whether or not the Project is completed. The City may make and retain copies for the use by the City and others; however, such documents are not intended or suitable for reuse by the City or others as an extension of the Project or on any other Project. Any such reuse without written approval or adaptation by the Consultant for the specific purpose intended will be at the City's sole risk and without liability to the Consultant. The City shall indemnify and hold harmless the Consultant from all claims, damages, losses and expenses including attorney's fees arising out of or resulting reuse of the documents.
- D. Reuse of City Documents** In a similar manner, the Consultant is prohibited from reuse or disclosing any information contained in any documents, plans or specifications relative to the Project without the expressed written permission of the City.
- E. Insurance** The Consultant shall procure and maintain, at its expense, the following insurance coverage:
1. Workers' Compensation -- Statutory Limits, with Employer's Liability limits of \$100,000 each employee, \$500,000 policy limit;
  2. Commercial General Liability for bodily injury and property damage liability claims with limits of not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate;
  3. Commercial Automobile Liability for bodily injury and property damage with limits of not less than \$1,000,000 each accident for all owned, non-owned and hired automobiles;
  4. Errors and omissions coverage of not less than \$1,000,000. Deductibles for any of the above coverage shall not exceed \$25,000 unless approved in writing by City.
  5. In addition, Consultant agrees to require all consultants and sub-consultants to obtain and provide insurance in identical type and amounts of coverage together and to require satisfaction of all other insurance requirements provided in this Agreement.
- F. Insurance Carrier Rating** Consultant's insurance shall be from an insurance carrier with an A.M. Best rating of A-IX or better, shall be on the GL 1986 ISO Occurrence form or such other form as may be approved by City, and shall name, by endorsement to be attached to the certificate of insurance, City, and its divisions, departments, officials, officers and employees, and other parties as specified by City as additional insureds as their interest may appear, except that the additional insured requirement shall not apply to Errors and Omissions coverage. Such endorsement shall be ISO CG2010 11/85 or equivalent. "Claims Made" and "Modified Occurrence" forms are not acceptable, except for Errors and Omissions coverage. Each certificate of insurance shall state that such insurance will not be canceled until after thirty (30) days' unqualified written notice of cancellation or reduction has been given to the City, except in the event of nonpayment of premium, in which case there shall be ten (10) days' unqualified written notice. Subrogation against City and City's Agent shall be waived. Consultant's insurance policies shall be endorsed to indicate that Consultant's insurance coverage is primary and any insurance maintained by City or City's Agent is non-contributing as respects the work of Consultant.
- G. Insurance Certificates** Before Consultant performs any portion of the Work, it shall provide City with certificates and endorsements evidencing the insurance required by this Article. Consultant agrees to maintain the insurance required by this Article of a minimum of three (3) years following completion of the Project and, during such entire three (3) year period, to continue to name City, City's agent, and other specified interests as additional insureds thereunder.
- H. Waiver of Subrogation** Coverage shall contain a waiver of subrogation in favor of the City, and its subdivisions, departments, officials, officers and employees.

- I. **Consultant Negligent Act** If due to the Consultant's negligent act, error or omission, any required item or component of the project is omitted from the Construction documents produced by the Consultant, the Consultant's liability shall be limited to the difference between the cost of adding the item at the time of discovery of the omission and the cost had the item or component been included in the construction documents. The Consultant will be responsible for any retrofit expense, waste, any intervening increase in the cost of the component, and a presumed premium of 10% of the cost of the component furnished through a change order from a contractor to the extent caused by the negligence or breach of contract of the Consultant or its subconsultants.
- J. **Termination** This Agreement may be terminated by either party upon seven days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party; provided, however, the nonperforming party shall have 14 calendar days from the receipt of the termination notice to cure the failure in a manner acceptable to the other party. In any such case, the Consultant shall be paid the reasonable value of the services rendered up to the time of termination on the basis of the payment provisions of this Agreement. Copies of all completed or partially completed designs, plans and specifications prepared under this Agreement shall be delivered to the City when and if this Agreement is terminated, but it is mutually agreed by the parties that the City will use them solely in connection with this Project, except with the written consent of the Consultant (subject to the above provision regarding Reuse of Documents).
- K. **Termination for Convenience** The City, within its sole discretion, may elect to terminate the Agreement with the Consultant for convenience upon three (3) days written Notice to Consultant. In the event of such termination, Consultant shall cease immediately all operations and shall be compensated for all work performed as of the date of termination in accordance with the terms of payment in this Agreement.
- L. **Controlling Law** This Agreement is to be governed by the laws of the State of Kansas.
- M. **Indemnity** To the fullest extent permitted by law, with respect to the performance of its obligations in this Agreement or implied by law, and whether performed by Consultant or any sub-consultants hired by Consultant, the Consultant agrees to indemnify City, and its agents, servants, and employees against all claims, damages, and losses, including reasonable attorneys' fees and defense costs, caused by the negligent acts, errors, or omissions of the Consultant or its sub-consultants, to the extent and in proportion to the comparative degree of fault of the Consultant and its sub-consultants.
- N. **Severability** Any provision or part of the Agreement held to be void or unenforceable under any law or regulation shall be deemed stricken and all remaining provisions shall continue to be valid and binding upon the City and the Consultant, who agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision. The provisions of this Article shall not prevent this entire Agreement from being void should a provision which is of the essence of this Agreement be determined void.
- O. **Notices** Any notice required under this Agreement will be in writing, addressed to the appropriate party at the address which appears on the signature page to this Agreement (as modified in writing from item to time by such party) and given personally, by registered or certified mail, return receipt requested, by facsimile or by a nationally recognized overnight courier service. All notices shall be effective upon the date of receipt.
- P. **Successors and Assigns** The City and the Consultant each is hereby bound and the partners, successors, executors, administrators, legal representatives and assigns of the City and the Consultant are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrators, legal representatives and assigns of such other party in respect of all covenants and obligations of this Agreement.

- Q. Written Consent to Assign** Neither the City nor the Consultant may assign, sublet, or transfer any rights under the Agreement without the written consent of the other, which consent shall not be unreasonably withheld; provided, Consultant may assign its rights to payment without Owner's consent, and except to the extent that any assignment, subletting or transfer is mandated by law or the effect of this limitation may be restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Agreement.
- R. Duty Owed by the Consultant** Nothing in this Agreement shall be construed to create, impose or give rise to any duty owed by the Consultant to any Contractor, subcontractor, supplier, other person or entity or to any surety for or employee of any of them, or give any rights or benefits under this Agreement to anyone other than the City and the Consultant.

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

**City:**

City of Prairie Village, Kansas

**By:** \_\_\_\_\_

Laura Wassmer, Mayor

Address for giving notices:

City of Prairie Village  
Department of Public Works  
3535 Somerset Drive  
Prairie Village, Kansas 66208

Telephone: 913-385-4640

Email: publicworks@pvkansas.com

**ATTEST:**

\_\_\_\_\_  
Joyce Hagen Mundy, City Clerk

**Consultant:**

Affinis Corp

**By** \_\_\_\_\_

  
Clifton M. Speegle, PE

Address for giving notices:

Affinis Corp  
8900 Indian Creek Parkway, Suite 450  
Overland Park, KS 66210

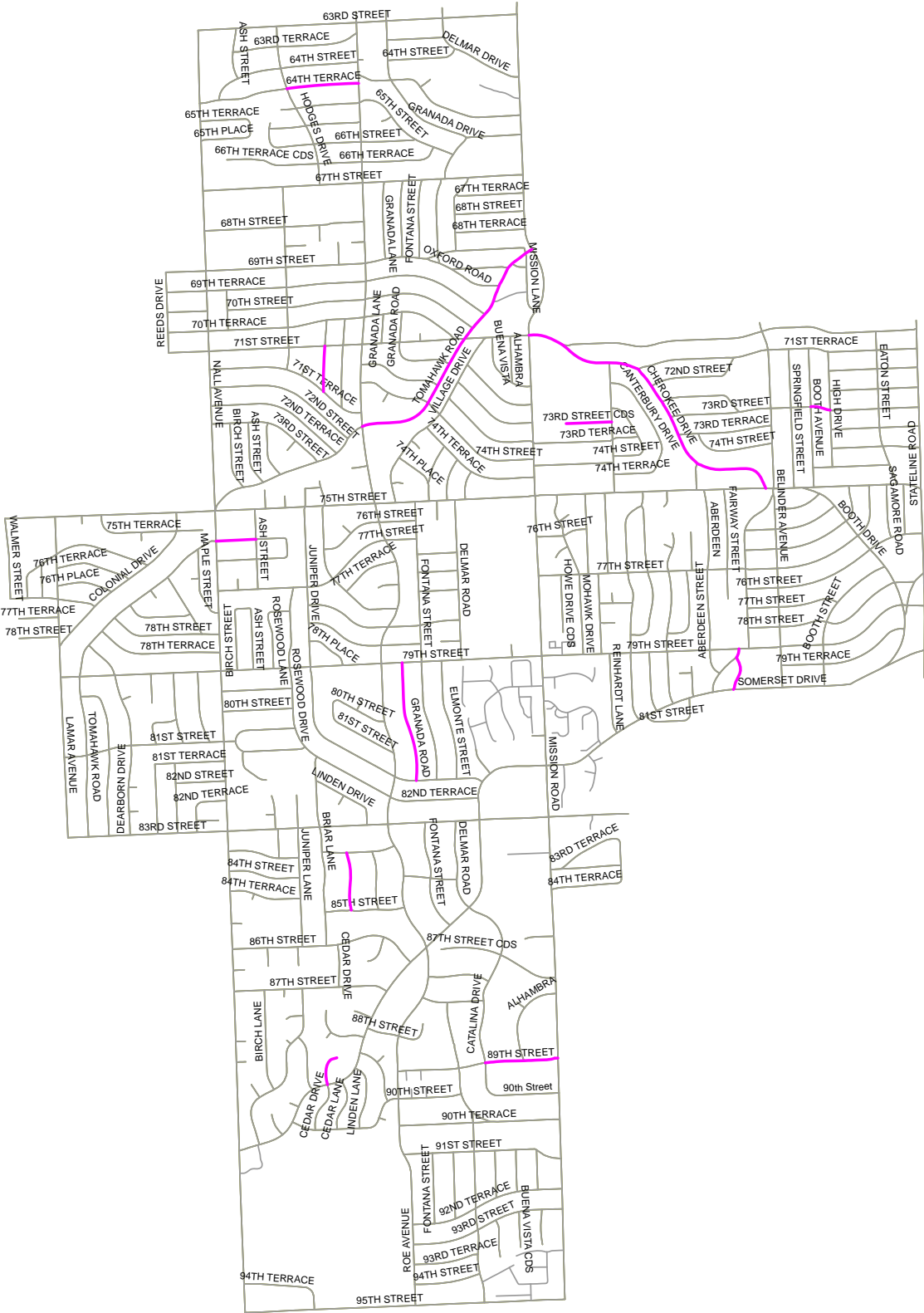
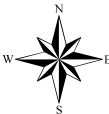
Telephone: 913-239-1110

Email: cspeegle@affinis.us

**APPROVED AS TO FORM BY:**

\_\_\_\_\_  
Catherine P. Logan, City Attorney

# 2018 Paving Program





## ADMINISTRATION

Planning Commission Meeting Date: February 6, 2018  
Council Meeting Date: March 5, 2018

**PC 2018-02: Consider Approval of Special Use Permit for Tidal Wave Car Wash at 7930 State Line Road**

**PC 2018-102: Consider Approval of Amendment to Preliminary Development Plan for 7930 State Line Road**

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### PLANNING COMMISSION RECOMMENDATION:

The Planning Commission recommends approval of both the amended preliminary development plan and the special use permit, subject to conditions to be addressed prior to approval of a final development plan. Those conditions are outlined below.

### BACKGROUND

The proposed car wash site is 7930 State Line Road, which was rezoned from C-0 and R-1B to CP-1 back in 2015. The City Council and Planning Commission approved the preliminary development plan and conditional use permit for a drive-thru restaurant for this location in September of 2015, and the Planning Commission approved the final site plan for this location in October of 2015.

The approved drive-thru restaurant was never constructed, and this new proposal to construct a car wash at this site requires an amendment to the approved preliminary development plan. In addition, a car wash is considered a special use in the CP-1 zoning district, which triggers the need for approval of a special use permit. If both the preliminary development plan amendment and special use permit is approved by the City Council, a final development plan will be submitted to Planning Commission for review prior to building permits being issued.

The Planning Commission held a public hearing on this item at their February 6 meeting. An excerpt of minutes and the staff report from that meeting are attached for the Council's review. One person spoke in opposition to the project. Nobody was present to speak in favor of the project.

The Planning Commission recommended approval of both the amendment to the preliminary development plan and special use permit, subject to the following conditions being addressed prior to approval of the final development plan:

1. Landscape plan amendments.
  - a. Add two shade trees to the front shrub bed. They should be 2.5" caliper and species of *Quercus bicolor* is recommended.
  - b. Add shrubs and perennials to fill the triangle lawn island at the northeast corner of the buildings
  - c. Add shrubs in the lawn area at the southeast corner of the building, along the neighboring property line.

- d. Provide shrubs and perennials on the interior side of the fence to soften the visual impact (to be reconsidered in association with specific fence color and material sample reviews).
  - e. Tree types at the west corner of the planting plan are not indicated on the schedule. Norway Spruce is recommended.
2. Site Plan amendments
    - a. Identify the fence color and provide samples of the fence, prior to final plan. Extend the fence at the west side of the site to continue up the south property line to the point of the last rear boundary of a residential lot.
    - b. Identify utility boxes to determine the visual impact, and screen these from adjacent property and streetscape with landscape materials.
    - c. Indicate pole heights and specific locations of lights to show performance criteria on the photometric plan, and use a graphic illustration such as a cross section with elevations demonstrating light heights, fixtures and cutoff and screening in relation to adjacent residential properties.
    - d. The applicant continue to advance the concept for emergency vehicle access shown in the Autoturn Exhibit, except that the backing area be a fire lane designed for no parking, and a loss of employee parking be located elsewhere on the site.
  3. Final elevations and details of the car wash building, canopy and associated equipment, and the vacuum screen shall be supplied including materials, colors, building dimensions, and other details. Specific materials and color for the trash enclosure, canopy and vacuum screen that complement the primary materials of the car wash building shall be specified.
  4. All signs shall be approved by a separate permit and meet the City of Prairie Village sign requirements. Any proposed monument signs shall be shown on the final development plan and approved by the Planning Commission.
  5. Operational limits and specifics of the facilities are confirmed including the following:
    - a. Details of the pay kiosks, including design, location of structures, and operating characteristics of equipment, and particular any anticipated noise impacts and mitigation strategies.
    - b. Hours of operation shall be limited to 7AM to 9PM
  6. Appropriate drainage permits be reviewed and approved by Public Works, including facilities designed to address the water and wastewater quantities and quality associated with the car wash activities.
  7. The acoustic measurement study of the Sharpsburg, Georgia site shall be interpreted to expected noise levels for this particular site plan, and noise impacts on the adjacent residential property shall be mitigated with a combination of vegetation, structural screens, noise regulators on the equipment and/or operational limits. The site shall meet a performance standard measured from any adjacent residential property of a maximum of 65 decibels between 7 a.m. and 9 p.m., and 50 decibels between the hours of 9 p.m. and 7 a.m. Prior to the City Council meeting, the applicant shall submit a noise study for this property to refine data and lower the accepted daytime performance level to maximum of 60 decibels, but in no case more than 65 decibels.



8. The special use permit shall be valid for a period of 5 years, and shall renew for successive 5 year periods provided no code violations exist and all conditions of the original Special Use Permit continue to be met, and the applicant addresses any unanticipated impacts identified by staff from this use on adjacent residential property.

#### **OPTIONS FOR CONSIDERATION**

The zoning regulations state that the Planning Commission makes a recommendation to the City Council on both preliminary development plans and special use permits. The City Council has the following options when making a final decision:

1. Approve the Planning Commission recommendation by a majority vote (including the conditions outlined above).
2. Return the application to the Planning Commission with direction to reconsider specific actions, either by a majority vote or by failure to approve or override the Planning Commission recommendation.
3. Override or modify the Planning Commission recommendation by at least a 2/3 vote of the membership of the governing body.

A valid protest petition was not filed within 14 days of the close of the public hearing, so a  $\frac{3}{4}$  vote of the governing body to approve is not needed.

If the City Council approves the special use permit and amendment to the preliminary development plan, the applicant may prepare a final development plan, which is subject to final approval by the Planning Commission before building permits can be issued.

#### **PREPARED BY**

Jamie Robichaud  
Assistant City Administrator  
Date: February 27, 2018

## ORDINANCE 2375

AN ORDINANCE APPROVING A SPECIAL USE PERMIT FOR THE OPERATION OF A CAR WASH ON THE PROPERTY DESCRIBED AS FOLLOWS: 7930 STATE LINE ROAD, PRAIRIE VILLAGE, KANSAS; AND APPROVING THE AMENDED PRELIMINARY DEVELOPMENT PLAN ASSOCIATED THEREWITH.

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

**Section I. Planning Commission Recommendation.** At its regular meeting on February 6, 2018, the Prairie Village Planning Commission held a public hearing, found the findings of fact to be favorable and recommended that the Governing Body approve the issuance of a Special Use Permit for the operation of a car wash by TW Macon, LLC at 7930 State Line Road and approved the amended Preliminary Development Plan subject to the following conditions to be addressed prior to approval of the Final Development Plan by the Planning Commission:

1. Landscape plan amendments.
  - a. Add two shade trees to the front shrub bed. They should be 2.5" caliper and species of *Quercus bicolor* is recommended.
  - b. Add shrubs and perennials to fill the triangle lawn island at the northeast corner of the buildings
  - c. Add shrubs in the lawn area at the southeast corner of the building, along the neighboring property line.
  - d. Provide shrubs and perennials on the interior side of the fence to soften the visual impact (to be reconsidered in association with specific fence color and material sample reviews).
  - e. Tree types at the west corner of the planting plan are not indicated on the schedule. Norway Spruce is recommended.
2. Site Plan amendments.
  - a. Identify the fence color and provide samples of the fence, prior to final plan. Extend the fence at the west side of the site to continue up the south property line to the point of the last rear boundary of a residential lot.
  - b. Identify utility boxes to determine the visual impact, and screen these from adjacent property and streetscape with landscape materials.
  - c. Indicate pole heights and specific locations of lights to show performance criteria on the photometric plan, and use a graphic illustration such as a cross section with elevations demonstrating light heights, fixtures and cutoff and screening in relation to adjacent residential properties.
  - d. The applicant continue to advance the concept for emergency vehicle access shown in the Autoturn Exhibit, except that the

backing area be a fire lane designed for no parking, and a loss of employee parking be located elsewhere on the site.

3. Final elevations and details of the car wash building, canopy and associated equipment, and the vacuum screen shall be supplied including materials, colors, building dimensions, and other details. Specific materials and color for the trash enclosure, canopy and vacuum screen that complement the primary materials of the car wash building shall be specified.
4. All signs shall be approved by a separate permit and meet the City of Prairie Village sign requirements. Any proposed monument signs shall be shown on the final development plan and approved by the Planning Commission.
5. Operational limits and specifics of the facilities are confirmed including the following:
  - a. Details of the pay kiosks, including design, location of structures, and operating characteristics of equipment, and particular any anticipated noise impacts and mitigation strategies.
  - b. Hours of operation shall be limited to 7AM to 9PM
6. Appropriate drainage permits be reviewed and approved by Public Works, including facilities designed to address the water and wastewater quantities and quality associated with the car wash activities.
7. The acoustic measurement study of the Sharpsburg, Georgia site shall be interpreted to expected noise levels for this particular site plan, and noise impacts on the adjacent residential property shall be mitigated with a combination of vegetation, structural screens, noise regulators on the equipment and/or operational limits. The site shall meet a performance standard measured from any adjacent residential property of a maximum of 65 decibels between 7 a.m. and 9 p.m., and 50 decibels between the hours of 9 p.m. and 7 a.m. Prior to the City Council meeting, the applicant shall submit a noise study for this property to refine data and lower the accepted daytime performance level to maximum of 60 decibels, but in no case more than 65 decibels.
8. The special use permit shall be valid for a period of 5 years, and shall renew for successive 5 year periods provided no code violations exist and all conditions of the original Special Use Permit continue to be met, and the applicant addresses any unanticipated impacts identified by staff from this use on adjacent residential property.

**Section II. Preliminary Development Plan.** That a Preliminary Development Plan as presented to the Planning Commission on February 6, 2018, and required as part of the special use permit and the zoning regulations applicable to

the subject property, is hereby approved subject to the conditions specified above.

**Section III.** Findings of the Governing Body. At its meeting on March 5, 2018, the Governing Body adopted by specific reference the findings of fact as contained in the Minutes of the Planning Commission meeting of February 6, 2018, and the recommendations of the Planning Commission including the conditions and recommended approval of the Special Use Permit docketed as PC2018-02 and amendments to the Preliminary Development Plan docketed as PC2018-102.

**Section IV.** Granting of Special Use Permit and approval of Preliminary Development Plan. Be it therefore ordained that the City of Prairie Village approves a Special Use Permit for the operation of a Car Wash and the amended Preliminary Development Plan associated therewith for 7930 State Line Road subject to the specific conditions listed above.

**Section V.** Non-Compliance and Termination. If the applicant is found to be in non-compliance with the conditions of the Special Use Permit, the permit will become null and void or may be revoked by the Governing Body in accordance with applicable codes and ordinances.

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

**PASSED AND ADOPTED THIS 5th DAY OF MARCH, 2018.**

**CITY OF PRAIRIE VILLAGE, KANSAS**

By: \_\_\_\_\_  
Laura Wassmer, Mayor

**ATTEST:**

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Joyce Hagen Mundy, City Clerk

\_\_\_\_\_  
Catherine P. Logan, City Attorney

**EXCERPT FROM  
PLANNING COMMISSION MINUTES  
FEBRUARY 6, 2018**

**ROLL CALL**

The Planning Commission of the City of Prairie Village met in regular session on Tuesday, February 6, 2018 in the Council Chambers at 7700 Mission Road. Chairman Nancy Wallerstein called the meeting to order at 7:10 p.m. with the following members present: Jonathan Birkel, Jeffrey Valentino, Melissa Brown and Gregory Wolf.

The following persons were present in their advisory capacity to the Planning Commission Chris Shires, City Planning Consultant on Meadowbrook Development; Chris Brewster, City Planning Consultant; Jamie Robichaud, Assistant City Administrator; David Waters, City Attorney and Joyce Hagen Mundy, Commission Secretary.

**PC2018-02 Request for Special Use Permit for a carwash &  
PC2018-102 Amendment to Preliminary Development Plan  
7930 State Line Road**

Aaron March, 4510 Belleview, attorney for the applicant, introduced the following members of their team in attendance: Pettey Hardin, principal with Tidal Wave, and Thomas Wells, development consultant for Tidal Wave. He thanked the staff and the neighbors for their comments and input on this application. Mr. March noted the proposed site is an approximately 1.3 acre lot at 7930 State Line Road that previously housed an office building that has been vacant for the past two years. In 2015, the property was rezoned CP-1 to accommodate a fast food drive-thru restaurant. They are not seeking rezoning of the property, but approval of a revised preliminary development plan and special use permit for the operation of a car wash. Mr. March stated they concur with the staff report and conditions of approval with one exception.

Pettey Hardin, PO #311 Thomasville, GA, provided history on Tidal Wave which first began in 2004 in Atlanta, Georgia. They were selected by the United States Small Business Administration as the Small Business of the Year for Georgia in 2009. This site would be their 36<sup>th</sup> operation in the country. He noted of the 27,000 car wash facilities in the country, they have consistently been ranked in the top 50. The company objectives are 1) to be the most attractive business in the community, 2) to provide the cleanest, greenest and easiest car cleaning service and 3) to maintain each location in a clean and beautiful manner with superior customer service.

They generally operate their facilities seven days per week from 8 a.m. to 8 p.m. at most locations. This can change with the seasons, generally closing earlier in the winter. Recycled water is used at all locations. Water conservation is promoted by reducing the amount of "fresh" water needed to provide a quality exterior wash vs. car washes at home using 14 to 20 gallons of fresh water vs. 80 to 140. Waste water from their operation is filtered prior to entry into the sanitary sewer system.

Mr. Hardin stated Tidal Wave is very active in the communities where they are located, partnering with local schools, athletic teams, service organizations, churches and other 501(c)(3) organizations. The third Friday of September is designated as "Charity Day," with 100% of ALL proceeds donated to special needs charities.

Thomas Wells, developer consultant for Tidal Wave, reviewed the site plan for the project with the proposed landscaping. He noted that they have taken the existing two entrances and combined them into one location. The entrance lane comes up to the pay station and circles around to the tunnel where the car wash is done. Prior to preparing this plan they met with the neighbors to gather input to address their concerns and the concerns addressed with the previous application for this site, amending their original site plan. As a result of that meeting, the tunnel location was moved from the center of the site to closer to State Line Road and further from the residential properties.

Mr. Wells shared a photo of an existing operation, showing stacked veneer stone on top of a water table then a split base masonry unit on the lower elevation. He pointed out the mechanical room that adjoins the car wash, noting that all of the equipment is enclosed. These elements are continued throughout the site. Mr. Wells showed a photo of the pay terminal, which is enclosed in brick (similar to an ATM machine) and attached to the canopy. The tunnel entrance to the north was presented. The south elevation is predominately glass with stone and masonry accent on each end. The tunnel canopy has an eave height of 12 feet and a peak height of 18 feet. A rendering of the exit elevation that is located closest to State Line Road and contains the dryers was reviewed. The northern elevation was shown that backs to the interior of the site. The proposed vacuum canopies have a 9 foot clearance with a façade of 42 inches. A rendering of the brick vacuum enclosure was shown and Mr. Wells noted that at the request of the neighbors, this also has been moved to a different location than their original plan.

A privacy fence is proposed where this property abuts the residential properties on the northwest side and southwest corner. It is a composite fence with a lifetime guarantee that simulates a rock wall but also has soundproofing qualities. The fence would require zero maintenance once constructed as opposed to a cedar wooden privacy fence.

Mr. Wells reviewed a cross section of the enhanced landscape buffer location where the fence would be constructed on the northwest side. The property line is in the backyard of the residential properties to the northwest and an existing chain link fence serves as a barrier between the residential properties and the parking lot of the vacant office building. Their plan is to create a landscape buffer by planting some evergreens, large shrubs and small trees along that portion and the privacy fence would be located on the interior of the site adjoining the paved area.

The two primary issues were presented at the neighborhood meeting. One was to relocate the vacuum enclosure, which was proposed in closer proximity to the residential properties, even though it is a fully enclosed structure. Sound measurements have been taken finding this to be less than 63 decibels at 25 feet. However, they were

able to relocate it from the proposed island to further away from the residential properties. The second request was to extend the privacy fence beyond the end of the residential property to the abutting south property line.

Mr. Wells summarized the following actions taken in response to residents' requests:

- The site was reconfigured so that the tunnel exit is facing and closest to State Line Road
- South levels at a distance of 25 feet from the vacuum enclosure were measured at 62.4 dBA, which is less than normal conversation at 3 feet
- Vacuum enclosure has been relocated on the site to provide additional separation from the residential properties. It is 140+ linear feet to the nearest residential property line.

Aaron March noted the preliminary plan approved for this site in 2015 was for a drive-thru fried chicken restaurant that would be open until 11 p.m., consistent with the many drive-thru restaurants located along State Line Road. They feel that their use is much less invasive and more compatible with the adjacent residential properties. Their hours of operation are fewer, creating a reduction in light and noise. There is no smell or odor associated with their operation. This use will generate less traffic, with 34% fewer afternoon peak traffic trips and the proposed plan reduces the number of curb cuts onto State Line Road from two to one, creating safer conditions.

Mr. March stated they are in agreement with the conditions of approval numbers 1 through 7 recommended by staff. They request that condition #8 be amended as follows:

The Special Use Permit shall be valid for a period of 5 years, **and shall automatically renew for successive 5 year periods** ~~at which time a renewal of the permit shall be based on Staff's determination that the special use continues~~ continuing to meeting the criteria of the original approval, and **the Applicant** addressing any unanticipated impacts **identified by Staff** from this use on adjacent residential property.

Mr. March stated it is very difficult to get a loan for a \$3.4M investment that is only secured for a five year timeframe. They are looking for a little more certainty that if they are following the requirements of the city that the permit will be renewed. They are not seeking an unlimited period of time, but that the renewals be automatic, pending their compliance with the requirements of the City.

Chris Brewster noted this site was rezoned for C-O and R-1B to CP-1 in 2015, in association with a preliminary development plan for a restaurant. An associated conditional use permit for a drive through restaurant was approved at the same time. The Planning Commission and City Council approved the application in September 2015. A final site plan was approved by the Planning Commission in October 2015.

The approved application and use was never constructed, and this new proposal for the site reflects a change in the preliminary development plan, requiring Planning Commission review and a recommendation to the City Council on the new development plan. In addition, the proposed use as a Car Wash is a special use in the CP-1 zoning

district, also requiring a Planning Commission recommendation and City Council final decision. Therefore, this application involves two separate but related actions by the Planning Commission:

- Recommendation to the City Council for an amended preliminary development plan; and
- Recommendation to the City Council for a special use permit

If each application is approved by the City Council, a final development plan will be submitted to Planning Commission for review prior to building permits being issued.

Approval of each of these applications by the City Council will allow the applicant to prepare and submit a final development plan for construction, refining of the details of the preliminary plan, addressing any conditions of approval of the preliminary plan or special use permit, and demonstrating compliance with all other city ordinance requirements.

This property is located south of the Panda Express, which was rezoned to CP-1 in 2007. The parcel has 100 feet of frontage on State Line Road and has a depth of 651 feet along the south property line. The parcel has an irregular boundary and contains approximately 1.37 acres. The site is occupied by an office building that was built in 1968 and the applicant proposes to demolish that building and construct a Tidal Wave car wash. A neighborhood meeting was held on January 15, 2018, and the applicant has noted the changes made at the residents' request at that meeting.

In considering an amended preliminary development plan for CP-1 zoning, the Planning Commission must consider the same criteria for the initial preliminary development plan. Mr. Brewster noted that most of the conditions of the property have not changed since the application that came before the Commission in 2015. The factors include, but are not limited to the following:

**1. The character of the neighborhood;**

The general character of this area is business on both sides of State Line Road. Culvers, Wendy's, CVS Pharmacy and McDonald's are located on the east side of State Line Road and all four have drive-thru windows, and in general are automobile-oriented commercial sites. To the south are offices. The immediate area to the north is developed with restaurants and retail uses, the abutting Panda Express also has a drive-thru window.

There are residential uses to the northwest and west of this property which have their rear yards adjacent to this site. Due to the irregular shape of this lot and pattern of streets in the vicinity, the residential adjacency begins approximately half-way down the northwest property line of this site, comprising the rear lot line of residential lots that front on Somerset. The southwest rear edge of this property abuts rear lot lines or residential lots in Leawood. This is a sensitive adjacency that is typical of many commercial corridors in older residential areas.

**2. The zoning and uses of property nearby;**



North: CP-1 Planned Restricted Business - Panda Express and R-1B Single-Family Residential - Single-Family Dwellings

East: Commercial (Kansas City, MO) - CVS and Wendy's

South: R-1 Single-Family Residential - Single-Family Dwellings and SD-0 Business Office District - Financial Institution (Leawood, KS)

West: R-1B Single-Family Residential - Single-Family Dwellings

All of the property in the immediate vicinity along this corridor is zoned for commercial or office uses. There is a small area between Somerset and 79<sup>th</sup> Street north of this site that is zoned residential (R-1B), and residential property south of 83<sup>rd</sup> Street in Leawood, which is also residential. Property generally to the rear of this site is zoned residential. Property immediately off the corridor to the west transitions to R-1B zoning.

**3. The suitability of the property for the uses to which it has been restricted under its existing zoning;**

The existing building was previously used for office space, but has been vacant since around the time of the original application in 2015. At that time, the property was experiencing some degree of vacancy and the previous application noted that the office market in Prairie Village is weak for this type of space. The building is older, having been built in 1968, and its appearance is not such that it would command the interest of many potential tenants. The existing building probably is at a state where a teardown and rebuild is a logical solution to more economically and effectively use the site. Since this property is on State Line Road, redevelopment for commercial use has a stronger potential.

**4. The extent that a change will detrimentally affect neighboring property;**

The properties to the north, south and east are developed for business uses and the redevelopment of this property will not detrimentally affect them. There will be additional traffic because a car wash generates more traffic than an office, but State Line Road can accommodate it. The applicant has submitted a traffic study, which projects that the expected traffic flow will be comparable or less than the previous anticipated use as a restaurant. This is in part reflected by different expected peak times, different capacity of the site (car wash bays vs. tables /drive-through in a restaurant), and the general nature and market for the proposed use in this area.

The residential uses to the northwest and southwest would be most affected by the car wash because of noise and lights from the traffic. The development plan proposes locating the higher intensity activities of this use to the front portion of the site along State Line, separating this from residences by both distance and the buildings. However, traffic circulation and other lower intensity activities are located closer to the residential property. Fencing and landscaping will be required to screen the use from the residential properties in a manner that mitigates negative effects. The car wash will be required to follow the outdoor lighting regulations, which prohibit outside lighting from impact on adjacent property.

**5. The length of time of any vacancy of the property;**

Until 2015, the building had been continually occupied by office uses since it was built, but was beginning to experience some degree of vacancy. It has been completely vacant more recently, due to the pending redevelopment of the site.

**6. The relative gain to public health, safety and welfare by destruction of value of the applicant's property as compared to the hardship on other individual landowners;**

The redevelopment of this site will permit the removal of one structure that is not at the quality that is desired by the market, and will allow the redevelopment for a use that will be of higher value relative to what has been occurring on this site and in the vicinity more recently. The site has not been well maintained or fully occupied under the previous office zoning. The recent approval of a redevelopment plan for a restaurant and drive-through under the current CP-1 zoning also were not completed. Maintaining the standards of this previously approved development plan does not present any significantly different impacts on adjacent neighbors or property that cannot be adequately addressed through comparable site plan, design or performance standards for the new development plan.

**7. City staff recommendations;**

Mr. Brewster stated it was the opinion of Staff that this is a logical request for an amended plan in the CP-1 Planned Restricted Business District Zoning. The use is of a comparable intensity to the previously considered use under a different development plan for the CP-1 district. The lot fronts on a commercial corridor where commercial uses benefit from exposure and capturing traffic from the corridor, so the context attracts uses such as proposed. This is an unusual site due to the long, narrow configuration of the lot, which is not compatible to more conventional or typical office building formats under the previous zoning. The proposed plan and use seems to use this irregular shape to its advantage. However, due to the car-oriented nature of this use (as was with the previous use approved under the CP-1 rezoning), and due to the intensity of activities under this plan, mitigating any potential impacts is important. Improving the relationship to the adjacent residential property and improving the aesthetic appearance of the buildings and site along State Line are the key strategies for making this generally appropriate concept meet the intent of the Planned Zoning District.

**8. Conformance with the Comprehensive Plan;**

Village Vision identifies this area as a Commercial Improvement area in the Conceptual Development Framework. There are no specific policies, plans or concepts for this portion of the State Line corridor.

The general policies for Commercial Improvement areas suggests that periodic upgrades are necessary for the City's commercial areas to remain attractive and retain tenants, including façade changes, signage or landscape improvements, and redevelopment with particular attention on how they relate to surrounding neighborhoods and to public streetscapes.

**9. Approval of the Preliminary Development Plan.**

Mr. Brewster noted that all planned zoning is conditioned on an approved preliminary development plan. Therefore, substantial amendments to a preliminary development plan require consideration of the criteria for evaluating the preliminary development plan, which are the same criteria as is used in site plan approval. Staff analysis of the proposed preliminary development plan is as follows:

**a. The site is capable of accommodating the buildings, parking areas, and drives with the appropriate open space and landscaping.**

The landscape plan demonstrates attention to some of the sensitive relationships of this site. The proposed vinyl fence will be a dominant feature on this property and is crucial to the relationship with the residential uses. Evergreen plants are shown on the neighbors' side of the fence to soften the impact of this feature. Specifics on the exact type and color of the fence will need to be supplied prior to the final development plan, including either material samples or photos if this product applied on other similar sites. The design, location and size of the fence included in the plan demonstrates the visual screening aspect, and specifically the mitigation of headlights from the circulation or any queuing of vehicles. Per the residents' request the fence will continue around the western-most extent of the south property boundary that also abuts residential property. Some additional landscape materials are recommended for portions of the site, including: the front shrub bed to improve the relationship to the streetscape, the triangular lawn on the northeast corner of the building, the southeast corner of the building along the neighborhood property line, and the interior side of the fence.

**b. Utilities are available with adequate capacity to serve the proposed development.**

The property is currently served with water, sewer, gas, electric, telephone and cable. The size of the proposed building does not appear that it would require anything out of the ordinary and the available utilities should be adequate to handle the project.

**c. The plan provides for adequate management for stormwater runoff.**

The area of the site is 1.36 acres with 1.15 acres covered with impervious material including a building and pavement. The proposed project will have 0.93 acres of impervious area. This is a reduction of approximately 9,583 sq. ft. of impervious area. Since the impervious area has been reduced, a stormwater master plan will not be required at this time. The stormwater and drainage will be reviewed by Public Works as a part of the building permit process.

**d. The plan provides for safe easy ingress/egress and internal traffic circulation.**

Ingress and egress will be provided from a single point off State Line Road, near the existing north entrance to the site. The plan shows a single-lane entry and a two-lane exit providing a left and right out option onto State Line Road. Within the site a circulation lane allows an ample number of stacking spaces so there should not be a traffic problem on State Line. The internal portion of the site is designed for circulation between the queuing area for the car wash, the pay kiosks and the exit. The volume of traffic generated by the car wash is projected in the traffic study, and has been reviewed by Public Works. The projected traffic is comparable and less than the impacts under the previous plan, and does not appear significant enough to affect State Line Road.

**e. The plan is consistent with good planning and site engineering design principles.**

The site plan appears to be well laid out considering its limited size and irregular configuration of the lot. The more intense activities have been oriented toward State Line Road, which is a high traffic commercial corridor. The plan has added additional landscape area and fencing beyond the current condition, which can help mitigate potential impacts on adjacent residential property. More open areas allow for more landscaping as well as reduce stormwater runoff from the current condition.

The plan demonstrates attention to the sensitive residential boundary with screening and landscape to block visual impacts. The circulation and queuing area does pass near this screen but the majority of activity is located to the internal portion of the site, and the building with the most intense activity located farthest from the residential boundary. The central portion of the site does include both a series of pay kiosks and a trash enclosure. However, there are not design concepts or details associated with the pay kiosks. If canopies, structures, or other related service stations will be constructed here, typical details and examples should be provided. In addition, details to the operating and performance of the pay kiosks shall also be provided including any expected noise impacts for residents, and how those potential impacts are to be mitigated under this plan.

A lighting plan has been submitted that demonstrate the light levels at the residential perimeter are zero. The adjacent commercial properties are at varying levels, but are within commonly acceptable levels for commercial adjacency. However, pole heights should be shown on the plan to verify these performance levels and the general compatibility with surrounding property.

Mr. Brewster noted when the Planning Commission has considered other redevelopment projects, pedestrian access and connectivity has been considered. The applicant has provided a sidewalk adjacent to State Line Road, which will connect to the sidewalk to the north. The proposed use of this site is vehicle-focused so pedestrian access to the building and site is not provided, nor considered necessary.

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

The applicant has submitted photographs of a comparable prototype facility, a photo simulation of the proposed building, and typical elevations. The plan includes four structures - a car wash building of approximately 3,500 square feet, a canopy that covers 17 pay kiosks in the central portion of the site, a vacuum screening structure at the west end of the pay kiosks, and a trash enclosure further to the west end of the kiosk.

The car wash is the most significant structure and the submitted images and elevations depict a cultured stone veneer as the predominant material on the front facade with natural earth tones, built upon a split-faced block base. The roof is blue prefinished standing seam metal. A large portion of the facades on the north and south elevations

is glass, providing views into the car wash equipment aligned in a long, linear fashion. A larger part of the building projects into the internal portion of the site is EFIS material with stone accents.

The canopy over the pay kiosks is also a significant structure. It appears that a blue metal panel canopy that covers the parking area and equipment is typical.

Details on the dumpster enclosure show an 8-foot high, fully enclosed structure with “facade to match the on-site buildings.” It is not clear which materials of the building are proposed for this, however from other examples split-face block base with an EFIS main wall is typical.

The vacuum enclosure has been relocated to the east end of the pay kiosk. Examples of the typical enclosure have been provided, materials, elevations and details will need to be provided at final plan approval.

Material samples were provided for view at the Planning Commission meeting for all structures including:

- The fence (photo examples or manufacture specifications for this specific material may be acceptable if a sample is not possible)
- The car wash building, canopy, vacuum screen and trash enclosures.
- Colors and basic material parameters should be committed to in the preliminary development plan, or detailed on conceptual elevations.

**g. The plan presents an overall development pattern that is consistent with the Comprehensive Plan and other adopted plan policies.**

This was reviewed in Section 8. of the general CP-1 criteria. There are no specific plans or policies for this area under the comprehensive plan, that would impact the preliminary development plan beyond that criteria.

**h. The Planning Commission and Governing Body may, in the process of approving preliminary and final plans, approve deviations from the standard requirements as follows, provided any deviations approved shall be in keeping with accepted land planning principles and must be clearly set out in the minutes as well as on exhibits in the record:**

**The setbacks of buildings from a property line other than a public street may be reduced to 60% of the standard requirement and setbacks at paved areas adjacent to property lines, other than street lines, to zero if existing or proposed development on said adjacent land justifies the same.**

Site plan has elevations for the trash enclosure and the typical elevations include dimensions that demonstrate compliance with the C-1 zoning standards. The C-1 district has the following development standards for buildings:

- height - 35 feet max;
  - The main carwash feature is 18 feet high at the ridgeline; approximately 12 feet high at the soffit (eave) height along the longer elevations; with a cupola beginning at approximately 21 feet, 9 inches

- front setback - 15 feet;
  - The site plan shows the main car wash building approximately 42.5 feet from the front property line.
- side setbacks - none, except when abutting lesser districts the standards of that district apply. In this case, the south lot line is zoned office and the comparable setback under the Prairie Village zoning ordinance is 10 feet for one-story (approximately 10 - 18 feet); 15 feet for two story (approximately 19-28 feet); and 20 feet for two and one-half story buildings (approximately 29-35 feet). Therefore, the actual height of the proposed structure will determine the appropriate setback on this side.
  - The site plan shows the main car wash building to be greater than 10 feet from the south side property line. It is primarily a one-story structure with an eave height of 12 feet along this elevation and a ridge height of 18 feet further internal to the site.
- rear setback - none, except 10 feet when abutting lesser districts, which is the case for this lot.
  - The site plan shows that all structures are well beyond a 10 foot rear property line.
  -

Dimensioned plans have not been submitted for the accessory structures, including the 20 x 20 prep canopy, the 25 x 16 pay kiosk or the vacuum canopy; however, the illustrations and prototype examples demonstrate these are typically within these standards and accessory to the car wash building.

Detailed and dimensioned plans should be submitted prior to final plans, demonstrating that all building dimensions meet the above standards, and, in general, the preliminary development plan should commit to general compliance with these standards.

#### **ANALYSIS - SPECIAL USE PERMIT:**

Mr. Brewster stated car washes are listed for eligibility in the C-1, C-2 and C-3 districts only, and therefore are applicable to the planned version of these districts (CP-1). There are no specific criteria or standards for car washes, so the special use permit should be evaluated according to the general special use criteria in Section 19.28.035. He noted that some of these criteria are similar to those for a preliminary development plan and have been addressed.

**A. The proposed special use complies with all applicable provisions of these regulations including intensity of use regulations, yard regulations and use limitations.**

This was more fully reviewed in the overall CP-1 and preliminary development plan criteria above. Car washes do not have any additional use-specific standards to apply in this situation.

**B. The proposed special use at the specified location will not adversely affect the welfare or convenience of the public;**

This was more fully reviewed in sections 3., 4., and 6. of the CP-1 / preliminary development plan criteria.

- C. The proposed special use will not cause substantial injury to the value of other property in the neighborhood where it is located.**

This was reviewed in section 6. of the CP-1 / preliminary development plan criteria.

- D. The location and size of the special use, the nature and intensity of the operation involved in or conducted in connection with it, and the location of the site with respect to streets giving access to it are such that the special use will not dominate the immediate neighborhood so as to hinder development and use of neighborhood property in accordance with the applicable zoning district regulations. In determining whether the special use will so dominate the immediate neighborhood consideration shall be given to:**

- 1. The location, size, nature and height of buildings structures, walls, and fences on the site; and**
- 2. The nature and extent of landscaping and screening on the site.**

This was generally reviewed in sections 9.a., d., e. and f. in the CP-1 / preliminary development plan criteria.

- E. Off-street parking and loading areas will be provided in accordance with standards set forth in these regulations and said areas shall be screened from adjoining residential uses and located so as to protect such residential uses from any injurious affect.**

This was reviewed in sections 4., 9.a, d., e. and f. in the CP-1 / preliminary development plan criteria.

- F. Adequate utility, drainage and other necessary utilities have been or will be provided.**

This was reviewed in sections 9.b. and c. in the CP-1 / preliminary development plan criteria.

- G. Adequate access roads or entrance and exit drives will be provided and shall be so designed to prevent hazards and to minimize traffic congestion in public streets and alleys.**

This was reviewed in section 9.d in the CP-1 / preliminary development plan criteria.

- H. Adjoining properties and the general public will be adequately protected from any hazardous or toxic materials, hazardous manufacturing processes, obnoxious odors, or unnecessary intrusive noises.**

This was covered under the general development plan criteria. In addition, a car wash has particular impacts that need consideration under this factor, which is why it requires a special use permit in the CP-1 district.

As a water intensive use, specifics on the drainage, run-off and how wastewater is handled on the site and in relation to other water, wastewater and run-off infrastructure will be reviewed by Public Works in association with the drainage permit and other construction permits. The applicant has supplied some analysis in the preliminary plan and indicated that this plan will recapture all waste water resulting from the car wash.

In addition, some activities associated with this use occur in parking areas. The visual screening of this has been covered under other criteria. The applicant has submitted an acoustic measurements document of a comparable location in Sharpsburg, Georgia to assess the potential impact on adjacent sites, which is included in the packet. This test resulted in measurements between 56.6 decibels and 89.7 decibels - the highest being at a distance of 25' from the most intensive equipment and on axis with it. This would be comparable to a location on State Line Road for this site plan. This study does not make a direct translation to the findings or typical expected results for this site. The applicant should provide this information at the hearing, and identify how any of the screening and noise mitigation components of the site plan will affect the west and northwest boundaries near residential property.

For reference, a survey of several peer community noise ordinances revealed the following typical ranges, measured at the boundary of adjacent property. (ranges reflect different communities' thresholds):

	Business Hours (7AM - 10PM)	Quiet Hours (10PM - 7AM)
Residential	60 dBA - 70 dBA	45dBA - 55dBA
Commercial	65 dBA - 80dBA	50dBA - 60dBA
Industrial	80dBA - n/a	60dBA - n/a

**I. Architectural style and exterior materials are compatible with such styles and materials used in the neighborhood in which the proposed structure is to be built or located.**

This was reviewed in section 9.f. in the CP-1 / preliminary development plan criteria.

Mr. Brewster stated that staff recommends approval of both the amended preliminary development plan and the special use permit, subject to the following conditions to be addressed prior to a final development plan, which shall be approved by Planning Commission:

1. Landscape plan amendments.
  - a. Add two shade trees to the front shrub bed. They should be 2.5" caliper and species of Qeucus bicolor is recommended.
  - b. Add shrubs and perennials to fill the triangle lawn island at the northeast corner of the buildings
  - c. Add shrubs in the lawn area at the southeast corner of the building, along the neighboring property line.
  - d. Provide shrubs and perennials on the interior side of the fence to soften the visual impact (to be reconsidered in association with specific fence color and material sample reviews).
  - e. Tree types at the west corner of the planting plan are not indicated on the schedule. Norway Spruce is recommended.
2. Site Plan amendments



- a. Identify the fence color and provide samples of the fence, prior to final plan. Extend the fence at the west side of the site to continue up the south property line to the point of the last rear boundary of a residential lot. (Note: Manufacture specifications showing photographs and the sound-mitigating characteristics of the fence have been submitted as a supplement to the application, and will be reviewed by staff - SlimTek Simulated Stone Fence.)
  - c. Identify utility boxes to determine the visual impact, and screen these from adjacent property and streetscape with landscape materials.
  - d. Indicate pole heights and specific locations of lights to show performance criteria on the photometric plan.
  - e. The applicant continue to advance the concept for emergency vehicle access shown in the Autoturn Exhibit, except that the backing area be a fire land designed for no parking, and an loss of employee parking be located elsewhere on the site.
3. Final elevations and details of the car wash building, canopy and associated equipment, and the vacuum screen shall be supplied including materials, colors, building dimensions, and other details. Specific materials and color for the trash enclosure, canopy and vacuum screen that complement the primary materials of the car wash building shall be specified. (Note: Typical elevations were provided as a supplement to the application, and have been incorporated into the staff review in this report.)
  4. All signs shall be approved by a separate permit and meet the City of Prairie Village sign requirements. Any proposed monument signs shall be shown on the final development plan and approved by the Planning Commission.
  5. Operational limits and specifics of the facilities are confirmed including the following:
    - a. Details of the pay kiosks, including design, location of structures, and operating characteristics of equipment, and particular any anticipated noise impacts and mitigation strategies.
    - c. Hours of operation shall be limited to 7AM to 9PM
  6. Appropriate drainage permits be reviewed and approved by Public Works, including facilities designed to address the water and wastewater quantities and quality associated with the car wash activities.
  7. The acoustic measurement study of the Sharpsburg, Georgia site shall be interpreted to expected noise levels for this particular site plan, and noise impacts on the adjacent residential property shall be mitigated with a combination of vegetation, structural screens, noise regulators on the equipment and/or operational limits. The site shall meet a performance standard measured from any adjacent residential property of a maximum of 65 decibels between 7 a.m. and 10 p.m., and 55 decibels between the hours of 10 p.m. and 7 a.m.
  8. The special use permit shall be valid for a period of 5 years, at which time a renewal of the permit shall be based on continuing to meet the criteria of the original approval, and addressing any unanticipated impacts from this use on adjacent residential property.

Gregory Wolf asked if the city had ever granted the requested language regarding the term of a special use permit. Mr. Brewster replied that the city has granted permits with indefinite terms. He noted the city still has the ability to revoke a permit should the conditions not be met. The concern expressed by Mr. March is a common concern. As long as the city has the ability to revoke and enforce, staff accepts the proposed language.

Chairman Nancy Wallerstein opened the public hearing on the application:

David Wooldridge, 2115 Somerset Drive, stated when they purchased their property it abutted two small office buildings. They have experienced several problems since the zoning was changed to allow Panda Express, including excessive noise, late deliveries and increased traffic. He noted that the neighborhood on the Kansas side contains 70% office buildings whereas on the Missouri side it is 92% commercial. There are no residences behind these intense commercial properties. There are 9 residences behind this proposed commercial use. He stated that an eight or ten foot fence would not screen the proposed carwash from his view due to the change in elevation between his property and this site. He will still see the full operation of the car wash, 12 hours a day, seven days a week. Mr. Wooldridge stated this is not acceptable, it is against his best interest and goes against the Golden Factors. This mass of impervious surface is not acceptable. The residents do not deserve to have a giant car wash in their backyard.

With no one else to address the Commission, the public hearing was closed at 8:35 p.m.

Mr. Wells stated they met with Mr. Wooldridge before they made their initial application to the City, trying to discern what the previous issues were and during those series of meetings, the reorientation of the site occurred. Melissa Brown stated she like the new orientation but noted that the civil drawings do not reflect that change. On sheet 4 with the striping of the lines for the car wash, she would like to see a striped line added behind the sidewalk to better protect pedestrians from cars pulling out on to State Line Road. Mr. Wells responded that these are preliminary concept plans and that striping and an ADA ramp will be shown on the final development plans.

Jeffrey Valentino confirmed the canopy was metal and that they are proposing 17 vacuum stations. Mr. Wells replied generally 8 to 12 spaces are being used at any one time. Typically they like to have at least 18 stations for the convenience of their customers, preferably 20 to 24 stations. Mr. Valentino stated he would like to see a reduction in the number of stations and the turn area rounded out. He compared this operation to that of Big Splash on Metcalf that doesn't have nearly as many vacuum stations. Mr. Wells stated the operation has been pulled back considerably already in response to the residents.

Mr. Valentino noted the bright blue canopy structure catches the eye and he feels its color should be reconsidered. He is not fully on board with the decibel ratings. Mr. Wells replied the central vacuum system is tied to one 25 horse power motor that powers all the vacuum stations. The motor is in a fully enclosed concrete structure with any noise going up. The most noise from their operation is at the end of the tunnel

inside the building where the cars are dried, which would face State Line Road. He stated noise from the vacuum stations has not been an issue at other sites, even those with more than 30 vacuum stations. A reduction in the number of vacuum stations would be detrimental to their customers and their business. Mr. Wells noted this is not the same as other facilities, where there are individual vacuums and motors at each station. Melissa Brown confirmed they did not have a detail service at the end of the car wash where cars are dried by staff. Mr. Valentino asked if they had any feedback on the materials or and if they had samples of the proposed fence. Mr. Wells shared samples of materials for the building and stated that they could have samples of the fence material at the final development plan. Mr. Valentino noted the elevation change from the residences to this site makes it difficult for both parties.

Jonathan Birkel questioned the decibel information presented. From the information presented, it appeared that at 100', the sound is still at around 70 decibels, which seems quite loud. Mr. Wells responded that rating was taken at the end of the tunnel, which points out to State Line Road. He added the measurement was also impacted by ambient road noise, which was greater than the noise from the dryers. He noted the reading at the vacuum stations was significantly less. Mr. Birkel replied he was trying to determine what the noise level would be for the neighboring residents and how or if it could be mitigated. Mr. Wells responded this was the reasoning behind the reorientation, which places the loudest part of their process as far from the residences as possible and directs the sound out to State Line Road. He added that their hours of operation also address the noise concerns, as they are not operating before 7 am or after 9 p.m. which corresponds with most cities noise restrictions.

Nancy Wallerstein asked what the hours of operation were for contractors in the city. Jamie Robichaud replied 7 a.m. to 10 p.m.

Gregory Wolf asked if they were ok with the condition related to emergency access by the fire department. Mr. Wells replied that he spoke with the Fire Marshall and they feel the proposed solution is very workable for them.

Nancy Wallerstein asked if the proposed fencing material had any sound barrier qualities. Mr. Wells replied it does, but he did not have any technical data. The Iowa Department of Transportation recognizes its use as a sound barrier material. It is 100% opaque and a solid fence would prevent more noise and light from penetrating through than traditional fences.

Mrs. Wallerstein asked for clarification on the location of the fence. Mr. Wells replied that the property line for this property is in the back yard of several of the residences. The existing chain-link fence was installed years ago within two to five feet of the deeded property line. Rather than remove the chain link fence, they are going to leave it intact. They will raise the grade and install the new privacy fence ten to twelve feet in from the actual property line itself and are proposing a continuous row/hedge of large evergreen shrubs on the residential side of the fence. They plan to maintain the existing trees and landscape in this area also. This will also help soften the impact of the fence. Mr. Wells noted that this area also serves as the center of the KCP&L easement.

Nancy asked who would maintain this landscaping. Mr. Wells replied that Mr. Brewster addressed that in his staff report, stating that the applicant is responsible for maintenance of the landscape buffer. He added that this design came from their discussions with the neighbors and Mr. Wooldridge. Mrs. Wallerstein noted that maintenance does not always occur. She also stated that she feels the size and caliber of the trees to be planted should be designated. Mr. Hardin reaffirmed that they would maintain the trees/shrubs. He could not guarantee that they would be six feet in height, but noted they would be as large as possible. Mr. Wells noted the buffer area was 9 to 12 feet in width. They are looking to put in evergreens that have a good growth rate, would spread, are hearty and low maintenance, having a mature height of six to ten feet that would not impact KCP&L and provide a good permanent buffer.

Mrs. Wallerstein asked how many cars could be stacked. Mr. Wells replied the plan allowed for 30 vehicles to be stacked bumper to bumper.

Mrs. Wallerstein asked if pole height had been discussed. Mr. Brewster replied that this is something that would be verified in the final development plan. Mrs. Wallerstein asked what the distance was from their exit to that of Panda Express. She wanted to verify that their entrance would not be blocked from stacking cars. Mr. Hardin replied that a new vehicle goes through the tunnel at a rate of one vehicle per minute. There will not be any problem with stacked cars blocking an entry.

Melissa Brown stated it would be helpful with the final plan to have a cross section showing light projecting onto the residential properties. They have prepared a photometric plan at ground level. This showed zero foot-candles at the property line. There will be some shielding of light from the fixture and from the fence and landscaping. This should be reflected in the final development plan.

Mrs. Brown confirmed that their operation used less water for their operations. Mr. Hardin explained the different processes that reused water and those using new water.

Nancy Wallerstein confirmed they have five parking spaces for employees. Mr. Hardin responded that they anticipate having 12 employees with 4 to 5 on duty most of the time. There will never be fewer than three people working.

Gregory Wolf asked if all of the conditions have been covered. Chris Brewster responded that most of the issues remaining were issues that staff and the applicant can address as the standards that have to be met are stated in the code, with most of them applying to final development plan approval. Signage is approved with the final development plan. The building elevations presented as sufficient for preliminary plan approval, with more details to be presented with the final development plan. The only issue remaining would be if the Commission wanted them to change the canopy.

Mr. Wolf stated that he was uncomfortable with the automatic renewal. Melissa Brown stated she would be ok with a ten year SUP with an audit after five years. Mr. Wolf

asked how long of a period would be needed to make their lender comfortable. He would support a term of more than five years, but not a lot more.

Mr. Hardin stated he has no reservation returning to the Planning Commission to confirm or reaffirm that the conditions of approval have and are being met knowing that the renewal would be based on their compliance. They are trying to avoid is going through a discretionary process where decisions are based on factors other than land use factors. Their concern is being able to ensure that the renewal is based on compliance to the conditions of the special use permit.

Jamie Robichaud advised the Commission that a special use permit coming before them at their March meeting was approved with a very similar condition. "Should no issues or code enforcement arise in the initial period, the renewal periods may be extended to a longer duration at the discretion of the Planning Commission."

Nancy Wallerstein noted the wording presented by the applicant was based on staff determination, not the Planning Commission. Mrs. Robichaud replied that she and Mr. Brewster do not have any concerns with the proposed language; however, she is hearing concerns from Commission members and feels that requiring them to come back to the Planning Commission for determination would be appropriate if that is what the Planning Commission wanted to do.

Mrs. Robichaud confirmed that all complaints and code violations are recorded by Code Enforcement and could easily be verified. Mr. Valentino asked if it required a public hearing. David Waters noted that the determination was to be made on any "violations" of the conditions and he questioned if a complaint would necessarily be considered a violation of the conditions of the special use permit. Mrs. Robichaud noted that Code Enforcement Officers do investigate all complaints and make a determination as to whether there is an actual violation.. Mr. Wolf suggested the following amendment: **The special use permit shall be valid for a period of 5 years and shall renew for successive 5 year periods provided no code violations exist and all conditions of the original Special Use Permit continue to be met and the applicant addresses any unanticipated impacts identified by staff from this use on adjacent residential property.** Mr. Wolf stated he felt this was necessary to allow the City to protect the residents from potential future problems by the use. Mr. March stated the proposed language addresses their concerns and is acceptable.

Mr. Brewster confirmed that the suggested language requires the applicant to come back to the Planning Commission to renew the application and that the renewal is based on their compliance with the conditions of approval.

Gregory Wolf moved the Planning Commission recommend the City Council approve PC2018-02 and PC-2018-102 as recommended by staff with the amendments suggested to condition 7 and the addition of condition 2E and also an amendment to 2D.

Jonathan Birkel asked if the applicant would be open to dropping the decibel requirements on number seven from 65 to 60 between the hours of 7 to 10 p.m. and from 55 to 50 between the hours of 10 p.m. and 7 a.m.

Nancy Wallerstein asked for clarification on the hours noted. Mr. Brewster responded that the staff recommendation was based on normal noise ordinance regulations and not on the specific hours of operation for this business. She wants to tighten it down so there is no misconception on what the hours of operation would be.

Mr. Birkel restated his requested change to be from 65 to 60 between the hours of 7 to 9 p.m. and from 55 to 50 between the hours of 9 p.m. and 7 a.m.

Aaron Mack referenced information in the staff report that noted typical ranges for business hours (7 a.m. to 10 p.m.) are between 60 dBA and 70 dBA and from (10 p.m. to 7 a.m.) at 45 dBA to 55 dBA. They are not a residential use, but they are below what would be required in most communities for residential neighborhoods. They can comply with the residential decibels.

Mr. Brewster clarified the table represents the range from noise ordinances from cities that they surveyed. The most restrictive during the day time hours was at 60 dBA, measured from the impacting property line. Mr. March replied the 50 dBA from 9 pm to 7 am is not a problem, as they are not operating. 65 dBA is the middle range of residential use and they can do that. However, with blowing wind it can easily be above 60 dBA, and he is uncomfortable agreeing to a condition when he knows there will be times when they are above 60 dBA. He can state with certainty that they will never go above 65 dBA. Mr. Birkel stated their acoustical study had a rating of 62.4 dBA. Mr. March stated with a north wind blowing to the west property line the noise level could reach 64 dBA. He doesn't want to buy a problem that with a windy day he could be in violation. Mr. Valentino noted the ratings are based on an average day.

Melissa Brown noted the acoustical report stated "To the southeast, the sound level due to the dryers would be 68 dBA at a distance of approximately 139'." Mrs. Wallerstein confirmed that Mr. Birkel was more concerned with noise for the homeowners to the west near the tunnels. Mrs. Wallerstein asked what the distance was from the dryers to the residences. Mr. Wells responded the relocated vacuum house to the closest residence is 140 feet. From the dryer to the nearest residential property is probably 200 feet. The measurements that were done in the report were at the end of the tunnel and directed outward. Their site plan was reconfigured so that the largest noise element was farthest from the residential properties and directed toward State Line Road. Mrs. Brown asked what the dBA was from the vacuum hut. Mr. Wells replied that 25 feet from the vacuum hut at the adjoining residential property line, the dBA is 60. For a reference, he added that two people having a conversation three feet apart exceeds 60 dBA.

Mr. Wolf stated what he is looking for is rating over a period of time or average. For example, on a given 20 day stretch, the average decibel rating would be 60 dBA or less. Mr. Wells replied in an isolated location with no roads nearby, they could. The issue is

with this location by State Line Road, there are other ambient noises over which they have no control. He doesn't know of a location 150' from the dryer where the reading would not be impacted by other ambient noises.

Mr. Birkel noted that every time you double the distance, you drop 6 decibels. He wants to be on the low end of the allowed decibel range for all of the neighboring properties.

Mr. March suggested that they do the study and agree to the appropriate decibel level when it comes before the Council. They have already committed that the number will not exceed 65 dBA. Between now and the time this goes to the City Council, they conduct a study and work with staff to explore their ability to reduce the decibel rating below 65 dBA. They will provide staff with the study, showing the various points at the property line to the west with what the noise level will be. They will commit to whatever that number is found to be, but they cannot commit to a number this evening.

They can commit to doing the study and before this application comes before the City Council they will be able to agree to a maximum average decibel level that they will not exceed. Mr. Wolf stated he would like to know what the noise level currently is and compare it to that. Mr. March agreed there needs to be baseline conditions determined.

Mr. Wolf stated he would amend his pending motion to add that the applicant prepare a sound study that is presented to City Council that justifies the decibel level and recognize the Planning Commission goal of a maximum level of 60 dBA, noting that the applicant agrees not to exceed 65 dBA. Mrs. Wallerstein confirmed that this is addendum to condition 7.

Mr. Brewster confirmed that the hours of operation are also changed to 7 a.m. - 9 p.m.

Mrs. Wallerstein stated the recommended motion now has a change to 7 and to 2E.

Mrs. Brown requested a change to 2D addressing the location, pole height, type of shield. She wants to be able to see how the lighting impacts adjacent residential properties.

Nancy Wallerstein stated it has been moved by Mr. Wolf and second by Mr. Birkel to recommend the City Council approve PC2018-02 and PC-2018-102 as recommended by staff with the amendments suggested to condition 7, which requires that the applicant prepare a sound study to present to the City Council that justifies the sound level and recognizes the Planning Commission goal of a maximum level of 60 dBA, noting that the applicant agrees not to exceed 65 dBA. The motion also included the addition of condition 2E and also an amendment to 2D. Mr. Wolf and Mr. Birkel accepted the amendment by Mrs. Brown. The motion was voted on and passed by a vote of 4 to 1 with Mr. Valentino voting in opposition.

# STAFF REPORT

**TO:** Prairie Village Planning Commission  
**FROM:** Chris Brewster, AICP, Gould Evans, Planning Consultant  
**DATE:** February 6, 2018, Planning Commission Meeting

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**Application:** PC 2018-02 & PC 2018102

**Request:** Special Use Permit for Car Wash and Amendment to Preliminary Development Plan in CP-1 zoning

**Action:** *A Special Use Permit requires the Planning Commission to evaluate facts and weigh evidence, and based on balancing the factors and criteria in the zoning ordinance, make a recommendation to the City Council.*

*An amendment to a Preliminary Development Plan in CP-1 zoning requires the Planning Commission to apply the facts of the application to the standards and criteria of the ordinance, and if the criteria are met, to recommend approval to the City Council.*

**Property Address:** 7930 State Line Road

**Applicant:** TW Macon LLC

**Current Zoning and Land Use:** CP-1 – Planned Restricted Business

**Surrounding Zoning and Land Use:** North: CP-1 Planned Restricted Business - Panda Express and R-1B Single-Family Residential - Single-Family Dwellings  
East: Commercial (Kansas City, MO) - CVS and Wendy's  
South: R-1 Single-Family Residential - Single-Family Dwellings and SD-O Business Office District - Financial Institution (Leawood, KS)  
West: R-1B Single-Family Residential - Single-Family Dwellings

**Legal Description:** MEADOW LAKE PT LT 14 BLK 8 & NEL ARO LT 3 BG SE CR LT 3 NELARO N 100' W 273' N 63.37' TO PT NWLY/L LT 14 BLK 8 MEADOW LAKE SW 421.97' E 651.33' TO POB PVC 7790M (abbreviated)

**Property Area:** 1.36 acres (17,690.03 s.f.)

**Related Case Files:** PC 2015-06 – Rezoning from R-1B and C-O to CP-1  
PC 2015-07 – Conditional Use Permit for Drive-Thru Window  
PC 2015-06 (revised) – Final Site Plan

**Attachments:** Application, and preliminary development plan

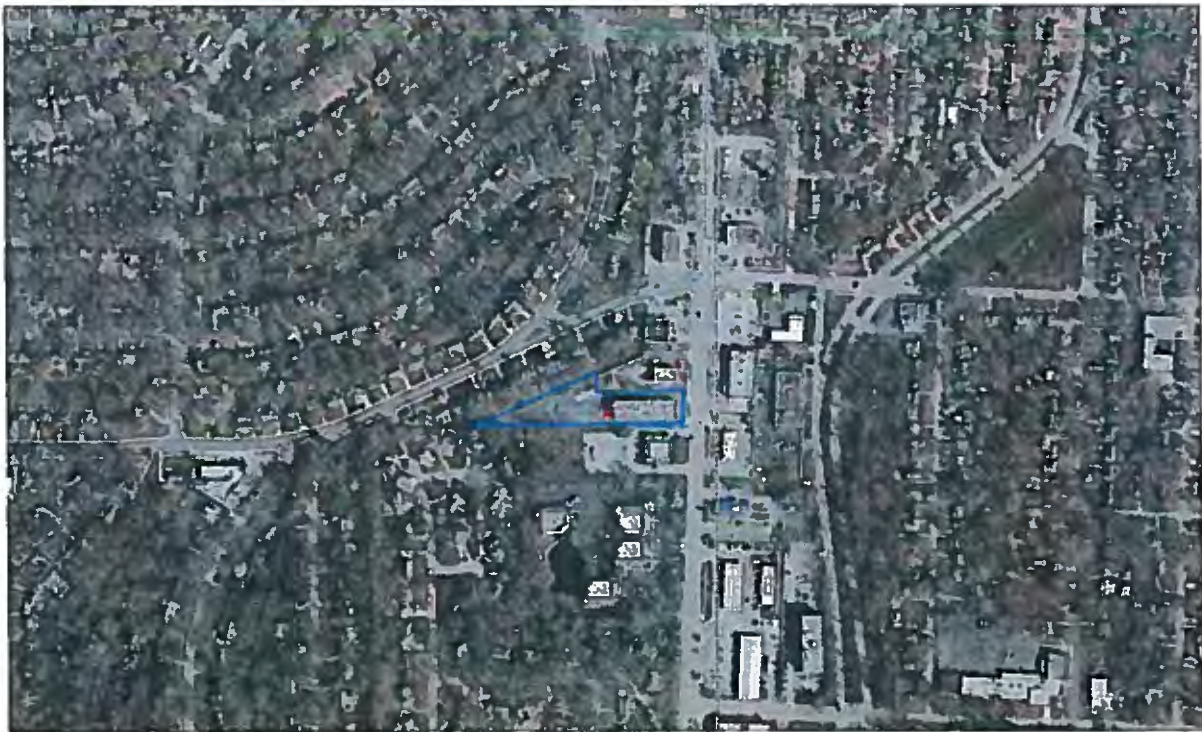
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General Location Map



Aerial Map



Site



Street Views



*Street view looking southwest on State Line Road*



*Street view looking northwest on State Line Road*



*Bird's eye view of site*

**BACKGROUND:**

This site was rezoned for C-O and R-1B to CP-1 in 2015, in association with a preliminary development plan for a restaurant. An associated conditional use permit for a drive through restaurant was approved at the same time. The Planning Commission initially recommended approval of the plan subject to 15 conditions on the development plan and 3 conditions on the conditional use permit, after hearings on June 2, 2015 and July 7, 2015. The City Council considered the application on August 3, 2015 and failed to approve the application, and instead sent the application back to Planning Commission to look at specific issues associated with the drive-through service area and the relationship to adjacent residential property. Upon rehearing and adjustments to the plan regarding location of service areas, landscape and screening, and operational limits to business hours, the Planning Commission and City Council approved the application in September 2015. A final site plan was also approved by the Planning Commission in October 2015.

The approved application and use was never constructed, and this new proposal for the site reflects a change in the preliminary development plan requiring Planning Commission review and a recommendation to the City Council for a final decision. In addition, the proposed use as a Car Wash is a special use in the CP-1 zoning district, also requiring a Planning Commission recommendation and City Council final decision. If each application is approved by the City Council, a final development plan will be submitted to Planning Commission for review prior to building permits.

**COMMENTS:**

The Planned Zoning District is intended to provide flexibility from the base zoning district standards that may result in "more efficient development and redevelopment of small tracts, innovative or imaginative site planning, and conservation of natural resources and minimum waste of land." [19.24.010] CP-1 zoning on this site facilitates dealing with unique site situations or specific development proposals that are not adequately addressed by the base zoning district standards. However, the base district standards (C-1 in this case) apply to planned districts the extent that they are not modified by a proposed development plan. This application presents a new development plan to accommodate a different use of the site than anticipated at the time of rezoning. The proposed use as a car wash also requires a special use permit according to the Prairie Village Zoning Ordinance. Therefore, this application involves two separate but related actions by the Planning Commission:

- Recommendation to the City Council for an amended preliminary development plan; and
- Recommendation to the City Council for a special use permit

Approval of each of these applications by the City Council will allow the applicant to prepare and submit a final development plan for construction, refining of the details or the preliminary plan, addressing any conditions of approval of the preliminary plan or special use permit, and demonstrating compliance with all other city ordinance requirements.

This property is located south of the Panda Express, which was rezoned to CP-1 in 2007. The parcel has 100 feet of frontage on State Line Road and has a depth of 651 feet along the south property line. The parcel has an irregular boundary and contains approximately 1.37 acres. The site is occupied by an office building that was built in 1968 and the applicant proposes to demolish that building and construct a Tidal Wave car wash.

The applicant held a neighborhood meeting on January 15, 2018, and a summary of that meeting has been added to the application materials.

**ANALYSIS – PRELIMINARY DEVELOPMENT PLAN:**

In considering an amended preliminary development plan for CP-1 zoning, the Planning Commission must consider the same criteria for the initial preliminary development plan. As a "planned zoning" application, preliminary development plans are considered according to factors commonly referred to as the "Golden" factors, which are incorporated into the City's Zoning Ordinance [19.52.030]. The factors include, but are not limited to the following:

1. **The character of the neighborhood;**
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The general character of this area is business on both sides of State Line Road. Culvers, Wendy's, CVS Pharmacy and McDonald's are located on the east side of State Line Road and all four have drive-thru windows, and in general are automobile-oriented commercial sites. To the south are offices. The immediate area to the north is developed with restaurants and retail uses, the abutting Panda Express also has a drive-thru window.

There are residential uses to the northwest and west of this property which have their rear yards adjacent to this site. Due to the irregular shape of this lot and pattern of streets in the vicinity, the residential adjacency begins approximately half-way down the northwest property line of this site, comprising the rear lot line of residential lots that front on Somerset. The southwest rear edge of this property abuts rear lot lines or residential lots in Leewood. This is a sensitive adjacency that is typical of many commercial corridors in older residential areas.

**2. The zoning and uses of property nearby;**

**North:** CP-1 Planned Restricted Business – Panda Express and R-1B Single-Family Residential – Single-Family Dwellings

**East:** Commercial (Kansas City, MO) – CVS and Wendy's

**South:** R-1 Single-Family Residential – Single-Family Dwellings and SD-0 Business Office District – Financial Institution (Leewood, KS)

**West:** R-1B Single-Family Residential – Single-Family Dwellings

All of the property in the immediate vicinity along this corridor is zoned for commercial or office uses. There is a small area between Somerset and 79<sup>th</sup> Street north of this site that is zoned residential (R-1B), and residential property south of 83<sup>rd</sup> Street in Leewood, which is also residential. Property generally to the rear of this site is zoned residential. Property immediately off the corridor to the west transitions to R-1B zoning.

**3. The suitability of the property for the uses to which it has been restricted under its existing zoning;**

The existing building was previously used for office space, but has been vacant since around the time of the original application in 2015. At that time, the property was experiencing some degree of vacancy and the previous application noted that the office market in Prairie Village is weak for this type of space. The building is older, having been built in 1968, and its appearance is not such that it would command the interest of many potential tenants. The existing building probably is at a state where a teardown and rebuild is a logical solution to more economically and effectively use the site. Since this property is on State Line Road, redevelopment for commercial use has a stronger potential.

**4. The extent that a change will detrimentally affect neighboring property;**

The properties to the north, south and east are developed for business uses and the redevelopment of this property will not detrimentally affect them. There will be additional traffic because a car wash generates more traffic than an office, but State Line Road can accommodate it. The applicant has submitted a traffic study, which projects that the expected traffic flow will be comparable or less than the previous anticipated use as a restaurant. This is in part reflected by different expected peak times, different capacity of the site (car wash bays vs. tables /drive-through in a restaurant), and the general nature and market for the proposed use in this area.

The residential uses to the northwest and southwest would be most affected by the car wash because of noise and lights from the traffic. The development plan proposes locating the higher intensity activities of this use to the front portion of the site along state line, separating this from residences by both distance and the buildings. However, traffic circulation and other lower intensity activities are located closer to the residential property. Fencing and landscaping will be required to screen the use from the residential properties in a manner that mitigates negative effects. The

car wash will be required to follow the outdoor lighting regulations, which prohibit outside lighting from impact on adjacent property.

**5. The length of time of any vacancy of the property;**

Until 2015, the building had been continually occupied by office uses since it was built, but is was beginning to experience some degree of vacancy. It has been completely vacant more recently, due to the pending redevelopment of the site.

**6. The relative gain to public health, safety and welfare by destruction of value of the applicant's property as compared to the hardship on other individual landowners;**

The redevelopment of this site will permit the removal of one structure that is not at the quality that is desired by the market, and will allow the redevelopment for a use that will be of higher value relative to what has been occurring on this site and in the vicinity more recently. The site has not been well maintained or fully occupied under the previous office zoning, which was leading marginalization of the existing building and maintenance issues on the site. The recent approval of a redevelopment plan for a restaurant and drive-through under the current CP-1 zoning also were not completed, although it is not clear from the application why the project was not completed. Maintaining the standards of this previously approved development plan does not present any significantly different impacts on adjacent neighbors or property that cannot be adequately addressed through comparable site plan, design or performance standards for the new development plan.

**7. City staff recommendations;**

It is the opinion of Staff that this is a logical request for an amended plan in the CP-1 Planned Restricted Business District Zoning. The use is of a comparable intensity to the previously considered use under a different development plan for the CP-1 district. The lot fronts on a commercial corridor where commercial uses benefit from exposure and capturing traffic from the corridor, so the context attracts uses such as proposed. This is an unusual site due to the long, narrow configuration of the lot, which is not compatible to more conventional or typical office building formats under the previous zoning. The proposed plan and use seems to use this irregular shape to its advantage. However, due to the car-oriented nature of this use (as was with the previous use approved under the CP-1 rezoning), and due to the intensity of activities under this plan, mitigating any potential impacts is important. Improving the relationship to the adjacent residential property and improving the aesthetic appearance of the buildings and site along State Line are the key strategies for making this generally appropriate concept meet the intent of the Planned Zoning District.

**8. Conformance with the Comprehensive Plan;**

Village Vision identifies this area as a Commercial Improvement area in the Conceptual Development Framework. There are no specific policies, plans or concepts for this portion of the State Line corridor.

The general policies for Commercial Improvement areas suggests that periodic upgrades are necessary for the City's commercial areas to remain attractive and retain tenants, including façade changes, signage or landscape improvements, and redevelopment with particular attention on how they relate to surrounding neighborhoods and to public streetscapes.

**9. Approval of the Preliminary Development Plan.**

All planned zoning is conditioned on an approved preliminary development plan. Therefore, substantial amendments to a preliminary development plan require consideration of the criteria for evaluating the preliminary development plan, which are the same criteria as is used in site plan approval:

- a. The site is capable of accommodating the buildings, parking areas, and drives with the appropriate open space and landscaping.**

A landscape plan is included in the submittal that demonstrates attention to some of the sensitive relationships of this site. The proposed vinyl fence will be a dominant feature on this property and is crucial to the relationship with the residential uses. Evergreen plants are shown on the neighbors' side of the fence to soften the impact of this feature. Specifics on the exact type and color of the fence will need to be supplied prior to the final development plan, including either material samples or photos if this product applied on other similar sites. This design, location and size of the fence included in the plan demonstrates the visual screening aspect, and specifically the mitigation of headlights from the circulation or any queuing of vehicles. However, the fence is proposed to end at the north boarder of this site, and does not continue around the western-most extent of the south property boundary (the south side of the "point"), that also abuts residential property.

Extension of the fence along the residential boundary and some additional landscape materials are recommended for portions of the site, including: the front shrub bet to improve the relationship to the streetscape, the triangular lawn on the northeast corner of the building, the southeast corner of the building along the neighborhood property line, and the interior side of the fence. These areas are called out for specific items in the staff recommendations below.

- b. Utilities are available with adequate capacity to serve the proposed development.**

The property is currently served with water, sewer, gas, electric, telephone and cable. The size of the proposed building does not appear that it would require anything out of the ordinary and the utilities that are available should be adequate to handle the project.

- c. The plan provides for adequate management for stormwater runoff.**

The area of the site is 1.36 acres and currently 1.15 acres is covered with impervious material which includes a building and pavement. The proposed project will have 0.93 acres of impervious area. This is a reduction of approximately 9,583 sq. ft. of impervious area. Since the impervious area has been reduced, a stormwater master plan will not be required at this time. The stormwater and drainage will be reviewed by Public Works as a part of the building permit process.

- d. The plan provides for safe easy ingress/egress and internal traffic circulation.**

Ingress and egress will be provided from a single point off State Line Road, near the existing north entrance to the site. The plan shows a single-lane entry and a two-lane exit providing a left and right out option onto State Line Road. Within the site a circulation lane allows an ample number of stacking spaces so that it should not be a traffic problem on State Line. The internal portion of the site is designed for circulation between the queuing area for the car wash, the pay kiosks and the exit. The volume of traffic generated by the car wash is projected in the traffic study, and has been reviewed by Public Works. The projected traffic is comparable and less than the impacts under the previous plan, and does not appear significant enough to affect State Line Road.

- e. The plan is consistent with good planning and site engineering design principles.**

The site plan appears to be well laid out considering its limited size and irregular configuration of the lot. The more intense activities have been oriented toward State Line Road, which is a high traffic commercial corridor. The plan has added additional landscape area and fencing beyond the current condition, which can help mitigate potential impacts on adjacent residential property. More open areas allow for more landscaping as well as reduce stormwater runoff from the current condition.

The plan demonstrates attention to the sensitive residential boundary with screening and landscape to block visual impacts. The circulation and queuing area does pass near this screen but the majority of activity is located to the internal portion of the site, and the building and most intense activity is located farthest from the residential boundary. The central portion of the site does include both a series of pay kiosks and a trash enclosure. Details of the screening of the trash enclosure are included in the plans. However, there are not design concepts or details associated with the pay kiosks. If canopies, structures, or other related service stations will be constructed here, typical details and examples should be provided. In addition, details to the operating and performance of the pay kiosks shall also be provided, including any expected noise impacts for residents, and how those potential impacts are to be mitigated under this plan.

A lighting plan has been submitted that demonstrate the light levels at the residential perimeter and zero. The adjacent commercial properties are at varying levels, but are within commonly acceptable levels for commercial adjacency. However, pole heights should be shown on the plan to verify these performance levels and the general compatibility with surrounding property.

When the Planning Commission has considered other redevelopment projects, pedestrian access and connectivity has been considered. The applicant has provided a sidewalk adjacent to State Line Road, which will connect to the sidewalk to the north. The proposed use of this site is vehicle-focused so pedestrian access to the building and site is not provided, nor considered necessary.

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

The applicant has submitted photographs of a comparable prototype store, a photo simulation of the proposed building, and typical elevations. The plan includes four structures – a car wash building of approximately 3,500 square feet, a canopy that covers 17 pay kiosks in the central portion of the site, a vacuum screening structure at the west end of the pay kiosks, and a trash enclosure further to the west end of the kiosk.

The car wash is the most significant structure and the submitted images and elevations depict a cultured stone veneer as the predominant material on the front facade with natural earth tones, built upon a split-faced block base. The roof is blue prefinished standing seam metal. A large portion of the facades on the north and south elevations is glass, providing views into the car wash equipment aligned in a long, linear fashion. A larger part of the building projects into the internal portion of the site is EFIS material with stone accents.

The canopy over the pay kiosks is also a significant structure. In one photo, and from reviewing other examples, it appears that a blue metal panel canopy that covers the parking area and equipment is typical.

Details on the dumpster enclosure show an 8-foot high, fully enclosed structure with “facade to match the on-site buildings.” It is not clear which materials of the building are proposed for this, however from other examples split-face block base with an EFIS main wall is typical.

There are no details on the vacuum screening structure.

Material samples should be provided for view at the Planning Commission for all structures including:

- The fence (photo examples or manufacture specifications for this specific material may be acceptable if a sample is not possible)
- The car wash building, canopy, vacuum screen and trash enclosures.
- Colors and basic material parameters should be committed to in the preliminary development plan, or detailed on conceptual elevations.

**g. The plan presents an overall development pattern that is consistent with the Comprehensive Plan and other adopted plan policies.**

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This was reviewed in section 8. of the general CP-1 criteria. There are no specific plans or policies for this area under the comprehensive plan, that would impact the preliminary development plan beyond that criteria.

- h. **The Planning Commission and Governing Body may, in the process of approving preliminary and final plans, approve deviations from the standard requirements as follows, provided any deviations approved shall be in keeping with accepted land planning principles and must be clearly set out in the minutes as well as on exhibits in the record:**

**The setbacks of buildings from a property line other than a public street may be reduced to 60% of the standard requirement and setbacks at paved areas adjacent to property lines, other than street lines, to zero if existing or proposed development on said adjacent land justifies the same.**

Site plan has elevations for the trash enclosure and the typical elevations include dimensions that demonstrate compliance with the C-1 zoning standards. The C-1 district has the following development standards for buildings:

- height – 35 feet max;
  - The main carwash feature is 18 feet high at the ridgeline; approximately 12 feet high at the soffit (eave) height along the longer elevations; with a cupola beginning at approximately 21 feet, 9 inches
- front setback – 15 feet;
  - The site plan shows the main car wash building approximately 42.5 feet from the front property line.
- side setbacks – none, except when abutting lesser districts the standards of that district apply. In this case, the south lot line is zoned office and the comparable setback under the Prairie Village zoning ordinance is 10 feet for one-story (approximately 10 – 18 feet); 15 feet for two story (approximately 19-28 feet); and 20 feet for two and one-half story buildings (approximately 29-35 feet). Therefore, the actual height of the proposed structure will determine the appropriate setback on this side.
  - The site plan shows the main car wash building to be greater than 10 feet from the south side property line. It is primarily a one-story structure with an eave height of 12 feet along this elevation and a ridge height of 18 feet further internal to the site.
- rear setback – none, except 10 feet when abutting lesser districts, which is the case for this lot.
  - The site plan shows that all structures are well beyond a 10 foot rear property line.

Dimensioned plans have not been submitted for the accessory structures including the 20 x 20 prep canopy, the 25 x 16 pay kiosk or the vacuum canopy, however the illustrations and prototype examples demonstrate these are typically within these standards and accessory to the car wash building.

Detailed and dimensioned plans should be submitted prior to final plans demonstrating that all building dimensions meet the above standards, and in general the preliminary development plan should commit to general compliance with these standards.

#### **ANALYSIS – SPECIAL USE PERMIT:**

Section 19.28.070 lists certain uses as specifically listed special uses, requiring approval of a special use permit. Car washes are listed for eligibility in the C-1, C-2 and C-3 districts only, and therefore are applicable to the planned version of these districts (CP-1). There are no specific criteria or standards for car washes, so the special use permit should be evaluated according to the general special use criteria in

section 19.28.035. (Where these criteria are the same or similar to the CP-1 and preliminary development plan criteria above, the analysis refers to those sections).

- A. The proposed special use complies with all applicable provisions of these regulations including intensity of use regulations, yard regulations and use limitations.**

This was more fully reviewed in the overall CP-1 and preliminary development plan criteria above. Car washes do not have any additional use-specific standards to apply in this situation.

- B. The proposed special use at the specified location will not adversely affect the welfare or convenience of the public;**

This was more fully reviewed in sections 3., 4., and 6. of the CP-1 / preliminary development plan criteria.

- C. The proposed special use will not cause substantial injury to the value of other property in the neighborhood where it is located.**

This was reviewed in section 6. of the CP-1 / preliminary development plan criteria.

- D. The location and size of the special use, the nature and intensity of the operation involved in or conducted in connection with it, and the location of the site with respect to streets giving access to it are such that the special use will not dominate the immediate neighborhood so as to hinder development and use of neighborhood property in accordance with the applicable zoning district regulations. In determining whether the special use will so dominate the immediate neighborhood consideration shall be given to:**

1. The location, size, nature and height of buildings structures, walls, and fences on the site; and
2. The nature and extent of landscaping and screening on the site.

This was generally reviewed in sections 9.a., d., e. and f. in the CP-1 / preliminary development plan criteria.

- E. Off-street parking and loading areas will be provided in accordance with standards set forth in these regulations and said areas shall be screened from adjoining residential uses and located so as to protect such residential uses from any injurious affect.**

This was reviewed in sections 4., 9.a, d., e. and f. in the CP-1 / preliminary development plan criteria..

- F. Adequate utility, drainage and other necessary utilities have been or will be provided.**

This was reviewed in sections 9.b. and c. in the CP-1 / preliminary development plan criteria.

- G. Adequate access roads or entrance and exit drives will be provided and shall be so designed to prevent hazards and to minimize traffic congestion in public streets and alleys.**

This was reviewed in section 9.d in the CP-1 / preliminary development plan criteria.

- H. Adjoining properties and the general public will be adequately protected from any hazardous or toxic materials, hazardous manufacturing processes, obnoxious odors, or unnecessary intrusive noises.**

This was covered under the general development plan criteria. In addition, a car wash has particular impacts that need consideration under this factor, which is why it requires a special use permit in the CP-1 district.

As a water intensive use, specifics on the drainage, run-off and how wastewater is handled on the site and in relation to other water, wastewater and run-off infrastructure will be reviewed by Public Works in association with the drainage permit and other construction permits. The applicant has supplied some analysis in the preliminary plan and indicated that this plan will recapture all waste water resulting from the car wash.

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In addition, some activities associated with this use occur in parking areas. The visual screening of this has been covered under other criteria. The applicant has submitted an acoustic measurements document of a comparable location in Sharpsburg, Georgia to assess the potential impact on adjacent sites, which is included in the packet. This test resulted in measurements between 56.6 decibels and 89.7 decibels – the highest being at a distance of 25' from the most intensive equipment and on axis with it. This would be comparable to a location on State Line Road for this site plan. This study does not make a direct translation to the findings or typical expected results for this site. The applicant should provided this information at the hearing, and identify how any of the screening and noise mitigation components of the site plan will affect the west and northwest boundaries near residential property.

For reference, a survey of several peer community noise ordinances revealed the following typical ranges, measured at the boundary of adjacent property. (ranges reflect different communities' thresholds):

	Business Hours (7AM – 10PM)	Quiet Hours (10PM – 7AM)
Residential	60 dBA – 70 dBA	45dBA – 55dBA
Commercial	65 dBA – 80dBA	50dBA – 60dBA
Industrial	80dBA – n/a	60dBA – n/a

- I. **Architectural style and exterior materials are compatible with such styles and materials used in the neighborhood in which the proposed structure is to be built or located.**

This was reviewed in section 9.f. in the CP-1 / preliminary development plan criteria.

#### RECOMMENDATION:

Staff recommendation is based upon the review of the application and ordinance criteria, and prior to the benefit of any testimony in the public hearing or reports on the neighborhood meeting. Based upon the application, Staff recommends approval of both the amended preliminary development plan and the special use permit, subject to the following conditions to be addressed prior to a final development plan, which shall be approved by Planning Commission:

1. Landscape plan amendments.
  - a. Add two shade trees to the front shrub bed. They should be 2.5" caliper and species of *Quercus bicolor* is recommended.
  - b. Add shrubs and perennials to fill the triangle lawn island at the northeast corner of the buildings
  - c. Add shrubs in the lawn area at the southeast corner of the building, along the neighboring property line.
  - d. Provide shrubs and perennials on the interior side of the fence to soften the visual impact (to be reconsidered in association with specific fence color and material sample reviews).
  - e. Tree types at the west corner of the planting plan are not indicated on the schedule. Norway Spruce is recommended.
2. Site Plan amendments
  - a. Identify the fence color and provide samples of the fence, prior to final plan. Extend the fence at the west side of the site to continue up the south property line to the point of the last rear boundary of a residential lot. (Note: Manufacture specifications showing photographs and the sound-mitigating characteristics of the fence have been submitted

- as a supplement to the application, and will be reviewed by staff – SlimTek Simulated Stone Fence.)
- c. Identify utility boxes to determine the visual impact, and screen these from adjacent property and streetscape with landscape materials.
  - d. Indicate pole heights and specific locations of lights to show performance criteria on the photometric plan.
3. Final elevations and details of the car wash building, canopy and associated equipment, and the vacuum screen shall be supplied including materials, colors, building dimensions, and other details. Specific materials and color for the trash enclosure, canopy and vacuum screen that complement the primary materials of the car wash building shall be specified. . (Note: Typical elevations were provided as a supplement to the application, and have been incorporated into the staff review in this report.)
  4. All signs shall be approved by a separate permit and meet the City of Prairie Village sign requirements. Any proposed monument signs shall be shown on the final development plan and approved by the Planning Commission.
  5. Operational limits and specifics of the facilities are confirmed including the following:
    - a. Details of the pay kiosks, including design, location of structures, and operating characteristics of equipment, and particular any anticipated noise impacts and mitigation strategies.
    - c. Hours of operation shall be limited to 7AM to 9PM
  6. Appropriate drainage permits be reviewed and approved by Public Works, including facilities designed to address the water and wastewater quantities and quality associated with the car wash activities.
  7. The acoustic measurement study of the Sharpsburg, Georgia site shall be interpreted to expected noise levels for this particular site plan, and noise impacts on the adjacent residential property shall be mitigated with a combination of vegetation, structural screens, noise regulators on the equipment and/or operational limits. The site shall meet a performance standard measured from any adjacent residential property of a maximum of 65 decibels between 7 a.m. and 10 p.m., and 55 decibels between the hours of 10 p.m. and 7 a.m.
  8. The special use permit shall be valid for a period of 5 years, at which time a renewal of the permit shall be based on continuing to meet the criteria of the original approval, and addressing any unanticipated impacts from this use on adjacent residential property.

#### **EFFECT OF DECISION:**

The Planning Commission makes a recommendation to the City Council on both the preliminary development plan and the special use permit. The City Council will make a final decision, according to the following:

- Approve the Planning Commission recommendation by a majority vote (including any conditions if the recommendation was for approval subject to conditions).
- Return to Planning Commission with direction to reconsider specific actions, either by a majority vote or by failure to approve the Planning Commission recommendation.
- Override or modify the Planning Commission recommendation by at least a 2/3 vote of the membership of the governing body.

If a valid protest is filed with the City Clerk within 14 days of the close of the public hearing, the City Council may only approve the application with a 3/4 vote of the membership of the governing body.

If approved by the Planning Commission and City Council, the applicant may prepare a final development plan for review by the Planning Commission.

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App # 00 16486

**SPECIAL USE PERMIT APPLICATION**

CITY OF PRAIRIE VILLAGE, KANSAS

For Office Use Only  
Case No.: PC2018-02  
Filing Fees: 100  
Deposit: 150



# 19646

Date Advertised: \_\_\_\_\_  
Date Notices Sent: \_\_\_\_\_  
Public Hearing Date: \_\_\_\_\_

APPLICANT: TW Macon, LLC (Thomas Wells) PHONE: 404-358-1176

ADDRESS: 124 Thompson St., Thomaston, GA E-MAIL: twells@kdsllc.net

OWNER: State Line 7930, LLC 30286 PHONE: 816-753-6000

ADDRESS: 605 W. 47th St. #200, KC, MO ZIP: 64112

LOCATION OF PROPERTY: 7930 State Line Rd, Prairie Village, KS

LEGAL DESCRIPTION: (See Attached)

**ADJACENT LAND USE AND ZONING:**

	<u>Land Use</u>	<u>Zoning</u>
North	<u>SF Resid &amp; Panda Express</u>	<u>R-1B &amp; CP-1</u>
South	<u>Commercial - Bank</u>	<u>SD-0 (Lenexa)</u>
East	<u>Commercial (CVS &amp; Wendys)</u>	<u>Commercial (KCMO)</u>
West	<u>Residential</u>	<u>R-1B</u>

Present Use of Property: Vacant - previously occupied by an office building

Please complete both pages of the form and return to:  
Planning Commission Secretary  
City of Prairie Village  
7700 Mission Road  
Prairie Village, KS 66208

Does the proposed special use meet the following standards? If yes, attach a separate Sheet explaining why.

See attached Project Narrative

- |   | <u>Yes</u> | <u>No</u> |
|---|------------|-----------|
| 1. Is deemed necessary for the public convenience at that location.   | <u>X</u>   | _____     |
| 2. Is so designed, located and proposed to be operated that the public health, safety, and welfare will be protected.   | <u>X</u>   | _____     |
| 3. Is found to be generally compatible with the neighborhood in which it is proposed.   | <u>X</u>   | _____     |
| 4. Will comply with the height and area regulations of the district in which it is proposed.  | <u>X</u>   | _____     |
| 5. Off-street parking and loading areas will be provided in accordance with the standards set forth in the zoning regulations, and such areas will be screened from adjoining residential uses and located so as to protect such residential use from any injurious effect. | <u>X</u>   | _____     |
| 6. Adequate utility, drainage, and other such necessary facilities have been or will be provided.   | <u>X</u>   | _____     |

Should this special use be valid only for a specific time period? Yes \_\_\_\_\_ No X

If Yes, what length of time? \_\_\_\_\_

SIGNATURE: Thomas A. Wells

DATE: 12/14/12

BY: Thomas A. Wells

TITLE: Development Consultant to Tidel Wave Auto Spa

Attachments Required:

- Site plan showing existing and proposed structures on the property in questions, and adjacent property, off-street parking, driveways, and other information.
- Certified list of property owners

**PROJECT NARRATIVE**  
**Tidal Wave Auto Spa – 7930 State Line Road, Prairie Village, KS**

The subject property is a 1.36 acre tract located at 7930 State Line Road. Until recently demolished, it was occupied by a two-story office building. In 2015, the property was rezoned to CP1 to allow for a drive-thru Slim Chickens fast food restaurant. The proposed use is an express self-service car wash facility to be developed by Tidal Wave Auto Spa.

The proposed project consists of one primary building – the wash tunnel which will be located on the southern portion of the property. The exterior façade of the building will consist of masonry (stone and split faced block), EFIS and glass facades with a standing seam metal pitched roof. One of the corporate philosophies of Tidal Wave Auto Spa is to be the most attractive business in the community; which is accomplished by constructing a quality facility, utilizing all concrete paving and intense landscaping of the site.

The proposed self-service car wash facility will be maintained and operated in a manner consistent with other neighboring commercial and retail uses. The proposed use will not be detrimental to, or endanger, the public health, safety or welfare. The proposed project will be in harmony with the surrounding retail and commercial land uses that serve the community and regional needs and is appropriate adjoining a minor thoroughfare.

The redevelopment of this site will allow for a use that will be of higher value and be a greater generator of revenue to the City. The redevelopment of the site will provide a structure that is very well designed, contains attractive landscaping and will be an asset to the neighborhood rather than create a hardship on the other adjacent owners.

The site is located in a commercial corridor with existing public utilities adequate to serve the intended use of the property as a self-service car wash facility.

The general character of this area is business on both sides of State Line Road. Culvers, Wendy's, CVS Pharmacy and McDonald's are located on the east side of State Line Road and all four have drive-thru windows.

The proposed use will promote water conservation as it will utilize a sophisticated water reclamation system, computer controlled operational systems and high-pressure nozzles and pumps which significantly minimize the amount of "fresh" water needed to provide a quality exterior wash. The amount of "fresh" water used at the proposed facility ranges from 14 to 20 gallons per vehicle (depending on vehicle size and wash selected), while utilizing approximately 50 gallons of reclaimed water per vehicle. Residents performing car washes at home use 80-140 gallons of fresh water per vehicle. Tidal Wave Auto Spa will only empty pre-filtered waste into the sewer system. Traditional and other car washes drain harmful cleaning chemicals and phosphates from the road film into the storm drain system.

Tidal Wave partners with local schools, athletic teams and their booster clubs, service organizations, churches and other 501(c)(3) organizations to help them raise funds. In addition

to ongoing partnerships, the third Friday of September is designated as “Charity Day” with 100% of ALL proceeds donated to special needs charities.

The Village Vision encourages the upgrading of uses to create higher density and intensity development. This is an underperforming property that needs reinvestment.



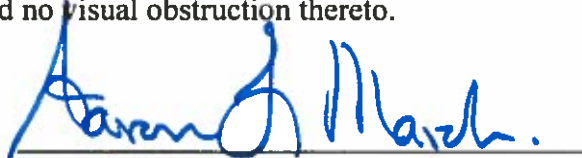
Application Nos. PC 2018-02 (SUP)  
PC 2018-103 (Amendment to Preliminary Development/  
Site Plan)

**AFFIDAVIT**

STATE OF KANSAS )  
 ) SS.  
COUNTY OF JOHNSON )

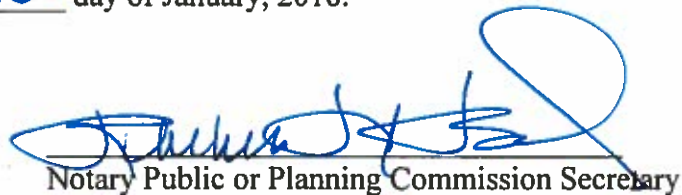
Aaron G. March, being duly sworn upon his oath, disposes and states:

That he is the attorney for the tract of land for which the application was filed. That in accordance with Section 19.28.025 of the Prairie Village Zoning Regulations, the applicant placed and maintained a sign, furnished by the City, on that tract of land. Said sign was a minimum of two feet above the ground line and within five feet of the street right-of-way line in a central position of the tract of land and had no visual obstruction thereto.



Aaron G. March, Esq.  
White Goss, a Professional Corporation  
4510 Belleview, Suite 300  
Kansas City, MO 64111

Subscribed and sworn to before me this 15<sup>th</sup> day of January, 2018.



Notary Public or Planning Commission Secretary



RACHELLE M. BIONDO  
My Commission Expires  
July 31, 2020  
Jackson County  
Commission #12499262

Application Nos.	PC 2018-02 (SUP)	
	PC 2018-103	(Amendment to Preliminary Development/ Site Plan)

Aaron G. March, being duly sworn upon his oath, deposes and states:

1. I am the attorney for the property described in the attached notice upon which an application has been filed before the Planning Commission of the City of Prairie Village, Kansas.
2. On the 15<sup>th</sup> day of January, 2018, a public information meeting was held pursuant to the Citizen Participation Policy adopted on June 6, 2000, by the Planning Commission.
3. On the 12<sup>th</sup> day of January, 2018, I did comply with notification requirements to landowners as stated Section 19.28.020, of the Prairie Village Zoning Regulations and notified in letter by certified mail all owners of land located within 200 feet of the described real property. Notice was mailed to the following:

Name

Address

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See attached

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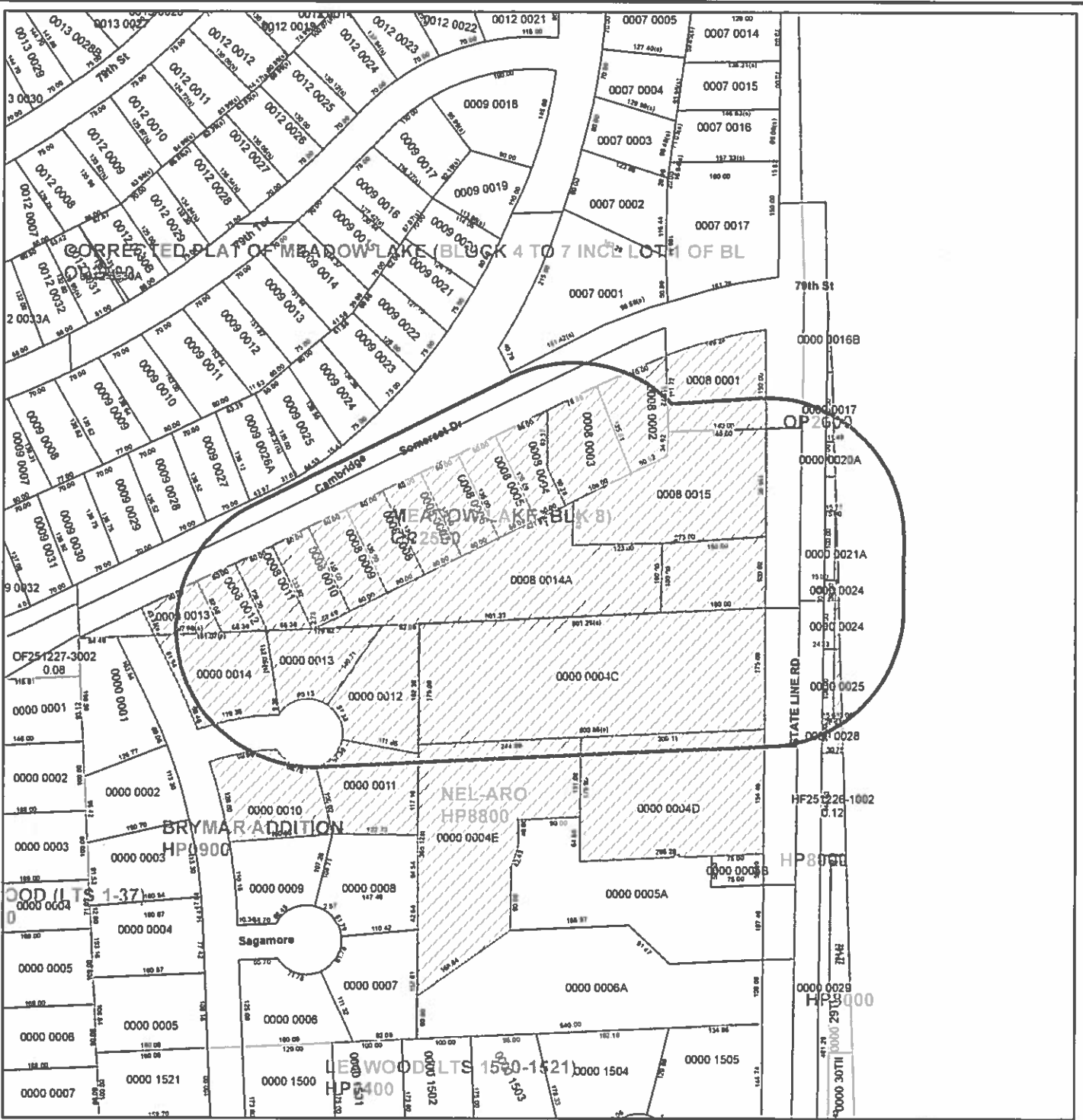
I certify that the foregoing is true and correct.



Aaron G. March, Esq.  
 White Goss, a Professional Corporation  
 4510 Belleview, Suite 300  
 Kansas City, MO 64111

<b>Property Owner</b>	<b>Mailing Address</b>
Martin E. Rankin Karen H. Rankin	7915 Sagamore Rd Leawood, KS 66206
Harlan D. Burkhead Patricia T. Burkhead	7909 Sagamore Rd Leawood, KS 66206
Brian W. Luger Kimberly R. Luger	7905 Sagamore Rd Leawood, KS 66206
Janelle McClymont James R. McClymont	7901 Sagamore Rd Leawood, KS 66206
Sophie A. Sosland Revocable Trust	7919 Sagamore Rd Leawood, KS 66206
Real Estate Corporation, Inc.	8014 State Line Rd Leawood, KS 66208
Inter State Federal Savings & Loan Association	P.O. Box 6213 Leawood, KS 66206
State Line 79, LLC	4520 Madison Avenue, #300 Kansas City, MO 64111
CS DEVCO LLC	4109 W. 123 <sup>rd</sup> St. Leawood, KS 66209
Bartholomew Young	2015 Somerset Dr Prairie Village, KS 66206
Garland N. Bailey Thellis C. Bailey	2021 Somerset Dr Prairie Village, KS 66206
Barbara L. Shanahan	2101 Somerset Dr Prairie Village, KS 66206
Heather R. Holm Douglas W. Holm	2111 Somerset Dr Prairie Village, KS 66206
Thomas Martin Audrey H. Martin	2119 Somerset Dr Prairie Village, KS 66206
Janelle Marie Johnston	2215 Somerset Dr Prairie Village, KS 66206
Matt Collum	8024 Outlook Ln Prairie Village, KS 66208
Stephanie L McEntire	2107 Somerset Dr Prairie Village, KS 66206
Ellen E. Wooldridge David Wooldridge	2115 Somerset Dr Prairie Village, KS 66206

Property Owner	Mailing Address
Thomas H. Fields	2201 Somerset Dr Prairie Village, KS 66206
James C. Fisher	2211 Somerset Dr Prairie Village, KS 66206
William Dean Randle Katherine Leann Randle	2212 Somerset Dr Prairie Village, KS 66206
State Line 7930 LLC	605 W. 47 <sup>th</sup> Street, #200 Kansas City, MO 64112
David M. Block	605 W. 47 <sup>th</sup> Street, #200 Kansas City, MO 64112
State Line 79 LLC	605 W. 47 <sup>th</sup> Street, #200 Kansas City, MO 64112
Block & Co.	605 W. 47 <sup>th</sup> Street, #200 Kansas City, MO 64112
CFT Developments, LLC	1683 Walnut Grove Ave Rosemead, CA 91770
Ohio National Life Insurance c/o Jay Birnbaum Co	8 Tobey Rd Pittsford, NY 14534



200 ft Buffer Map

WHITE

GOSS  
ATTORNEYS AT LAW

AARON G. MARCH  
amarch@whitegoss.com  
816.502.4701

January 5, 2018

VIA U.S. MAIL

Martin E. Rankin  
Karen H. Rankin  
7915 Sagamore Rd  
Leawood, KS 66206

Re: Tidal Wave Auto Spa

Dear Property Owner:

Our firm represents TW Macon, LLC in regard to the property located at 7930 State Line Road. An application for Special Use Permit and approval of an Amendment to the Preliminary Development/Site Plan has been filed with the City of Prairie Village. Approval of these requests would allow for the development of the property as a car wash as depicted on the enclosed drawing.

This application will be heard by the City Plan Commission on Tuesday, February 6, 2018.

We have scheduled a neighborhood meeting to present information regarding this application and to answer any questions. The meeting will be held on Monday, January 15, 2018 at 7:00 p.m. at the Prairie Village Community Center located at 7720 Mission Road, Prairie Village, Kansas.

We look forward to seeing you at the meeting.

Very truly yours,



Aaron G. March

AGM:jjw

Enclosure

cc: Mr. Thomas Wells

## Memorandum

TO: File  
FROM: Mr. Christopher M. Mattix  
DATE: January 17, 2018  
RE: Tidal Wave Auto Spa/Prairie Village

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This memorandum summarizes the Tidal Wave Auto Spa/Prairie Village project neighborhood meeting held on January 15, 2018. In attendance at the meeting for the project team were Petty Harden, Thomas Wells, Sandra Watts, Aaron March and myself. Five neighborhood residents were in attendance as was City Council Person Terrence Gallagher.

Mr. March began the presentation by welcoming the attendees and discussed the nature of the project. He showed the attendees an enlarged preliminary landscape and site plan. Additional site plan drawings and an aerial were handed out to each attendee. Mr. March then turned the presentation over to Mr. Harden.

Mr. Harden provided the group with a summary of his background and experience developing similar properties. He spoke about some of the ways Tidal Wave is different than its competitors, such as Waterway. He mentioned that the car wash will be attended at all times by 3 – 6 employees during normal business hours. Access to the facility will be closed-off with traffic cones when the car wash closes for the day. Customers will remain in their vehicle because the facility is an equipment-only wash.

Mr. Harden discussed the flow of traffic and each phase of the wash process. Customers turning west from State Line Road will enter the northeast corner of the property and form a single-file line. They are then routed along the property's perimeter until two lanes form near the southwest corner where customers make their purchase. Once a car wash is selected, the customers again form a single file line and enter the wash building. When the car wash is complete, customers may choose to turn into the facility's vacuum and self-detail work areas or exit the facility turning northbound or southbound onto State Line Road. The entire car wash process from start to finish takes three and a half minutes.

Mr. Harden then spoke about the design modifications and site enhancements that he and his team have already made to the original plans to mollify concerns raised by some of the neighbors at earlier meetings. The wash building's orientation was flipped so that the dryers would be near State Line. The dryers will also be enclosed within the wash building instead of attached to the building's exterior. The vacuum system's motor will be housed in a cinderblock enclosure and covered with a roof.

Mr. Harden turned the presentation over to Mr. Wells who elaborated on some of the ways that the current project is less intrusive than the previous plan for a Slim Chickens fast food restaurant. He suggested that the car wash would close earlier than a drive-through restaurant, and there would not be as much odor emanating from a car wash facility as there would be from a fried chicken restaurant. Mr. Wells indicated his belief that light pollution would be reduced by the project's fencing and landscape work, and the pole height was adjusted and shields added to reduce foot candle bleedover.

Mr. March concluded the presentation by giving the attendees key dates for next milestones. The Planning Commission meeting for this project is scheduled for February 6<sup>th</sup> and a tentative date for the City Council meeting is scheduled for March 5<sup>th</sup>. Mr. March then opened the meeting up for questions.

Thomas Fields, Brian and Kimberly Lugar, David Wooldridge, and Bill Randle asked the following questions:

1. Did you consider moving the vacuum motor enclosure further east (away from the residences)? Mr. Harden responded that he would have a team meeting with the engineers and architects to review the possibility of relocating the motor.
2. What will be the hours of operation? Mr. Harden said that generally the hours of operation are 8:00 o'clock a.m. to 8:00 o'clock p.m., but the exact hours are flexible. Typically the facility stays open later in the summer and closes earlier in the winter.
3. Are you putting a gate to control access from State Line Road? Mr. Harden answered that the facility will block off the entrance using traffic cones when the facility is closed.
4. Will water from the facility drain towards the residences? Mr. Wells answered that there is a culvert near the center of the property and that the current grading of the property channels surface water towards the center. Water from the wash process will be captured and treated in accordance with Clean Water Act requirements before it is discharged into the culvert.
5. Do you have plans to change the property's grading or elevation? Mr. Wells answered yes, the current plan calls for an increase in the property's lowest point by three feet and an increase in the property's edges near the residences by two feet.
6. Can you extend the perimeter fencing along the southern boundary to provide additional privacy to residences along that boundary? Mr. Harden responded that he would instruct his team to extend the fence along shared *residential* property boundaries.
7. Will this project require a change in zoning? Mr. March answered that no, the existing CP1 zoning is fine but that the project will require a change to the approved development plan, and will require approval of a special use permit.



8. When was the traffic study done? Mr. Wells answered that BHC Rhodes completed a traffic study dated December 17, 2017. The study concluded that no modifications to State Line Road were necessary to accommodate traffic associated with this project.

David Wooldridge spoke next acknowledging that he had met with Thomas prior to today's meeting and shared with him some of his concerns. He also acknowledged that while some of his concerns had been addressed by the changes discussed at the meeting, he still objected to changing the property's character from office space.

At that point, the meeting concluded and Mr. March offered that any other parties with questions could come and address the group individually. The meeting adjourned around 8:15 p.m.



Arpeggio, LLC  
1947 Aspen Dr. NE  
Atlanta, GA 30345  
(404) 277-6528 (DIRECT)  
(404) 417-0100  
(404) 806-6104 (FAX)

December 4, 2017

Mr. Thomas A. Wells  
Keystone Development Services, LLC  
4335 South Lee Street, Suite B  
Buford, Georgia 30518

Re: Tidal Wave Auto Spa Sharpsburg Acoustic Measurements

Dear Thomas:

We have completed our measurements and analysis of sound levels at the Tidal Wave Auto Spa located at 5040 East Highway 54 in Sharpsburg, Georgia and offer the following summary.

#### INTRODUCTION

I visited the site on Wednesday, November 29, 2017 to perform sound level measurements at several locations in the vicinity of the car wash dryers and the vacuum pump house. Specifically, with respect to the dryers, measurements were made in a southeastern line path at distances of 25', 50', 75', and 100' from the exit of the car wash building. Sound levels were also measured on axis with the exit of the building at distances of 25' and 50'. With respect to the vacuum pump house, measurements were made along a northwestern line path at distances of 25', 50', 75', and 100' from the west façade of the building. Figure 1 shows the locations of measurements.

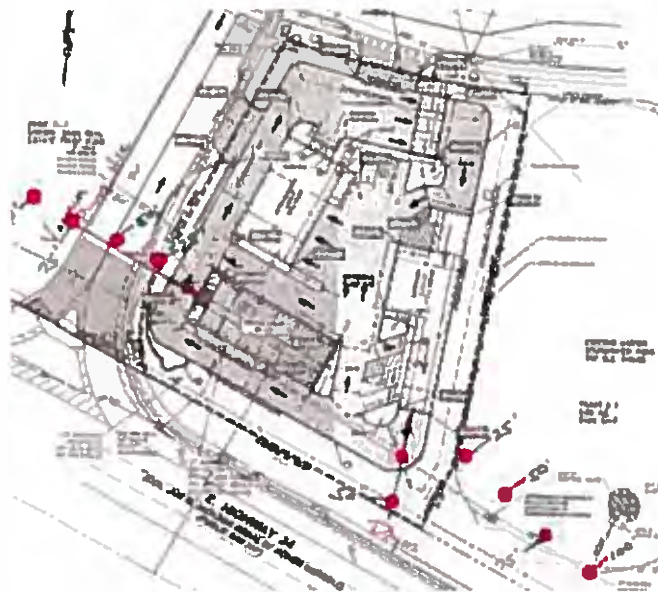


Figure 1 – Sound Level Measurement Locations

Sound measurements were made with a Larson•Davis System 824 sound level meter and real time analyzer (SN 1771) with a Larson•Davis Model 2560 ½" random incidence microphone (SN 3249) and Larson•Davis Model PRM902 preamplifier (SN 2276). This system was calibrated with a Larson•Davis Model CAL250 precision acoustic calibrator (SN 4096).

While measurements were made, the temperature was approximately 60°F and there was no wind or precipitation.

## RESULTS

Table 1 shows the broadband A-weighted sound levels measured at each measurement location.

**Table 1 – Sound Levels (dBA) at Measurement Locations**

Distance	Southeast of Dryers	South of (On Axis With) Dryers	Northwest of Vacuum Pump House
25'	82.8	89.7	62.4
50'	78.3	82.7	59.9
75'	75.7	N/A	58.2
100'	71.0	N/A	56.6

As expected, sound levels were lower with increased distance from the sound sources. In theory, sound levels are reduced by approximately 6 decibels for each doubling of distance due to geometric spreading of sound waves. Measurement results show some deviation from this at certain points. This is most readily seen with the vacuum pump house measurements. In this case, the levels generated by the source were relatively low such that it was difficult to filter out traffic noise. This became more pronounced with increased distance to the point that, at 100', the sound of traffic was comparable to that of the vacuum pump house. Measurements southeast of the dryers also exhibit some anomalies due to differing traffic levels during the respective measurements. In general, the closer 25' measurements should be viewed as being the most accurate as they are least influenced by environmental sounds such as that due to traffic.

Given the fact that, as previously discussed, one can expect a 6 decibel reduction with each doubling of distance, it is simple to calculate the distance from each sound source where the sound level could be expected to be 68 dBA. To southeast, the sound level due to the dryers would be 68 dBA at a distance of approximately 139'. This was calculated using the 25' and 100' measurements as reference points and averaging the results. On axis with the car wash the sound level would be 68 dBA at a distance of approximately 288'. This was calculated using the 25' and 50' measurements as reference points and averaging the results. Using the 25' distance as the reference point for the vacuum pump house, one would calculate the distance at which the sound level was 68 dBA to be approximately 13'.

Table 2 shows approximate sound levels produced by some common sources.

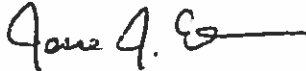
**Table 2 – Average Sound Levels Produced by Common Sources**

Source	Sound Level, dBA
Passenger (non hybrid) car at 50' (55 mph)	71
Large truck at 50' (55 mph)	86
Lawnmower (gas) at 5'	86
Wind in trees (10 mph)	43
Vacuum cleaner at 3'	81
Garbage disposal at 2'	69
Normal conversational speech at 3'	63

Note: Drawn from M. David Egan's "Architectural Acoustics," 1988

Please do not hesitate to contact me at 404-277-6528 if you have any questions or need additional assistance.

Sincerely,



Jesse J. Ehnert, INCE Bd. Cert.  
Arpeggio, LLC

Tidal Wave Auto Spa -- Tunnel Elevations









EXIT END





## **Simulated Stone Fence**

Commercial Grade Simulated Stone Privacy Fence. Lifetime Warranty. Made in USA



## **Beautiful and Green**

Simulated stone fences are possibly the most beautiful privacy fence ever made. You can own a heavy duty commercial grade simulated stone fence at a fraction of the cost of a traditional masonry wall. Go “green” with our eco-friendly EcoStone fence that is approved for commercial projects that require green building materials. Simulated stone privacy fence panels are perfect for commercial or residential applications, and are shipped factory-direct to your project site. Posts are foam-filled with steel, and each panel is delivered pre-built for easy installation. Simply install your post and attach our fence. Our product is approved for commercial noise reduction and sound barrier fencing. If you need help, we provide 24/7 installation support.

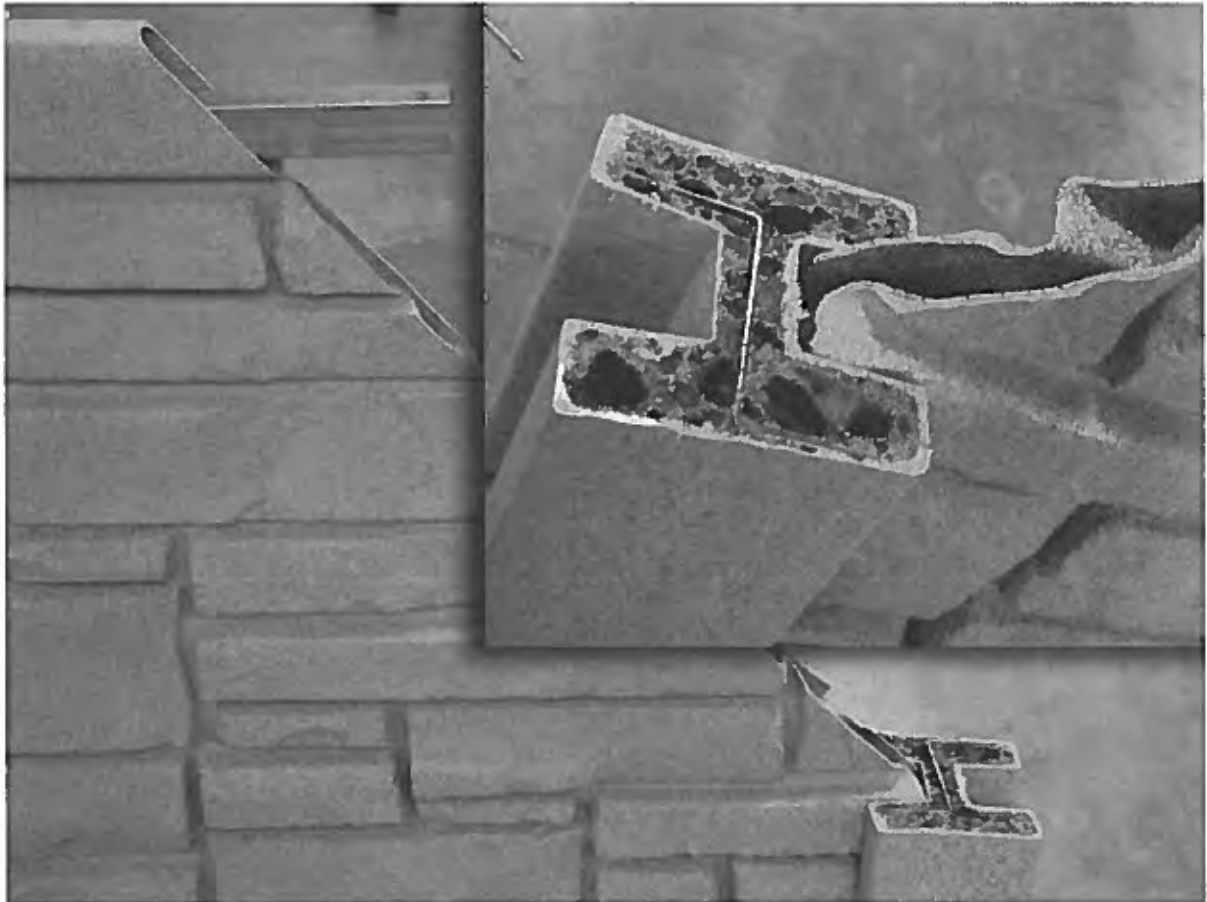
## **Sound Wall Approved**

Our simulated stone privacy fence is soundproof and approved with IDOT for use in various Department of Transportation projects. It costs significantly less than a traditional precast concrete sound wall and is available in 6', 8', 9', 12', or 16' tall variations. You can choose from 6 different color schemes, including brown, grey, beige, dark brown, desert, or black granite. We pre-build your wall and ship it directly to your work site, all backed by a lifetime warranty. You can also save by ordering an extra tall (12'-16') fence.



## **Lifetime Warranty**

Easy installation and a manufacturer's lifetime warranty make this investment one of the wisest and most rewarding you will ever make for your property. The galvanized steel substructure and unique product engineering make installation easy, offering a superior performance and look that will last a lifetime. These privacy fence sections will dramatically transform your space from ordinary to spectacular. This is likely the greatest visual change you could create on your property per dollar invested. It will draw praise and curiosity from the entire neighborhood.



## **Easy Installation**

We ship our SimTek Ecostone fence panels and simulated stone fence products to you pre-assembled which makes it very basic to install. Simply set your posts in the ground and attach your panels to the posts. Shipped factory direct to any address worldwide with A+ 24/7 installation support. Instead of owning another ordinary privacy fence, you can enhance your environment for only a few dollars more and enjoy it for a lifetime. Reward yourself and your family with the most beautiful fence available today.

**Our simulated stone fence has reinvented fence manufacturing with its patented rotationally molded design that produces a realistic stone appearance and superior performance.**

## **What Makes Our Products Different?**

Possibly the most beautiful manufactured privacy fence ever made!

- **Patented construction**

Made with proprietary Linear Low Density Polyethylene Plastic (LLDPE) and reinforced with galvanized steel.

- **Superior wind rating**

Can withstand constant hurricane force winds up to 110 mph and 130 mph gusts. Certified to Dade County, Florida hurricane requirements.

- **Excellent sound barrier**

Blocks 98% of direct sound with a sound transmission class (STC) rating of 26.

- **Durable in temperature extremes**

It is very stable in temperature extremes. Withstands tests at -40°F to 140°F.

- **Color options**

We offer 6 designer granite colors: brown, beige, grey, black, desert and dark brown.

- **Easy installation**

It is the most user-friendly fence on the market and we offer full installation instructions and support with each order.

- **Graffiti resistant**

Easily remove graffiti using a high-powered pressure washer.

- **Solid privacy and security**

It provides exceptional privacy and security for you and your family.

- **Lifetime warranty**

A maintenance-free solution. Our patented fence will never need painting or staining; nor will it warp, fade or crack.

- **A cost effective solution**

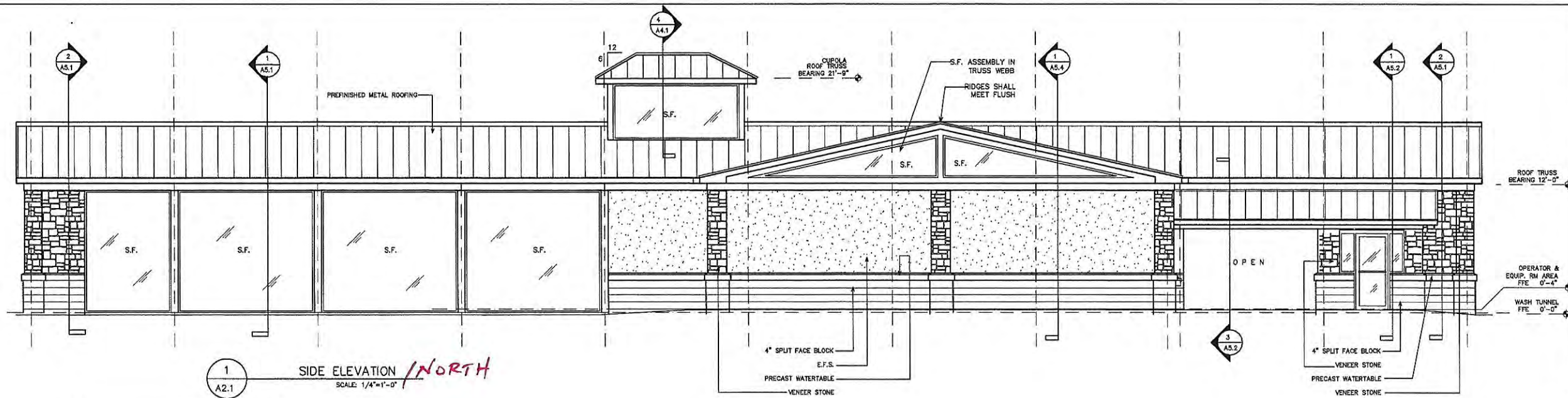
It offers a maintenance-free solution. Our patented fence will never need painting or staining; nor will it warp, fade or crack.

- **Made in the USA**

It is proudly made in the United States.

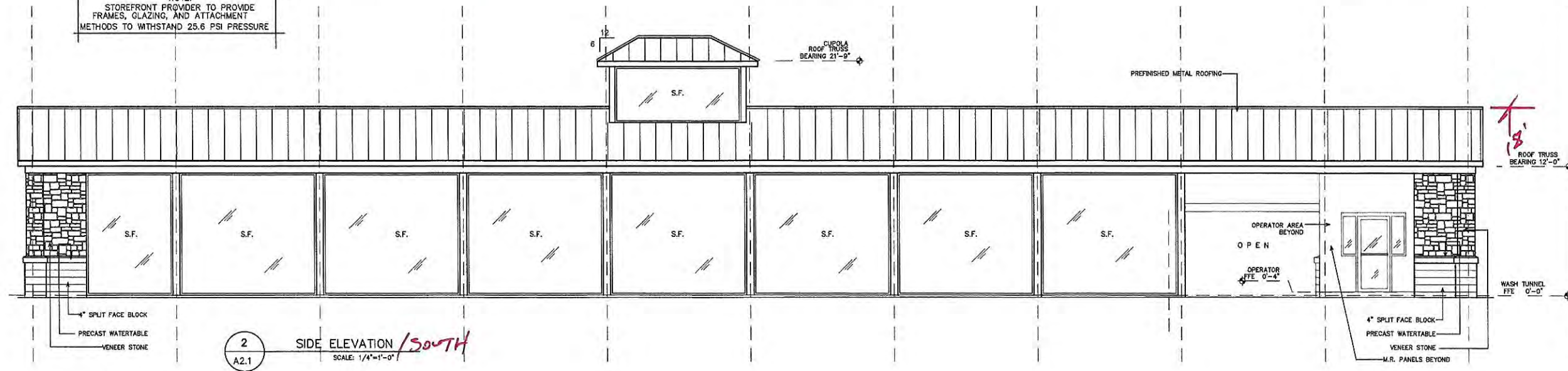
- **Fade resistant**

It contains xenon-arc 12 UV inhibitors for a lifetime of vibrant colors.

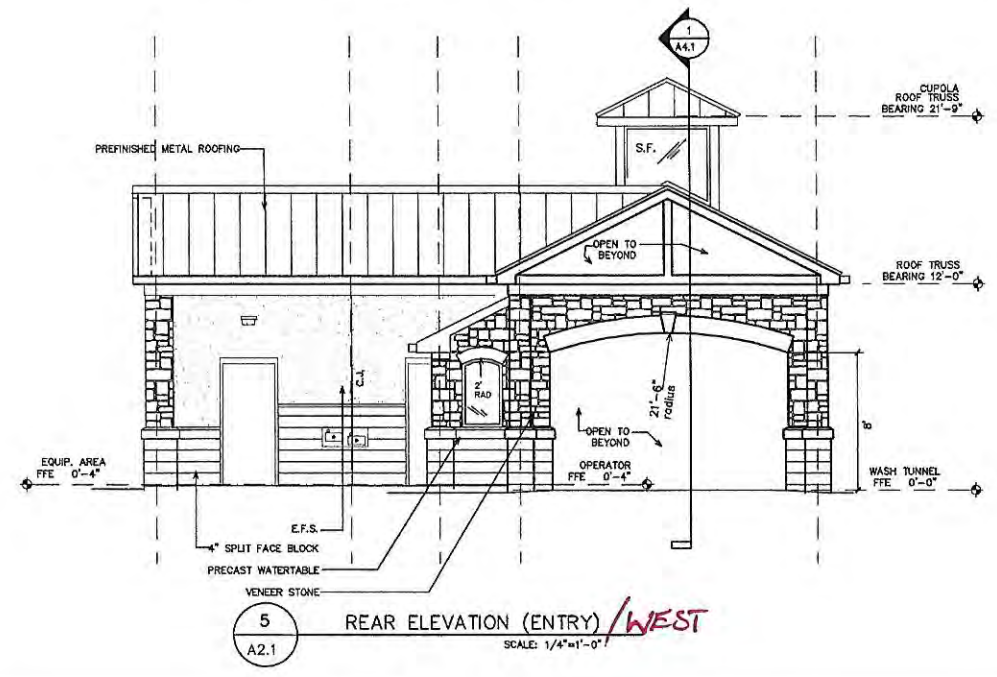


1 SIDE ELEVATION / NORTH  
SCALE: 1/4"=1'-0"

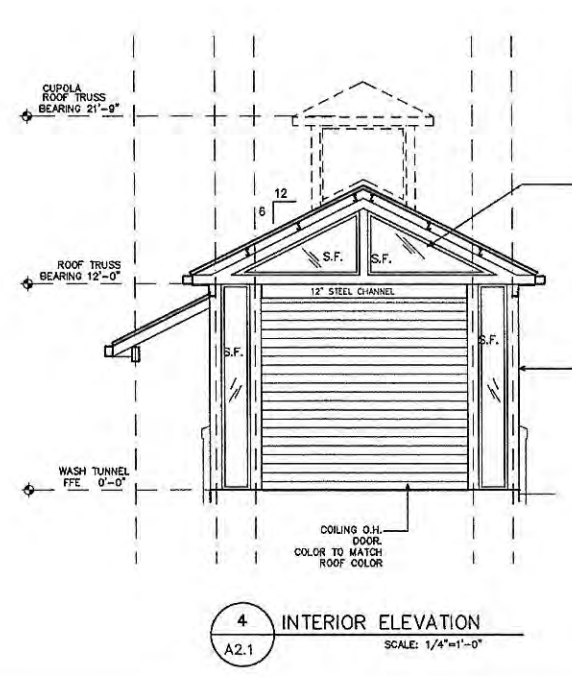
NOTE:  
STOREFRONT PROVIDER TO PROVIDE  
FRAMES, GLAZING, AND ATTACHMENT  
METHODS TO WITHSTAND 25.6 PSI PRESSURE



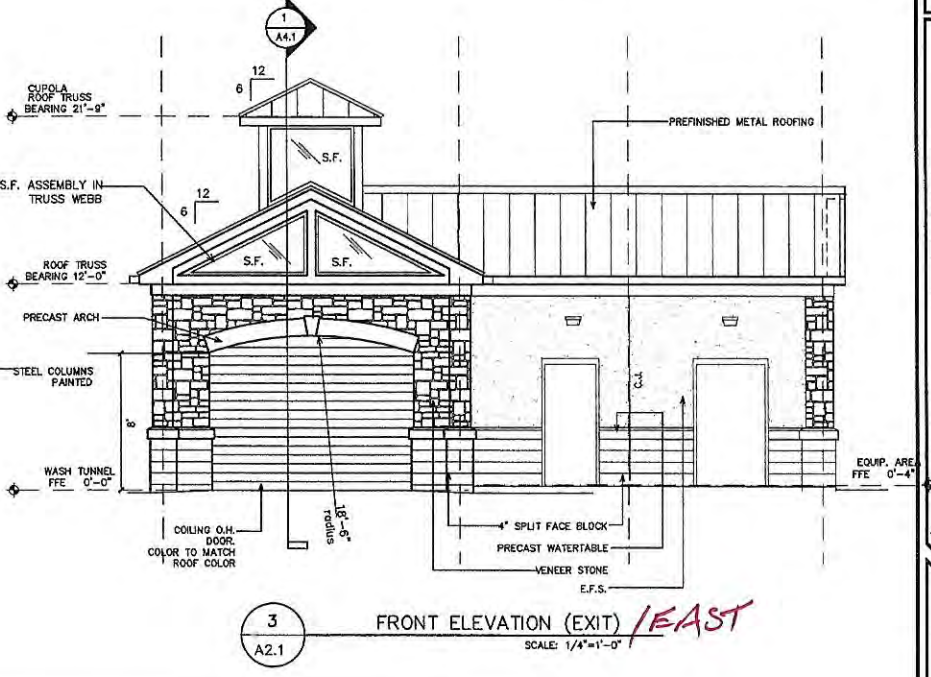
2 SIDE ELEVATION / SOUTH  
SCALE: 1/4"=1'-0"



5 REAR ELEVATION (ENTRY) / WEST  
SCALE: 1/4"=1'-0"



4 INTERIOR ELEVATION  
SCALE: 1/4"=1'-0"



3 FRONT ELEVATION (EXIT) / EAST  
SCALE: 1/4"=1'-0"

A NEW  
TIDAL WAVE AUTO SPA  
CAR WASH FACILITY  
PRAIRIE VILLAGE, KANSAS

APRIL 10, 2017

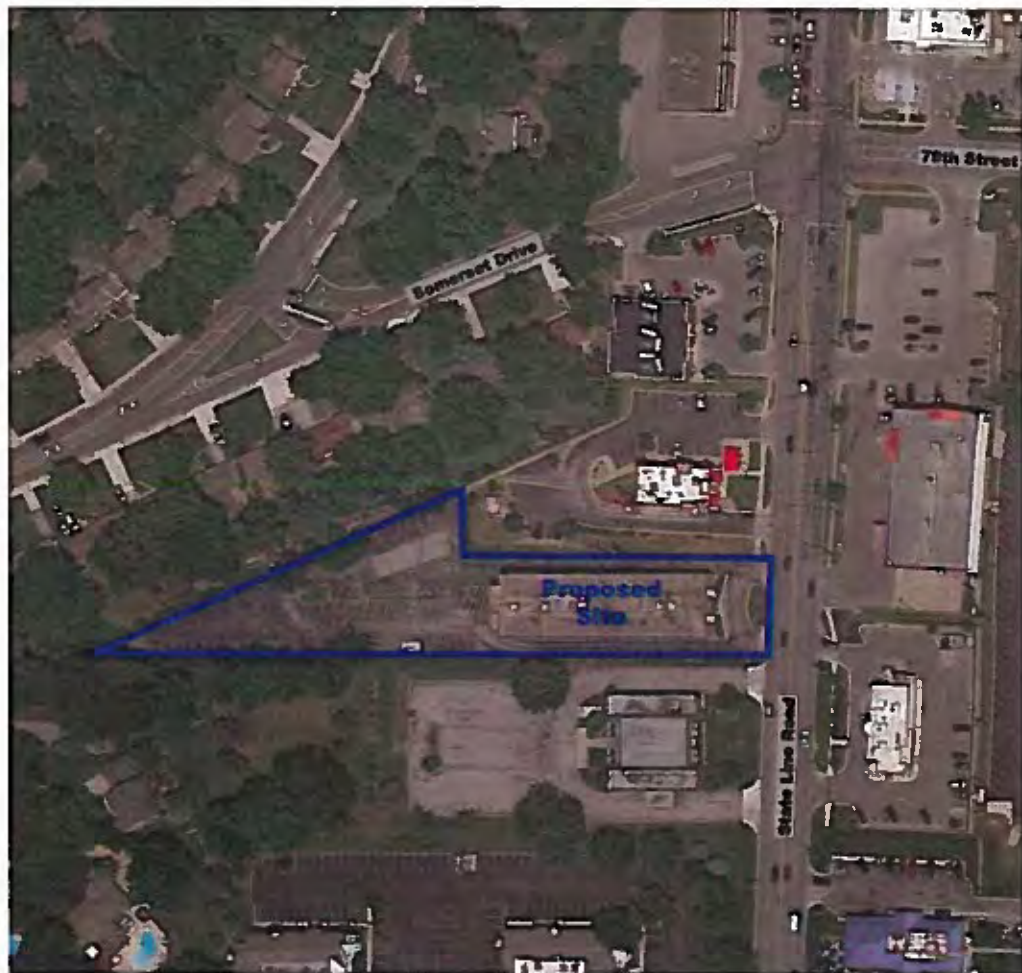
TIDAL WAVE  
A U T O S P A

SHEET:  
A2.1  
OF: 10



# Tidal Wave Auto Spa

TRAFFIC IMPACT STUDY



**7930 State Line Road  
Prairie Village, Kansas**

December  
2017



# Tidal Wave Auto Spa

# Traffic Impact Study

**December 2017**

I HEREBY CERTIFY THAT THIS REPORT WAS  
PREPARED BY ME OR UNDER MY DIRECT  
SUPERVISION, AND THAT I AM A DULY  
REGISTERED PROFESSIONAL ENGINEER EXISTING  
UNDER THE LAWS OF THE STATE OF KANSAS



David Karl Smalling, P.E., PTOE, ENV SP  
Kansas Professional Engineer 17969

# 1 Introduction

## Project Understanding

Tidal Wave Auto Spa is seeking a special use permit from the City of Prairie Village for the site located at 7930 State Line Road.

## Purpose and Scope of the Study

The purpose of this study is to assess the traffic impacts of the proposed Tidal Wave Auto Spa, located on the west side of State Line Road at 7930 State Line Road, Prairie Village, Kansas, on State Line Road.

Using trip generation and trip distribution, this study will review the expected operations at the intersection of the site's driveway and State Line Road to determine if any modifications are necessary to improve capacity. The PM peak hour of traffic will be analyzed.

# 2 Site Characteristics

## Land Use

- Existing – The existing property is 1.37 acres. It has a Land-Based Classification Standards (LBCS) Function of "General Office Building". There is a two-story office building that totals 23,924 square feet (SF). The building will be razed, as there are no plans for it to be used as part of the proposed site plan. See the Site Location Map in [Figure 1](#).
- Previously Proposed (2015) – The previously proposed Slim Chickens was a Fast-Food Restaurant with Drive-Through Window. That development consisted of 122 seats in a 4,235 SF restaurant.
- Proposed – The proposed development is an Automated Car Wash with one car wash tunnel. For the Site Plan, see [Figure 2](#).

## Site Plan Access

- Existing – The existing property has two 22' driveways adjacent to the north and south property lines. See the Site Location Map in [Figure 1](#).
- Proposed – One 36' driveway will be utilized along the north property line for entering and exiting movements. The proposed site has capacity to stack approximately 45 vehicles. See the Conceptual Site Plan in [Figure 2](#).

## Adjacent Roadway

State Line Road is a 4-lane undivided arterial with a posted 35-mph speed limit at the intersection of the site's driveway.

## Existing Traffic Count Data

Traffic counts were completed in June 2011 by the City of Kansas City, Missouri. The Traffic Count Data is shown in [Appendix A](#). As shown on Pages 9 and 10 of [Appendix A](#), the PM peak hour was observed to begin at 4:45 PM and end at 5:45 PM. There were 944 northbound vehicles and 976 southbound vehicles. The directional distribution is 49% northbound and 51% southbound.

### 3 Trip Generation and Distribution

#### ITE Trip Generation Data

The Institute of Transportation Engineers (ITE) compiles information submitted by its members regarding actual traffic counts taken at various development types and summarizes the information into a useful format to predict traffic volumes generated by future developments of similar type and size. This report, entitled Trip Generation Manual, is in its 10<sup>th</sup> edition and is one of the most widely used and accepted tools in projecting development trips.

The report contains sections of data collected at various development types during various times of the day, including the weekday PM peak hour. The data is summarized as an average rate and in graphical format as a plot of trips generated vs. various independent variables such as car wash tunnels, 1000 square feet gross floor area (GFA), or seats.

#### Trip Generation

For purposes of this study, the businesses will be classified with the following ITE land use codes and independent variable.

##### *Existing*

- Office Building, 710 "General Office Building", 23,924 SF
  - There were 32 data plots for "General Office Building" ranging from 5,260 to 511,000 SF with an average size of 114,000 SF. The existing building is 23,924 SF. This data was filtered to include 15 data plots ranging from 5,260 to 62,000 SF with an average size of 24,000 SF to more closely match the existing building.

##### *Previously Proposed*

- Slim Chickens, 934 "Fast-Food Rest. with Drive-Thru Window", 4235 SF or 122 seats

##### *Proposed*

- Tidal Wave Auto Spa, 948 "Automated Car Wash", 1 car wash tunnel

Regarding the previously proposed Slim Chickens, there are two variables (1000 SF and seats) for which the trips can be generated. The variable generating the fewest trips (seats) is the most conservative for this comparison.

Table 1 summarizes the trip ends produced for the weekday PM peak hour. See the trip generation data plot for each business in Appendix B.

<b>Table 1 - Trip Generation (Weekday PM Peak Hour)</b>							
<b>Business</b>	<b>Variable</b>	<b>Value</b>	<b>Avg. Trip Gen. Rate</b>	<b>Dir. Dist.</b>	<b>Trip Ends</b>		
					<b>Total</b>	<b>Entering</b>	<b>Exiting</b>
<b>Existing</b>							
Office	1000 SF	23.924	1.56	29/71	37	11	26
<b>Compared to Proposed</b>					<b>-41</b>	<b>-28</b>	<b>-13</b>
<b>Previously Proposed</b>							
Slim Chickens	1000 SF	4.235	32.67	52/48	138	72	66
Slim Chickens	Seats	122	0.97	53/47	118	63	55
<b>Compared to Proposed</b>					<b>40</b>	<b>24</b>	<b>16</b>
<b>Proposed</b>							
Tidal Wave	Tunnels	1	77.50	50/50	<b>78</b>	<b>39</b>	<b>39</b>

Table 1 indicates that 78 vehicle trips may be generated by the proposed Tidal Wave Auto Spa. The proposed use generates 41 more trips than the existing land use and 40 less trips than the previously proposed land use.

### **Trip Distribution**

The proposed site will only have one access point. As shown in Table 1, 39 vehicles will enter and 39 vehicles will exit the driveway during the weekday PM peak hour. Based on the traffic counts collected by Kansas City, Missouri in June 2011 (shown in Appendix A), the directional distribution is 49% northbound and 51% southbound. For the 39 vehicles entering the site, 20 vehicles will be making a southbound right turn and 19 vehicles will be making a northbound left turn. For the 39 vehicles exiting the site, 20 vehicles will turn right and head south on State Line Road and 19 will turn left and head north on State Line Road. See the Trip Distribution in Figure 3.

## **4 Conclusion**

Using trip generation and trip distribution, this study reviewed the expected operations at the Tidal Wave Auto Spa driveway at State Line Road to determine if any modifications are necessary.

As shown in Figure 3, there are nineteen (19) site generated vehicles expected to make a northbound left turn from State Line Road into Tidal Wave Auto Spa during the weekday PM peak hour. This averages to approximately one vehicle every three minutes. This provides ample time to find a gap in traffic to facilitate the turning movement. There are twenty (20) southbound vehicles entering the site. These vehicles are making a free-flowing right turn and are not anticipated to burden traffic flow. The proposed automotive spa also contains vehicle stacking for approximately 45 vehicles on site. This stacking length exceeds the total number of vehicles expected to be generated by the facility during the weekday PM peak hour.

As shown in Table 1, the proposed facility is expected to generate less trips than the previously proposed fast-food restaurant with drive-through window. Regardless of these comparisons, the number of vehicles expected to access Tidal Wave Auto Spa is low enough that no modifications to State Line Road are required.

# Figures



**Figure 1 – Site Location Map**

NO.	REVISION DESCRIPTION	BY	DATE

**CONCEPTUAL SITE PLAN**  
 Prepared for  
**PRAIRIE VILLAGE, KANSAS**  
 LAND LOT XXX, LAND DISTRICT XTH  
 SHJ CONSTRUCTION GROUP

**EMC ENGINEERING**  
 2875 MADISON ROAD SUITE 100  
 OMAHA, NE 68114  
 PHONE: (402) 426-8800  
 FAX: (402) 426-8801  
 WWW.EMCSERVICES.COM  
 emc@emcservices.com

PROJECT NO.: 120027  
 DRAWN BY: JAC  
 CHECKED BY: JAC  
 DATE: 11/11/10  
 SCALE: AS SHOWN  
 SHEET 1 OF 1



**SITE INFORMATION**  
 ADDRESS: 7TH STATE LINE ROAD PRAIRIE VILLAGE, KS  
 PROPERTY AREA: 1.81 AC  
 CURRENT ZONING: C-1  
 BUILDING SETBACKS:  
 FRONT: 10'  
 SIDE: 5'  
 REAR: 5'

**SITE AREAS**  
 EXISTING CONCRETE DRIVEWAY  
 LANDSCAPE AREA (S.A. AS SHOWN)  
 LANDSCAPE AREA (S.A. AS SHOWN)  
 LANDSCAPE AREA (S.A. AS SHOWN)  
 LANDSCAPE AREA (S.A. AS SHOWN)  
 LANDSCAPE AREA (S.A. AS SHOWN)

**PLANNING NOTE**  
 EXISTING DRIVEWAY TO BE REMOVED  
 2' SPACE FOR CONCRETE DRIVEWAY TO BE ADDED  
 1' SPACE FOR CONCRETE DRIVEWAY TO BE ADDED  
 1' SPACE FOR CONCRETE DRIVEWAY TO BE ADDED  
 PROPOSED NUMBER OF SPACES: 2

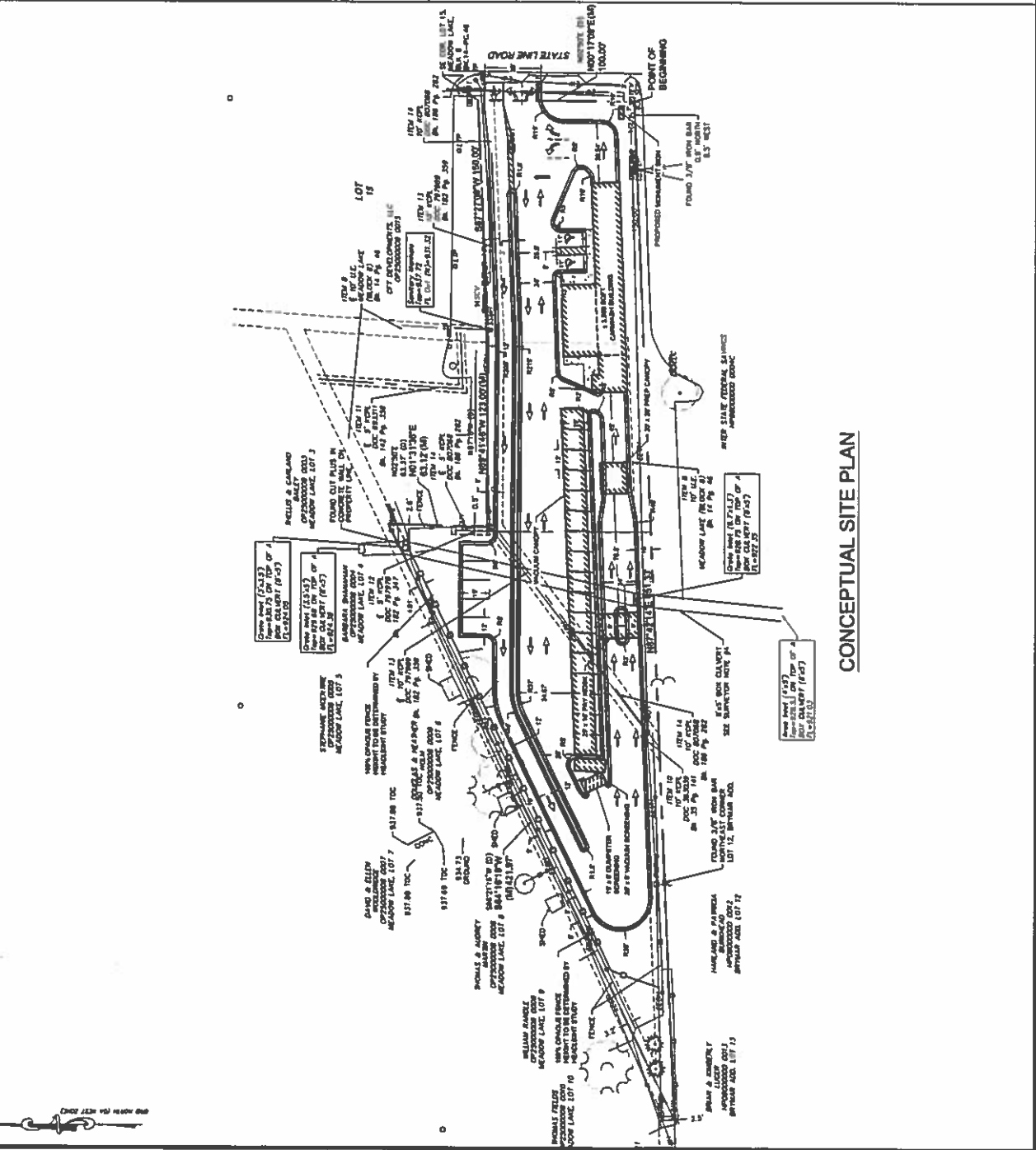


Figure 2 - Conceptual Site Plan



**Figure 3 – Trip Distribution**



---

# **Appendices**

# Appendix A - Traffic Count Data

## Kansas City Missouri Public Works 414 East 12th Street Kansas City, Mo. 64106

State Line Rd and W 79th St  
Weather: Clear Road: Dry  
Counted By: DG / JH / AP / SC  
3 Year Count Program

File Name : STATELINE79  
Site Code : 20005632  
Start Date : 6/21/2011  
Page No : 1

Start Time	STATE LINE RD Southbound										STATE LINE RD Northbound										W 79TH ST Westbound										W 79TH ST Eastbound									
	Right		Thru		Left		Peds		App Total		Right		Thru		Left		Peds		App Total		Right		Thru		Left		Peds		App Total		Right		Thru		Left		Peds		App Total	
06:00 AM	0	25	1	0	0	0	0	0	26	0	4	4	0	0	8	5	25	0	30	0	0	0	0	0	0	0	12	0	0	0	0	0	0	0	76	76				
06:15 AM	3	37	2	0	0	0	0	0	42	5	2	3	0	0	10	5	32	1	38	1	9	4	0	0	0	0	14	0	0	0	0	0	0	0	104	104				
06:30 AM	3	65	2	0	0	0	0	0	70	4	4	13	0	0	21	7	58	1	66	1	10	4	0	0	0	0	15	0	0	0	0	0	0	0	172	172				
06:45 AM	2	82	2	0	0	0	0	0	86	1	4	6	0	0	11	14	82	3	99	0	19	3	0	0	0	0	22	0	0	0	0	0	0	0	218	218				
<b>Total</b>	<b>8</b>	<b>209</b>	<b>7</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>224</b>	<b>10</b>	<b>14</b>	<b>26</b>	<b>0</b>	<b>0</b>	<b>50</b>	<b>31</b>	<b>197</b>	<b>5</b>	<b>233</b>	<b>2</b>	<b>47</b>	<b>14</b>	<b>0</b>	<b>0</b>	<b>63</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>570</b>	<b>570</b>						
07:00 AM	3	92	2	1	0	0	0	0	97	2	3	14	0	0	19	23	84	3	110	1	16	2	0	0	0	19	1	1	0	0	0	0	0	245	246					
07:15 AM	1	113	6	0	0	0	0	0	120	2	10	9	0	0	21	31	130	2	163	3	18	6	0	0	0	27	0	0	0	0	0	0	0	331	331					
07:30 AM	4	190	5	0	0	0	0	0	199	0	6	24	0	0	30	32	132	8	172	2	39	9	0	0	0	50	0	0	0	0	0	0	0	451	451					
07:45 AM	1	201	15	0	0	0	0	0	217	1	13	18	0	0	32	31	155	2	188	4	58	6	0	0	0	68	0	0	0	0	0	0	0	505	505					
<b>Total</b>	<b>9</b>	<b>596</b>	<b>28</b>	<b>1</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>633</b>	<b>5</b>	<b>32</b>	<b>65</b>	<b>0</b>	<b>0</b>	<b>102</b>	<b>117</b>	<b>501</b>	<b>15</b>	<b>633</b>	<b>10</b>	<b>131</b>	<b>23</b>	<b>0</b>	<b>164</b>	<b>1</b>	<b>1</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>1532</b>	<b>1533</b>							
08:00 AM	5	159	7	0	0	0	0	0	171	1	3	11	0	0	15	34	143	2	179	6	43	9	0	0	58	0	0	0	0	0	0	0	423	423						
08:15 AM	3	174	11	0	0	0	0	0	188	0	6	19	0	0	25	30	133	3	166	4	73	13	0	0	90	0	0	0	0	0	0	0	469	469						
08:30 AM	2	154	0	0	0	0	0	0	162	3	5	3	0	0	11	32	141	5	178	2	24	6	0	0	32	0	0	0	0	0	0	0	383	383						
08:45 AM	0	142	3	0	0	0	0	0	145	3	8	12	0	0	23	28	152	11	191	8	37	5	0	0	50	0	0	0	0	0	0	0	409	409						
<b>Total</b>	<b>10</b>	<b>629</b>	<b>27</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>666</b>	<b>7</b>	<b>22</b>	<b>45</b>	<b>0</b>	<b>0</b>	<b>74</b>	<b>124</b>	<b>569</b>	<b>21</b>	<b>714</b>	<b>20</b>	<b>177</b>	<b>33</b>	<b>0</b>	<b>230</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>1684</b>	<b>1684</b>							
09:00 AM	3	145	10	0	0	0	0	0	158	3	10	13	0	0	26	22	119	5	146	9	39	13	0	0	61	0	0	0	0	0	0	0	391	391						
09:15 AM	2	130	7	0	0	0	0	0	139	1	7	5	0	0	13	36	129	12	177	7	27	9	0	0	43	1	1	0	0	0	0	0	372	372						
09:30 AM	3	139	4	0	0	0	0	0	146	6	3	6	1	0	15	32	138	4	174	3	30	6	0	0	39	1	1	0	0	0	0	0	374	375						
09:45 AM	7	116	11	0	0	0	0	0	134	7	19	16	0	0	42	9	136	12	157	9	34	6	0	0	49	0	0	0	0	0	0	0	382	382						
<b>Total</b>	<b>15</b>	<b>530</b>	<b>32</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>577</b>	<b>17</b>	<b>39</b>	<b>40</b>	<b>1</b>	<b>0</b>	<b>96</b>	<b>99</b>	<b>522</b>	<b>33</b>	<b>654</b>	<b>28</b>	<b>130</b>	<b>34</b>	<b>0</b>	<b>192</b>	<b>2</b>	<b>1</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>1519</b>	<b>1521</b>							
10:00 AM	5	136	9	0	0	0	0	0	150	0	6	8	1	0	14	11	113	8	132	18	33	11	0	0	62	1	1	0	0	0	0	0	358	359						
10:15 AM	5	131	7	0	0	0	0	0	143	3	1	1	0	0	5	23	123	13	159	11	38	14	1	0	63	2	2	0	0	0	0	0	370	372						
10:30 AM	2	134	5	0	0	0	0	0	141	0	0	0	0	0	0	36	117	7	160	9	27	6	1	0	42	1	1	0	0	0	0	0	343	344						
10:45 AM	3	133	7	1	0	0	0	0	143	0	3	0	0	0	3	25	136	18	179	14	20	3	0	0	37	1	1	0	0	0	0	0	362	363						
<b>Total</b>	<b>15</b>	<b>534</b>	<b>28</b>	<b>1</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>577</b>	<b>3</b>	<b>10</b>	<b>9</b>	<b>1</b>	<b>0</b>	<b>22</b>	<b>95</b>	<b>489</b>	<b>46</b>	<b>630</b>	<b>52</b>	<b>118</b>	<b>34</b>	<b>2</b>	<b>204</b>	<b>5</b>	<b>1</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>1433</b>	<b>1438</b>							
11:00 AM	2	144	8	0	0	0	0	0	154	0	0	0	0	0	0	22	134	9	165	8	16	10	0	0	34	0	0	0	0	0	0	0	353	353						
11:15 AM	1	139	9	0	0	0	0	0	149	3	2	0	0	0	5	30	126	10	166	8	34	7	0	0	49	1	1	0	0	0	0	0	369	370						
11:30 AM	3	165	12	2	0	0	0	0	180	0	5	4	0	0	9	21	183	10	214	6	26	9	2	0	41	5	5	0	0	0	0	0	444	449						
11:45 AM	8	146	23	0	0	0	0	0	177	1	2	5	0	0	8	31	201	22	254	6	26	12	0	0	44	0	0	0	0	0	0	0	483	483						
<b>Total</b>	<b>14</b>	<b>594</b>	<b>52</b>	<b>2</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>660</b>	<b>4</b>	<b>9</b>	<b>9</b>	<b>0</b>	<b>0</b>	<b>22</b>	<b>104</b>	<b>644</b>	<b>51</b>	<b>799</b>	<b>28</b>	<b>102</b>	<b>38</b>	<b>2</b>	<b>168</b>	<b>6</b>	<b>1</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>1649</b>	<b>1655</b>								
12:00 PM	2	172	20	0	0	0	0	0	194	12	5	12	0	0	29	35	164	11	210	13	37	15	0	0	65	0	0	0	0	0	0	0	498	498						
12:15 PM	7	167	17	0	0	0	0	0	191	3	8	15	0	0	26	33	193	13	239	11	43	10	0	0	64	0	0	0	0	0	0	0	520	520						
12:30 PM	4	183	9	0	0	0	0	0	196	5	15	7	0	0	27	39	171	8	218	8	30	6	0	0	44	0	0	0	0	0	0	0	485	485						
12:45 PM	5	151	7	0	0	0	0	0	163	3	2	4	0	0	9	34	168	15	217	12	41	8	0	0	61	0	0	0	0	0	0	0	450	450						
<b>Total</b>	<b>18</b>	<b>673</b>	<b>53</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>744</b>	<b>23</b>	<b>30</b>	<b>38</b>	<b>0</b>	<b>0</b>	<b>91</b>	<b>141</b>	<b>696</b>	<b>47</b>	<b>884</b>	<b>44</b>	<b>151</b>	<b>39</b>	<b>0</b>	<b>234</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>1953</b>	<b>1953</b>								

# Appendix A - Traffic Count Data

## Kansas City Missouri Public Works 414 East 12th Street Kansas City, Mo. 64106

File Name : STATELINE79  
Site Code : 20005632  
Start Date : 6/21/2011  
Page No : 2

State Line Rd and W 79th St  
Weather: Clear Road: Dry  
Counted By: DG / JH / AP / SC  
3 Year Count Program

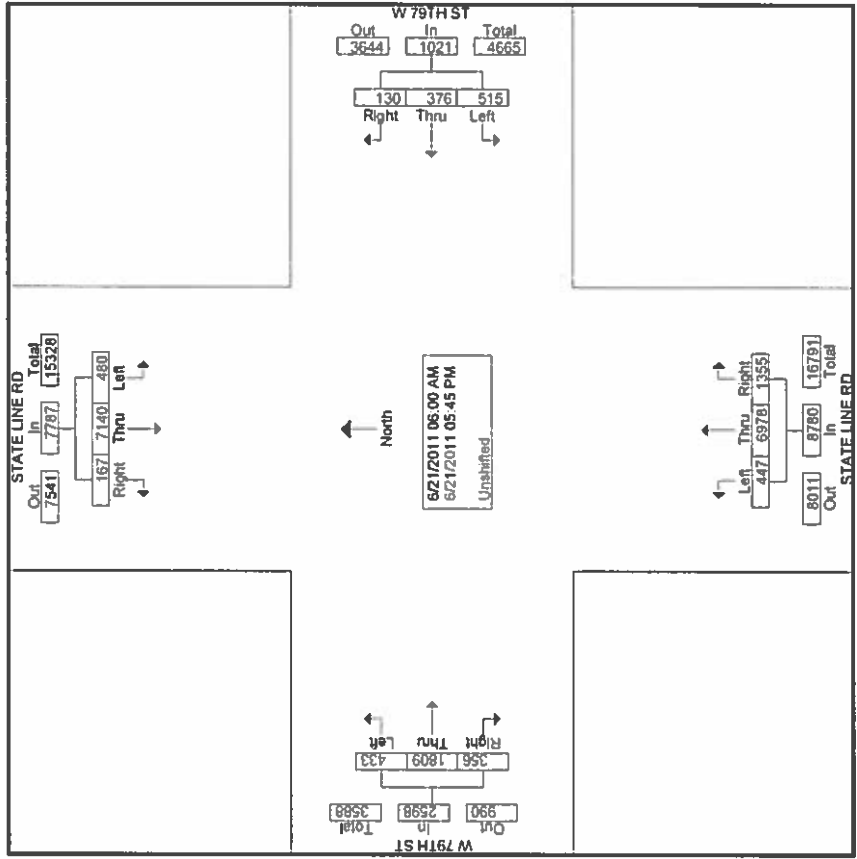
Start Time	Groups Printed - Unshifted																						
	STATE LINE RD Southbound						STATE LINE RD Northbound						W 79TH ST Eastbound										
	Right	Thru	Left	Peds	App. Total	App. Total	Right	Thru	Left	Peds	App. Total	App. Total	Right	Thru	Left	Peds	App. Total	App. Total	Inch. Total	Int. Total			
01:00 PM	5	162	5	0	172	3	9	22	0	34	35	172	16	0	223	16	55	7	0	78	0	507	507
01:15 PM	5	175	10	0	190	0	5	7	0	12	39	169	11	1	219	3	39	9	0	51	1	472	473
01:30 PM	1	154	9	0	164	4	9	11	0	24	34	163	9	3	206	3	34	8	0	-45	3	439	442
01:45 PM	8	131	6	3	145	1	9	3	0	13	30	186	10	0	226	5	29	6	0	-40	3	424	427
Total	19	622	30	3	671	8	32	43	0	83	138	690	46	4	874	27	157	30	0	214	7	1842	1849
02:00 PM	2	134	10	0	146	0	3	11	0	14	27	146	7	0	180	17	37	9	0	63	0	403	403
02:15 PM	0	140	9	0	149	1	15	8	0	24	32	159	7	0	198	10	49	7	0	66	0	437	437
02:30 PM	3	107	10	0	120	1	6	8	0	15	16	171	9	0	196	11	50	7	0	68	0	399	399
02:45 PM	2	128	8	0	138	1	0	4	0	5	24	148	8	0	180	2	23	3	1	28	1	351	352
Total	7	509	37	0	553	3	24	31	0	58	99	624	31	0	754	40	159	26	1	225	1	1590	1591
03:00 PM	3	169	4	1	176	5	7	12	0	24	45	175	10	0	230	4	45	10	0	59	1	489	490
03:15 PM	2	187	12	0	201	0	4	14	0	18	29	161	4	0	194	7	25	13	0	45	0	458	458
03:30 PM	9	147	16	0	172	2	12	17	0	31	25	152	9	0	186	9	31	8	0	48	0	437	437
03:45 PM	1	155	6	0	162	10	22	14	2	46	37	159	13	0	209	5	27	10	0	42	2	459	461
Total	15	658	38	1	711	17	45	57	2	119	136	647	36	0	819	25	128	41	0	194	3	1843	1846
04:00 PM	6	195	12	0	213	1	5	4	0	10	25	148	12	0	185	9	49	16	0	74	0	482	482
04:15 PM	8	180	17	0	205	3	11	15	0	29	30	148	11	0	189	4	38	9	0	51	0	474	474
04:30 PM	2	193	15	0	210	3	18	20	0	41	32	157	34	0	223	7	54	28	0	89	0	563	563
04:45 PM	4	214	24	0	242	7	15	33	0	55	20	164	22	0	206	19	115	14	0	148	0	651	651
Total	20	782	68	0	870	14	49	72	0	135	107	617	79	0	803	39	256	67	0	362	0	2170	2170
05:00 PM	6	195	26	0	227	4	14	27	0	45	43	175	15	0	233	8	51	20	0	79	0	584	584
05:15 PM	2	217	19	0	238	6	11	21	0	38	39	184	9	0	232	8	74	15	0	97	0	605	605
05:30 PM	3	210	19	1	232	9	26	12	0	47	49	221	3	1	273	12	69	12	0	93	2	645	647
05:45 PM	6	182	16	0	204	0	19	20	0	39	33	202	10	1	245	13	59	7	0	79	1	567	568
Total	17	804	80	1	901	19	70	80	0	169	164	782	37	2	983	41	253	54	0	348	3	2401	2404
Grand Total	167	7140	480	9	7787	130	376	515	4	1021	1355	6978	447	10	8780	356	1809	433	5	2598	28	20186	20214
Approach %	2.1	91.7	6.2			12.7	36.8	50.4			15.4	79.5	5.1			13.7	69.6	16.7					
Total %	0.8	35.4	2.4			0.6	1.9	2.6		5.1	6.7	34.6	2.2		43.5	1.8	9	2.1		12.9	0.1	99.9	

# Appendix A - Traffic Count Data

File Name : STATELINE79  
 Site Code : 20005632  
 Start Date : 6/21/2011  
 Page No : 3

Kansas City Missouri Public Works  
 414 East 12th Street  
 Kansas City, Mo. 64106

State Line Rd and W 79th St  
 Weather: Clear Road: Dry  
 Counted By: DG / JH / AP / SC  
 3 Year Count Program

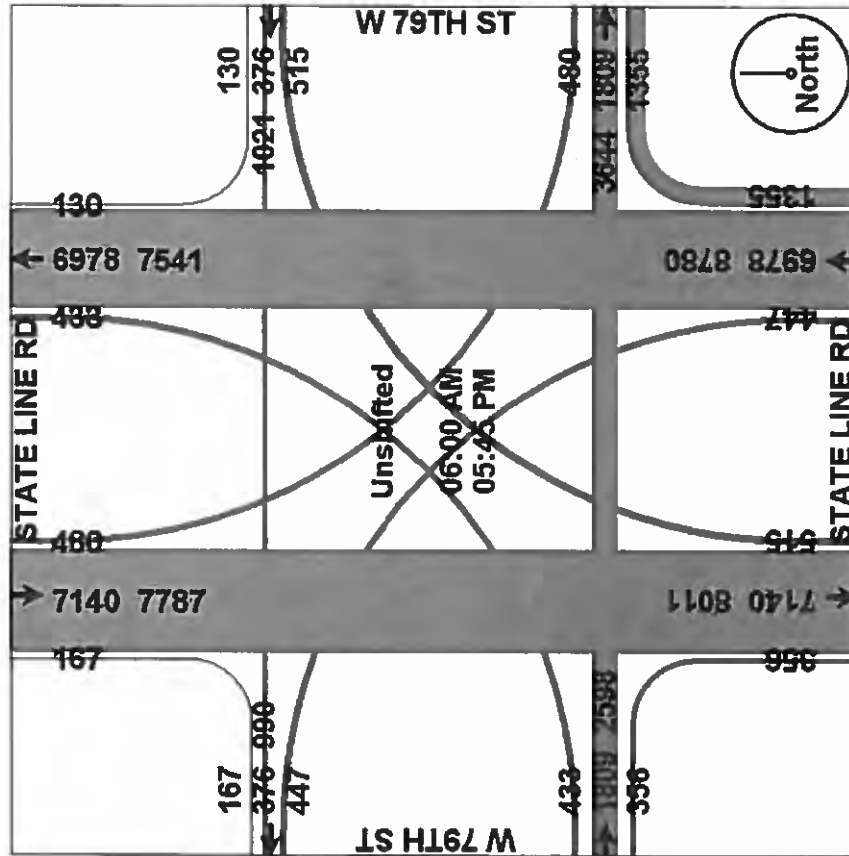


# Appendix A - Traffic Count Data

File Name : STATELINE79  
 Site Code : 20005632  
 Start Date : 6/21/2011  
 Page No : 4

Kansas City Missouri Public Works  
 414 East 12th Street  
 Kansas City, Mo. 64106

State Line Rd and W 79th St  
 Weather: Clear Road: Dry  
 Counted By: DG / JH / AP / SC  
 3 Year Count Program



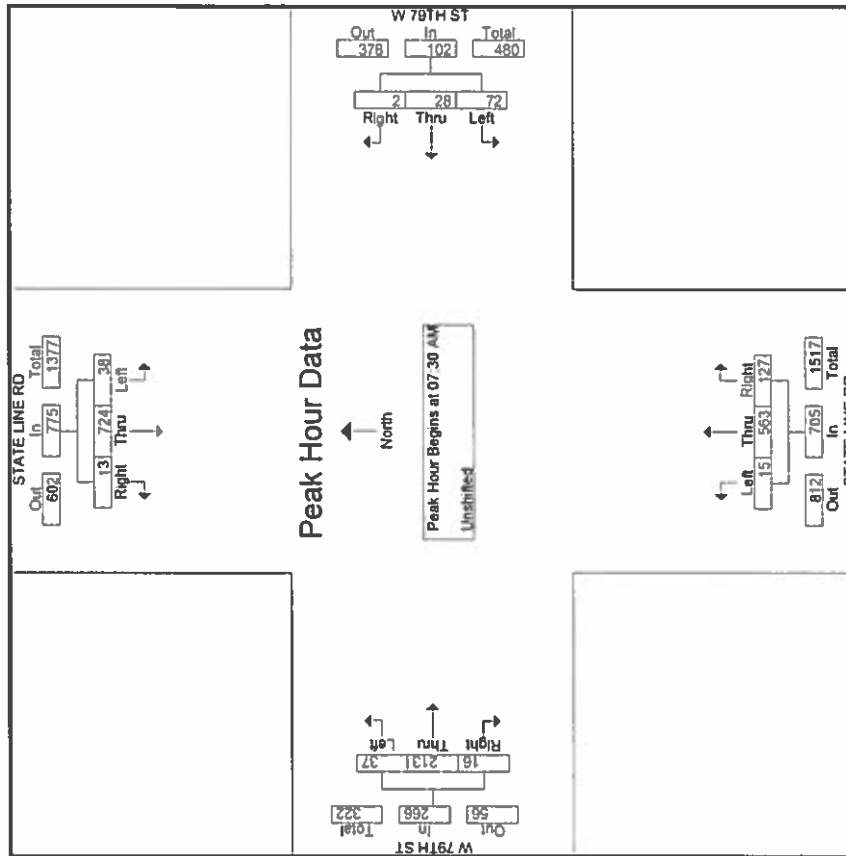


# Appendix A - Traffic Count Data

File Name : STATELINE79  
 Site Code : 20005632  
 Start Date : 6/21/2011  
 Page No : 6

Kansas City Missouri Public Works  
 414 East 12th Street  
 Kansas City, Mo. 64106

State Line Rd and W 79th St  
 Weather: Clear Road: Dry  
 Counted By: DG / JH / AP / SC  
 3 Year Count Program



# Appendix A - Traffic Count Data

## Kansas City Missouri Public Works 414 East 12th Street Kansas City, Mo. 64106

State Line Rd and W 79th St  
Weather: Clear Road: Dry  
Counted By: DG / JH / AP / SC  
3 Year Count Program

File Name : STATELINE79  
Site Code : 20005632  
Start Date : 6/21/2011  
Page No : 7

Start Time	STATE LINE RD Southbound				W 79TH ST Westbound				STATE LINE RD Northbound				W 79TH ST Eastbound			
	Right	Thru	Left	App. Total	Right	Thru	Left	App. Total	Right	Thru	Left	App. Total	Right	Thru	Left	App. Total
Peak Hour Analysis From 10:00 AM to 01:45 PM - Peak 1 of 1																
Peak Hour for Entire Intersection Begins at 11:45 AM																
11:45 AM	8	146	23	177	1	2	5	8	31	201	22	254	6	26	12	44
12:00 PM	2	172	20	194	12	5	12	29	35	164	11	210	13	37	15	65
12:15 PM	7	167	17	191	3	8	15	26	33	193	13	239	11	43	10	64
12:30 PM	4	183	9	196	5	15	7	27	39	171	8	218	8	30	6	44
Total Volume	21	668	69	758	21	30	39	90	138	729	54	921	38	136	43	217
% App. Total	2.8	88.1	9.1		23.3	33.3	43.3		15	79.2	5.9		17.5	62.7	19.8	
PHF	.656	913	.750	.967	.438	500	.650	.776	.885	907	.614	.906	.731	791	.717	.835

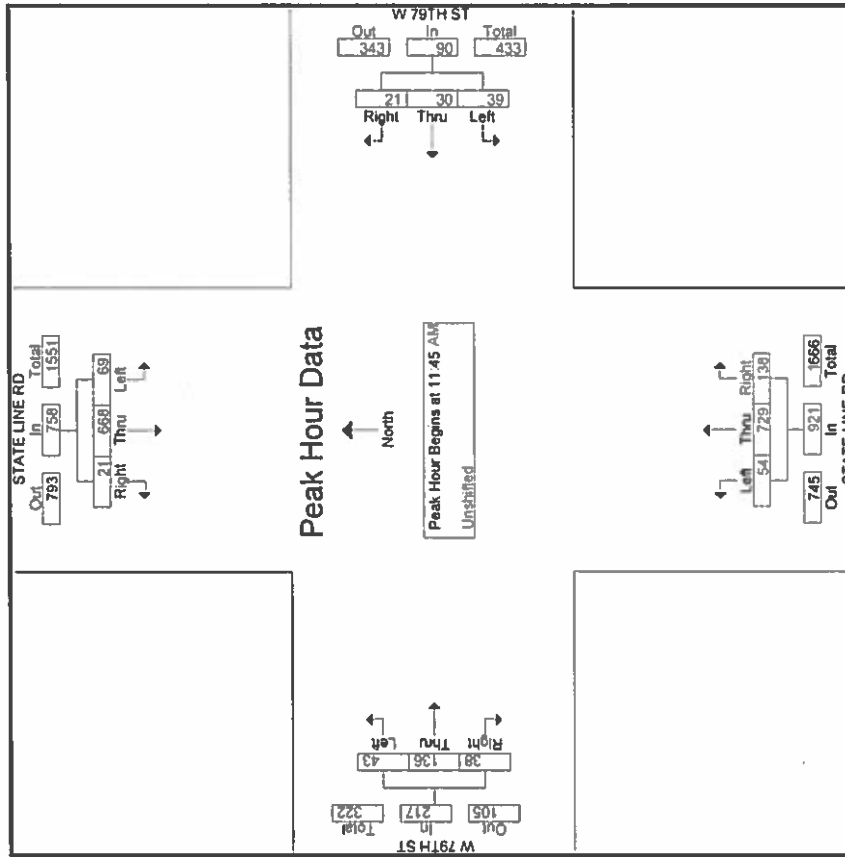


# Appendix A - Traffic Count Data

File Name : STATELINE79  
 Site Code : 20005632  
 Start Date : 6/21/2011  
 Page No : 8

Kansas City Missouri Public Works  
 414 East 12th Street  
 Kansas City, Mo. 64106

State Line Rd and W 79th St  
 Weather: Clear Road: Dry  
 Counted By: DG / JH / AP / SC  
 3 Year Count Program



# Appendix A - Traffic Count Data

## Kansas City Missouri Public Works 414 East 12th Street Kansas City, Mo. 64106

State Line Rd and W 79th St  
Weather: Clear Road: Dry  
Counted By: DG / JH / AP / SC  
3 Year Count Program

File Name : STATELINE79  
Site Code : 20005632  
Start Date : 6/21/2011  
Page No : 9

Start Time	STATE LINE RD Southbound			W 79TH ST Westbound			STATE LINE RD Northbound			W 79TH ST Eastbound			Int Total
	Right	Thru	Left	Right	Thru	Left	Right	Thru	Left	Right	Thru	Left	
04:45 PM	4	214	24	7	15	33	20	164	22	19	115	14	651
05:00 PM	6	195	26	4	14	27	43	175	15	8	51	20	584
05:15 PM	2	217	19	6	11	21	39	184	9	8	74	15	605
05:30 PM	3	210	19	9	26	12	49	221	3	12	69	12	645
Total Volume	15	836	88	26	66	93	185	744	49	47	309	61	2485
% App. Total	1.6	89	9.4	14.1	35.7	50.3	16	78.8	5.2	11.3	74.1	14.6	954
PHF	.625	963	.846	.722	615	.705	.841	.770	.557	.618	.672	.763	704

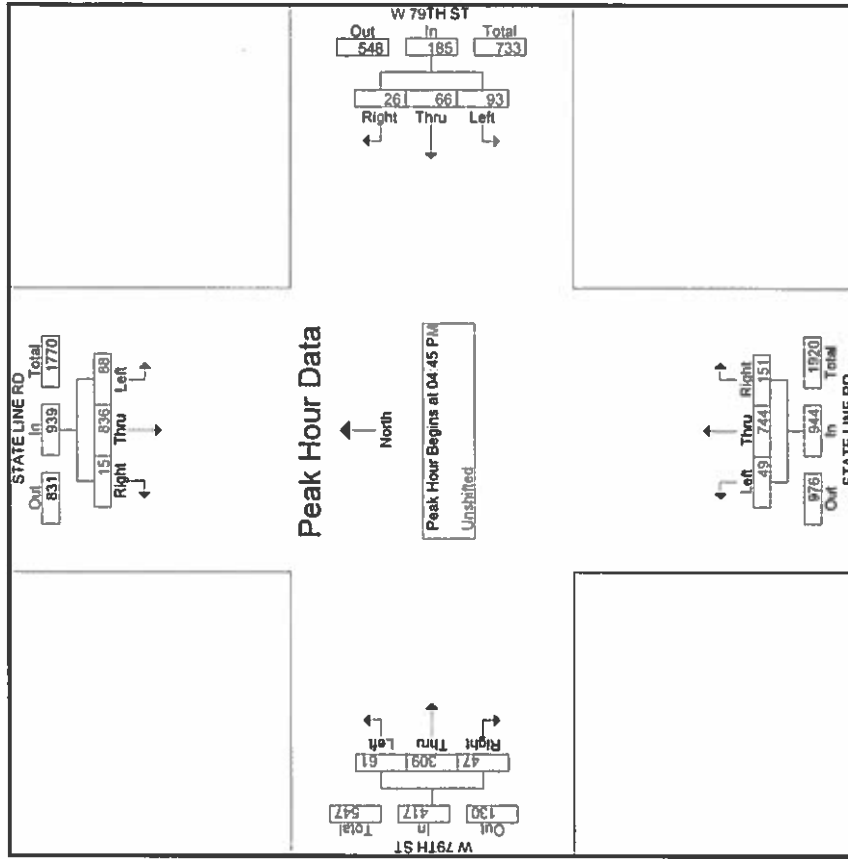
Peak Hour Analysis From 02:00 PM to 05:45 PM - Peak 1 of 1  
Peak Hour for Entire Intersection Begins at 04:45 PM

# Appendix A - Traffic Count Data

File Name : STATELINE79  
 Site Code : 20005632  
 Start Date : 6/21/2011  
 Page No : 10

Kansas City Missouri Public Works  
 414 East 12th Street  
 Kansas City, Mo. 64106

State Line Rd and W 79th St  
 Weather: Clear Road: Dry  
 Counted By: DG / JH / AP / SC  
 3 Year Count Program



## General Office Building (710)

**Vehicle Trip Ends vs:** 1000 Sq. Ft. GFA  
**On a:** Weekday,  
 Peak Hour of Adjacent Street Traffic,  
 One Hour Between 4 and 6 p.m.  
**Setting/Location:** General Urban/Suburban  
 Number of Studies: 15 out of 32  
 Avg. 1000 Sq. Ft. GFA: 24  
 Directional Distribution: 29% entering , 71% exiting

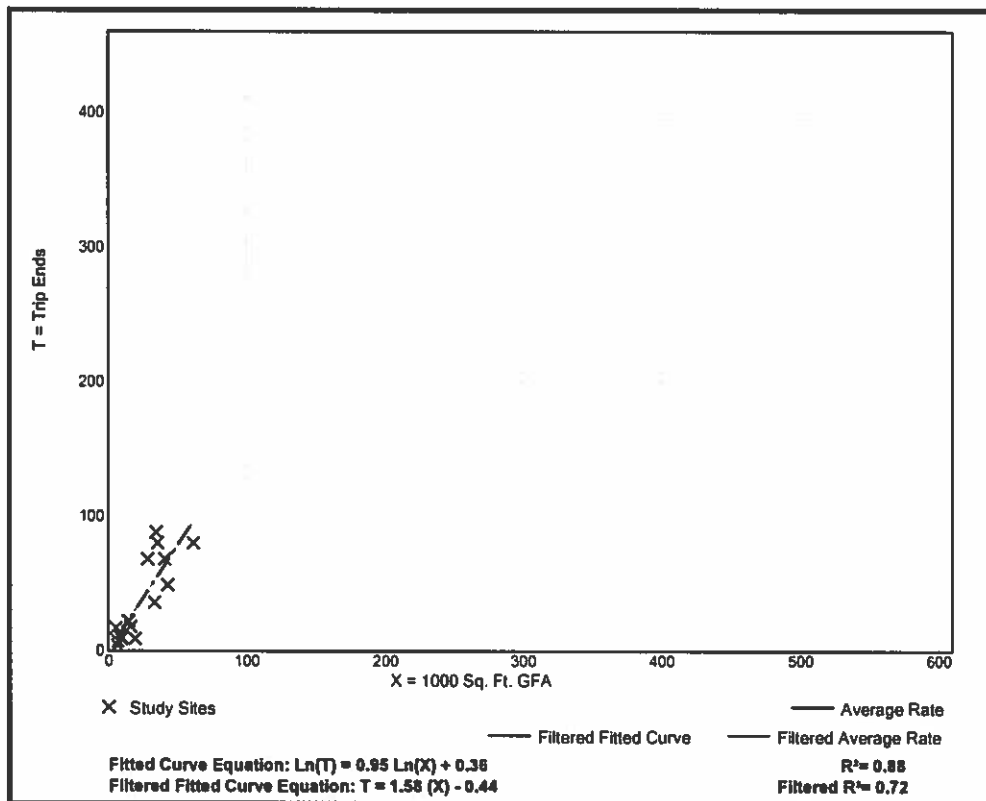
### Vehicle Trip Generation per 1000 Sq. Ft. GFA

Average Rate	Range of Rates	Standard Deviation
1.56	0.47 - 3.23	0.65

Data Filtered By: [IV Value: 5.26-62]

### Data Plot and Equation

*Caution – Filtered Data Set*



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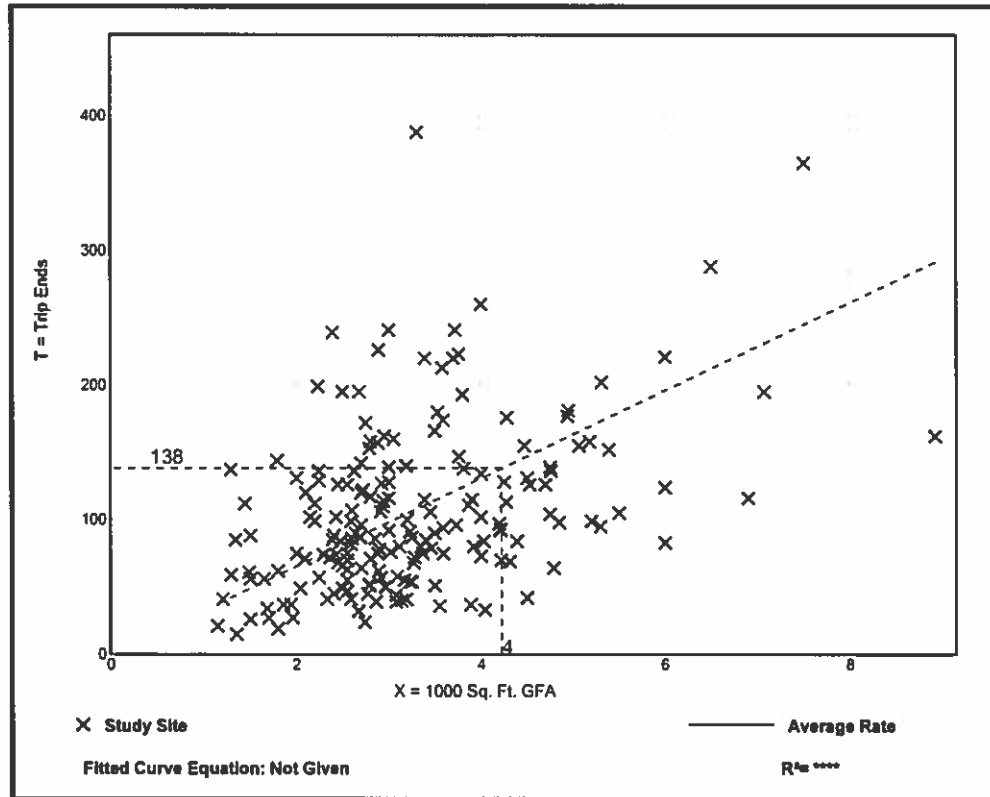
## Fast-Food Restaurant with Drive-Through Window (934)

**Vehicle Trip Ends vs: 1000 Sq. Ft. GFA**  
**On a: Weekday,**  
**Peak Hour of Adjacent Street Traffic,**  
**One Hour Between 4 and 6 p.m.**  
**Setting/Location: General Urban/Suburban**  
 Number of Studies: 185  
 Avg. 1000 Sq. Ft. GFA: 3  
 Directional Distribution: 52% entering, 48% exiting

### Vehicle Trip Generation per 1000 Sq. Ft. GFA

Average Rate	Range of Rates	Standard Deviation
32.67	8.17 - 117.22	17.87

### Data Plot and Equation



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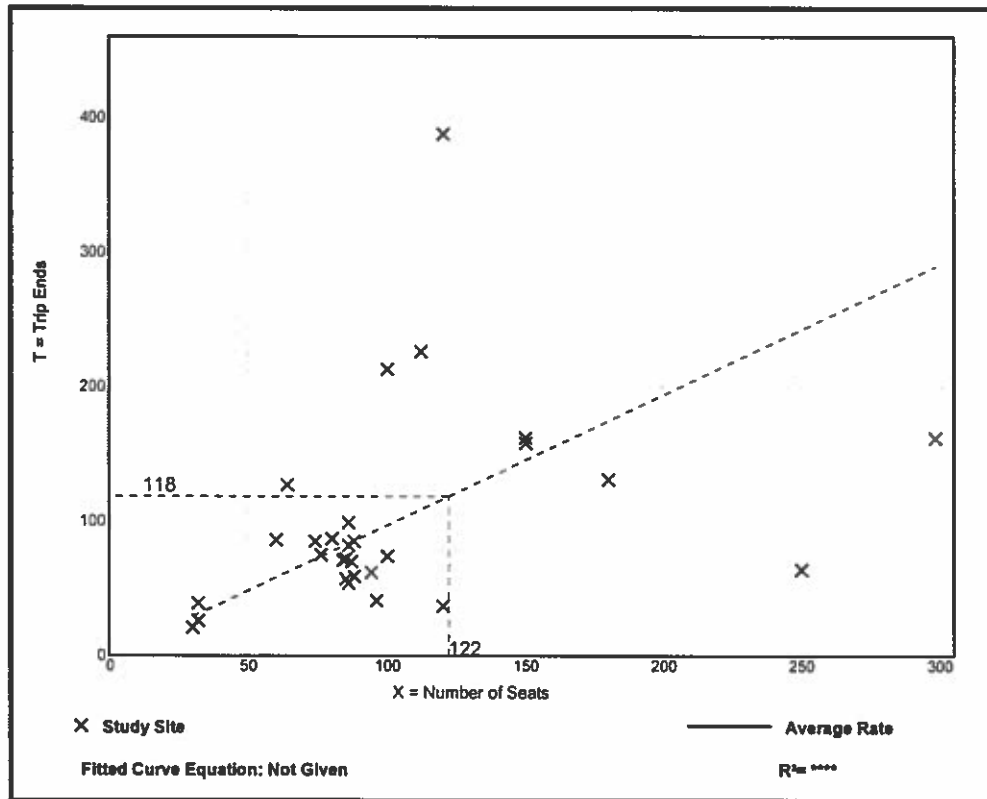
### Fast-Food Restaurant with Drive-Through Window (934)

Vehicle Trip Ends vs: **Seats**  
 On a: **Weekday,**  
**Peak Hour of Adjacent Street Traffic,**  
**One Hour Between 4 and 6 p.m.**  
 Setting/Location: **General Urban/Suburban**  
 Number of Studies: 29  
 Avg. Num. of Seats: 103  
 Directional Distribution: 53% entering, 47% exiting

**Vehicle Trip Generation per Seat**

Average Rate	Range of Rates	Standard Deviation
0.97	0.26 - 3.23	0.67

**Data Plot and Equation**



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## Automated Car Wash (948)

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**Vehicle Trip Ends vs: Car Wash Tunnels**  
**On a: Weekday,**  
**Peak Hour of Adjacent Street Traffic,**  
**One Hour Between 4 and 6 p.m.**  
**Setting/Location: General Urban/Suburban**  
**Number of Studies: 3**  
**Avg. Num. of Car Wash Tunnels: 1**  
**Directional Distribution: 50% entering, 50% exiting**

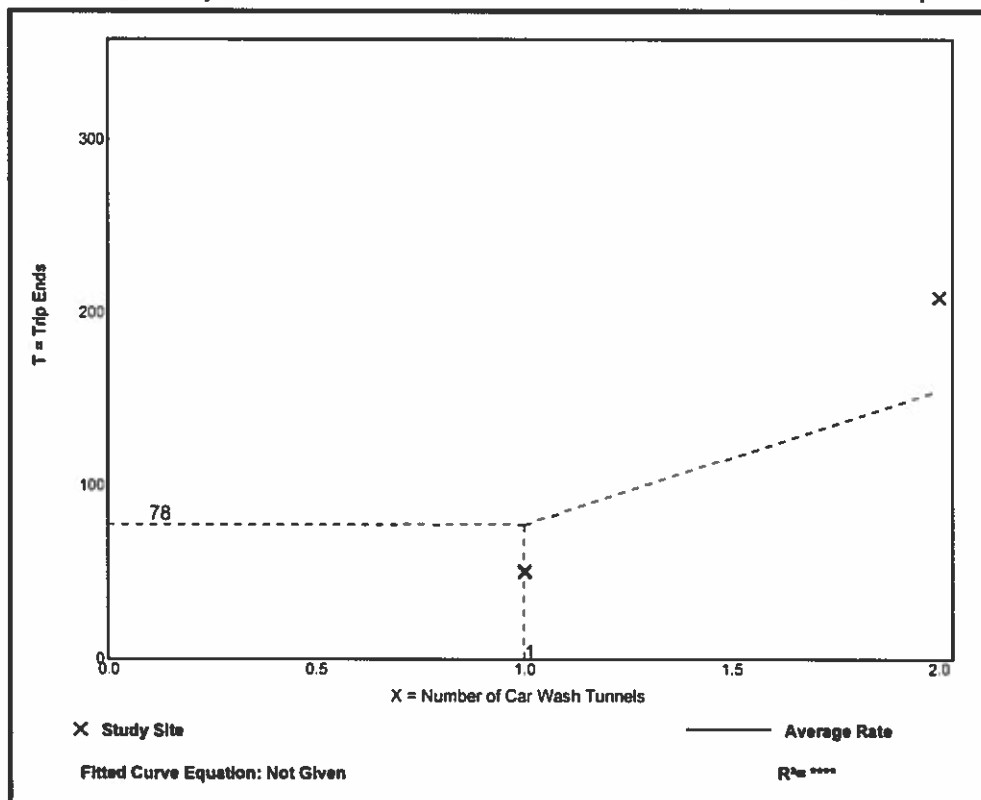
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### Vehicle Trip Generation per Car Wash Tunnel

Average Rate	Range of Rates	Standard Deviation
77.50	50.00 - 104.50	33.07

### Data Plot and Equation

*Caution – Small Sample Size*



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# Memo

To: Governing Body  
From: Tucker Poling, Council Member, Ward 3  
Date: February 14, 2018  
Re: Improving council meeting efficiency and transparency

---

## SUMMARY OF PROPOSAL

Combine Committee of Whole meeting “COW” with Council Meeting (“CM”) into functionally one meeting. Within this proposal, I also propose flipping the order of the COW and the CM portions within the streamlined meeting structure. This will serve two primary goals: (1) improved efficiency; and (2) improved transparency. We can make our process more productive while improving our customer service by making the process more clear and approachable for residents.

- Two separate meetings.  Proposal = one meeting.
- Two separate meeting times.  Proposal = one meeting time.
- Two separate agendas.  Proposal = one agenda.
- Two separate packets.  Proposal = one packet.
- Two separate sets of minutes.  Proposal = one set of minutes
- Duplicated agenda items.  Proposal = items raised once per night.

## BACKGROUND

### 1. Our process includes unnecessary inefficiency.

- Duplicative staff efforts.
  - Staff must create two packets. These packets contain duplicative memos and sometimes duplicative materials. For example, at the 2/5/18 meeting, there were 5 duplicative memos.
  - They then must sometimes duplicate presentation/time at the podium because the same matters raised in COW are then raised again the same night during CM.
  - Staff must create two separate sets of minutes. Further, these separate sets of minutes often duplicate the same motions and action items.



- Staff must create and post two separate and duplicative agendas. Not a tremendous amount of extra time, but waste is waste and it's our residents' resources we're expending.
- Duplicate council motions and votes.
  - Currently, we often raise the same issues twice during the same night. For example, at the 2/5/18 meeting, there were 5 items raised for motion and vote at both the COW and CM.
    - 5 unnecessary motions.
    - 5 unnecessary votes.
- Other cities don't do this.
  - As the chart in your packet shows, most other cities don't even have a committee of the whole, and those that do generally use it as it was intended – as a substantively separate work session meeting on a different night. We appear to be the only city that duplicates agenda items, motions, and votes in COW and CM on the same night.

## 2. Our process is unnecessarily confusing.

- Our current process is confusing to the uninitiated, which is most of our residents. To a resident who doesn't follow the council closely, the process is not clear and user-friendly.
  - It can be difficult for residents to know which meeting to attend. They have to wade through a 200 page packet, make sense of the inexplicably duplicative agendas, and try to figure out which meeting to attend.
  - Many residents don't even know what "committee of the whole" is and whether they can attend.
  - They often don't realize that if they see something on the city council meeting agenda and come to the city council meeting, they may miss most or all of the substantive discussion on the item because the discussion occurred during COW.
- Another way to think about transparency is customer service. Our residents are our customers. Information is one of the products we provide. Engagement with their local government is one of the services we provide. We should make it as easy and intuitive as possible for them to understand, follow, and engage with what we're doing. It's not sufficient to say "we're not hiding anything." Transparency is about proactive customer service to our constituents – it's their government and they're paying the bills.
- The current process also places public participation comments after COW discussion and deliberation has already occurred. This means we may have already discussed and voted on an item in COW before hearing from residents who came to the meeting to provide their thoughts on the item.

## PROPOSED IMPROVEMENTS

### 1. Combine the two meetings into functionally one meeting.

- One meeting agenda, packet, and minutes.
- Items would appear only once on the agenda. No duplicative motions and votes. Items that require same night action (which are currently duplicated in both the COW and CM meetings) would be heard only once, under new business.
- I am not proposing to eliminate the COW. The COW would become a segment of the unified meeting. It would be a work session for items that do not require same-night action.
  - Items passed favorably during the COW portion of the meeting would be raised for final action at the next council meeting (or designated future meeting) under new or old business. This would align our process with the intended purpose of a committee function in parliamentary procedure – to consider, deliberate, and work up items for final action on a later date.
- See explanations in attached example agenda, based on 2/5/18 meeting.
  - I. Call to Order.
  - II. Roll Call.
  - III. Pledge.
  - IV. Intro of Students and Scouts.
  - V. Presentations.
  - VI. Public Participation.
  - VII. Consent Agenda.
  - VIII. Committee Reports.
  - IX. Mayor's Report.
  - X. Staff Reports.
  - XI. Old Business.
  - XII. New Business.
  - [pro-forma motion to recess CM into COW work session]
  - XIV. Committee of the Whole Work Session. (Council President presides consistent with current process)
  - XIV. Announcements.
  - XV. Adjorn.
- Would allow us to incorporate public participation comments from residents in our deliberation of all agenda items for the evening.

### 2. Flip the order of the CM and COW segments of the meeting.

- Substantively better process.
  - In regular order, the purpose of a committee meeting is to work-shop proposals and then either move them forward for final consideration by the body or reject them.
    - Think legislative committees – it's a more deliberative and interactive filter step before moving a proposal to final consideration of the body.
  - For items that do not require immediate action, this provides some built-in breathing room between our initial discussion of an item and our final decision. This allows for a more thoughtful and deliberative process. It also gives staff an opportunity to consider the council's thoughts and directions regarding a proposal and provide more meaningful feedback when the matter is presented for action in final form.

**COUNCIL MEETING AGENDA  
CITY OF PRAIRIE VILLAGE  
Council Chambers  
Monday, February 05, 2018  
6:00 PM**

**I. CALL TO ORDER**

**II. ROLL CALL**

**III. PLEDGE OF ALLEGIANCE**

**IV. INTRODUCTION OF STUDENTS & SCOUTS**

**V. PRESENTATIONS**

Swearing in ceremony for new Prairie Village Police Officers

Recognition of Faith Lutheran Church

**VI. PUBLIC PARTICIPATION**

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

**VII. CONSENT AGENDA**

By Staff

1. Approve the regular City Council meeting minutes - January 16, 2018
2. Approve claims ordinance 2962
3. Approve the purchase of a DARE Police vehicle
4. Approve the purchase of three 2018 Ford Police Interceptor Utilities
5. Approve Construction Change Order #1 (Final) with Guarantee Roofing Inc. for the City Hall roof repair

By Committee

6. Approve an agreement with Collection Bureau of Kansas, Inc. (CBK) for collecting outstanding court fines and fees.

**VIII. COMMITTEE REPORTS**

**\*\*[duplicative C.O.W. items, currently raised again under this agenda section after being already raised during C.O.W., are eliminated. They are raised and acted upon only once per meeting, items that require same-evening action are raised during new/old business]\*\***

Planning Commission

PC2018-101 Consider Final Plat for "Meadowbrook Park, Second Plat"

**IX. MAYOR'S REPORT**

**X. STAFF REPORTS**

**XI. OLD BUSINESS**

**XII. NEW BUSINESS**

**\*\*[items that require same-night action, which are currently included in C.O.W. agenda, would now be here or under old business]\*\***

COU2018-06 Consider approval of the final design engineering contract with Water Resources Solutions, LLC for the Delmar and Fontana low water crossing removal and drainage project

COU2018-07 Consider approval of an agreement with Dale Brothers for the North Park building demolition project

COU2018-08 Consider approval of a design agreement with BBN Architects, Inc. for the design of the 2018 parks projects

COU2018-09 Consider approval of Meadowbrook Project Construction Change Order #1 with Superior Bowen Asphalt Company for the modifications to the pond spillway outlets

COU2018-10 Consider approval of an amendment to the Johnson County SMAC Funding Agreement for the Meadowbrook project Planning Commission

**XIII. CITY COUNCIL MEETING ADJURNS OR RECESSES [BY PRO FORMA MOTION]**

**XIV. COMMITTEE OF THE WHOLE WORK SESSION**

**\*\*[All items that do not require same-night action would be considered here. If passed favorably by the committee, final action would occur at next/later council meeting under old business.]**

COU2018-XX Consider approval of . . .

Cities for CEDAW - Ron Nelson

Council meeting efficiency - Tucker Poling

**XIV. ANNOUNCEMENTS**

**XIV. ADJOURNMENT**

City	Meeting Start Time	Committee of the Whole	Council Agenda Order
Fairway	7:30 p.m.	No	1. Pledge of Allegiance 2. Proclamations 3. Standing Committee Reports 4. Special Committee Reports 5. Public Comment for items on agenda 6. Consent Agenda 7. New Business 8. Public Comment for items not on agenda
KCK	7:00 p.m.	No	1. Invocation 2. Pledge of Allegiance 3. Mayor's Agenda 4. Consent Agenda 5. Public Hearing Agenda 6. Standing Committee Agenda 7. Administrator's Agenda 8. Commissioner's Agenda 9. Public Announcements
Leawood	5:30 p.m.	No	1. Pledge of Allegiance 2. Approval of Agenda 3. Public Comment 4. Proclamations 5. Consent Agenda 6. Mayor's Report 7. Councilmember's Report 8. City Administrator's Report 9. Staff Reports 10. Committee Reports 11. Old Business 12. Other Business 13. New Business
Lenexa	7:00 p.m.	Yes (committee of the whole is held on 2nd and 4th Tuesdays; Council is held on 1st and 3rd Tuesdays) - no action taken in committee of the whole	1. Roll Call 2. Minutes 3. Agenda Modifications 4. Presentations 5. Consent Agenda 6. Board Recommendations 7. Public Hearings 8. New Business 9. Business from the Floor 10. Councilmember Reports 11. Staff Reports 12. Executive Session
Mission	7:00 p.m.	No	1. Pledge of Allegiance 2. Public Hearings 3. Special Presentations 4. Issuance of Notes and Bonds 5. Consent Agenda 6. Committee Reports 7. Public Comments 8. Action Items 9. Unfinished Business 10. New Business 11. Comments from Council 12. Mayor's Report 13. City Administrator's Report 14. Executive Session
Mission Hills	6:30 p.m.	No	1. Pledge of Allegiance 2. Approval of Minutes 3. Consent Agenda 4. Financial Reports 5. Old Business 6. New Business 7. City Staff Reports 8. Mayor's Comments 9. Council Liaison Reports
Olathe	7:00 p.m.	No	1. Pledge of Allegiance 2. Special Business 3. Public Hearings 4. Consent Agenda 5. New Business 6. New City Council Business 7. General Issues and Concerns of Citizen 8. City Council and City Manager Review Items
Overland Park	7:30 p.m.	Yes (usually only held for executive session or special items in a conference room separate from council chambers before the meeting at 6:30 p.m.)	1. Pledge of Allegiance 2. Public Hearings 3. Mayor's Agenda Items 4. Council President Agenda 5. City Manager Agenda 6. Consent Agenda 7. Regular Agenda (Committee Reports and Staff Reports) 8. Economic Development and Public-Private Partnership Projects 9. Planning Commission Recommendations 10. Old Business 11. New Business
Roeland Park	7:00 p.m.	No (will have work sessions occasionally at 6)	1. Invocation 2. Pledge of Allegiance 3. Agenda Revisions 4. Mayor's Agenda 5. Consent Agenda 6. Public Hearing Agenda 7. Standing Committees' Agenda 8. Administrator's Agenda 9. Commissioners' Agenda 10. Land Bank Board of Trustees' Consent Agenda 11. Public Announcements
Shawnee	7:00 p.m.	Yes (first Tuesday of the month at 7 p.m. - regular meetings are on 2nd and 4th Monday of the month, but works very similar to Prairie Village's committee of the whole).	1. Pledge of Allegiance 2. Consent Agenda 3. Mayor's Items 4. Business from the Floor 5. Public Items 6. Staff Items 7. Miscellaneous Items
Westwood	7:00 p.m.	No	1. Pledge of Allegiance 2. Visitor Presentations and Reports 3. Public Comment on Non-Agenda Items 4. Financial Reports 5. City Attorney Report 6. Administrative Report 7. Police/Court Report 8. Public Works Report 9. Committee Reports
DeSoto	7:30 p.m.	No	1. Pledge of Allegiance 2. Consent Agenda 3. Public Comment 4. Old Business 5. New Business 6. Executive Session 7. Advisory/Staff Reports 8. Council & Mayor Comments
Gardner	7:00 p.m.	No	1. Pledge of Allegiance 2. Public Comments 3. Consent Agenda 4. Committee Recommendations 5. Old Business 6. New Business 7. Council Updates 8. Executive Session

Johnson County	9:30 a.m.	No	1. Pledge of Allegiance 2. Public Comments 3. Notes for the Record 4. Consent Agenda 5. Action Agenda 6. Reports and Communications 7. Commission Comments 8. Executive Session
Merriam	7:00 p.m.	No	1. Pledge of Allegiance 2. Public Comments 3. Consent Agenda 4. Mayor's Report 5. Council Items - Finance and Administration 6. Council Items - Community Development/Public Works/CIP 7. Staff Items 8. New Business 9. Executive Session



**MINUTES OF THE  
FEBRUARY 6, 2018  
LENEXA CITY COUNCIL MEETING  
COMMUNITY FORUM, 17101 W 87<sup>th</sup> STREET PARKWAY  
LENEXA, KS 66219**

**CALL TO ORDER**

The meeting was called to order at 7:00 PM.

**SWEARING IN CEREMONY**

Joe Karlin was sworn into office.

**ROLL CALL**

The following Councilmembers were present with Mayor Mike Boehm presiding: Steve Lemons, Bill Nicks, Thomas Nolte, Dan Roh, Corey Hunt, Andy Huckaba, and Mandy Stuke. Councilmember Joe Karlin was absent.

Staff present included Eric Wade, City Administrator; Todd Pelham, Deputy City Administrator; Mike Nolan, Assistant to the City Administrator; Beccy Yocham, Community Development Director; Cindy Harmison, City Attorney; Danielle Dulin, Interim City Clerk; and other City Staff.

**APPROVE MINUTES**

*A motion to approve the minutes of the January 23, 2018 City Council meeting was made and seconded. Motion passed unanimously.*

**MODIFICATION OF AGENDA**

Denise Rendina, Director of Communications, will provide a Farmers Market update during staff reports.

**RECOGNITION**

Doug Bach, County Administrator for Unified Government of Wyandotte County and Kansas City, Kansas and Past President of the Kansas Association of City/County Managers, presented Eric Wade with the Buford Watson, Jr. Award for Excellence in Public Management.

## CONSENT AGENDA

1. Acceptance of public right-of-way as shown on the Final Plat for Cottonwood Canyon, Street Plat. PT18-01F

*This final plat request for the Cottonwood Canyon Subdivision is being made to allow dedication of the 50-foot right-of-way in which 28-foot back of curb to back of curb private streets have been constructed to city specifications. At the time of preliminary plan approval in 2006, the proposed subdivision did not have public street access. The developer was allowed to proceed with development using private streets with the understanding that at some time in the future they would be dedicated as public streets.*

2. Acceptance of public right-of-way, drainage easements, and utility easements as shown on the Final Plat for The Timbers at Clear Creek, Sixth Plat. PT17-20F

*This Final Plat is a 15-acre parcel proposed to be subdivided into 34 lots. It is a continuation of the Timbers of Clear Creek Subdivision. Public right-of-way, drainage easements, and utility easements are being dedicated to the City of Lenexa as part of the subdivision Final Plat.*

3. Ordinance granting a telecommunications franchise to Unite Private Networks, LLC.

*The ordinance will renew the franchise with Unite Private Networks, LLC to construct, operate and maintain a telecommunications system in City. The franchise ordinance includes a 5% fee on gross receipts and a two-year term with four automatic renewal terms of two years for a total of 10 years.*

4. Resolution approving an Estoppel Certificate regarding a Stormwater Management/BMP Facilities Maintenance Agreement with Himoina Power Systems, Inc.

*In November 2015, the City entered into an agreement with Himoina Power Systems, Inc. ("HiPower") setting forth the terms and conditions under which HiPower could construct and maintain on-site stormwater management and BMP facilities on property located at the northwest corner of 110th Street and Lakeview Avenue. The Estoppel Certificate states that to the best of the City's knowledge, HiPower is not in default of the agreement.*



5. Resolution authorizing the Mayor to execute an architectural/engineering services agreement with HNTB Corporation for on-call street lighting design.

*This is an engineering services agreement with HNTB Corporation for the design of various street lighting projects on an on-call basis. The total cost of these services is not to exceed \$200,000.00.*

6. Resolution providing notice and calling for a public hearing to appear and show cause why the fire damaged structure at 8513 Constance should not be condemned and ordered repaired or demolished as an unsafe or dangerous structure in accordance with K.S.A. 12-1750 et. seq.

*A fire occurred to the single family dwelling at 8513 Constance on December 17, 2017 resulting in substantial damage to the structure. In order to ensure that a fire damaged property is not left in an unsafe or unsightly condition, City Code Article 1-9-H and K.S.A. 12-1750 require insurance companies to provide the City with a portion of any claim paid when certain conditions are met. The City must initiate abatement proceedings within 30 days of the receiving the funds.*

7. Resolution approving the Advisory Services Agreement with Lockton Investment Advisors, LLC to provide investment services for the City's supplemental retirement plans.

*On September 19, 2017, the City published a Request for Proposals (RFP) from qualified firms to provide investment advisory services for the City's supplemental employee retirement plans. The City received 14 proposals. After a detailed analysis of the proposals, and interviews with five of the 14 firms, staff recommends Lockton Investment Advisors, LLC to provide investment advisory services for the City's supplemental employee retirement plans. The cost of services for the first year is \$40,000.*

8. Resolution approving adjustments to the pay ranges contained in the fiscal year 2018 Pay Plan and authorizing the City Administrator to implement the updated pay plan.

*The city's pay plan is a key component in recruiting and retaining a quality workforce. Staff worked with Lockton Companies, Inc. to review the plan's internal equity and market competitiveness. Staff is recommending changes to the pay grades and salary ranges. The estimated cost of merit increases and pay plan adjustments is approximately \$1.7 million.*

9. Ordinance amending City Code Section 1-4C-1 dealing with compensation.

*This is a clean up item to amend the City Code on Mayor and Councilmember salaries to be consistent with the City's practice over the last three years to set the annual salary by resolution as part of the City's budget process.*

## **END OF CONSENT AGENDA**

*A motion to approve items through on the consent agenda was made by Councilmember Huckaba, seconded by Councilmember Stuke. Motion passed unanimously.*

## **BUSINESS FROM FLOOR**

None.

## **COUNCILMEMBER REPORTS**

None.

## **STUDENT INTRODUCTIONS**

The following Boy Scouts were in attendance: Nathan Cowley & Will Cross. Riley Janasz was present for American Government class.

## **STAFF REPORTS**

### 10. Farmers Market update

Denise Rendina, Communications Director, and Jenny Doty, Recreation Supervisor, provided an update on the farmers market. Applications for farmers are currently being accepted. The farmers market will be open on Saturdays from 8 AM to noon starting April 21 and Tuesday mornings 8 AM to noon starting May 30. The last day of the farmers market will be September 2. Ms. Rendina presented the farmers market logo.

### 11. Legislative update

Dr. Stuart Little, Little Government Relations, stated the legislative session in its fifth week, and it is the last week to introduce new bills. He provided an update on several bills that could have implications for the city.

## **EXECUTIVE SESSION**

### 12. Executive Session to discuss a personnel issue of non-elected personnel. (City Administrator's annual evaluation)

*A motion to recess into Executive Session for 30 minutes to discuss a personnel matter involving nonelected personnel for the purpose of conducting the annual*

*performance evaluation of the City Administrator with Eric Wade, City Administrator, present for the discussion was made by Councilmember Nolte, seconded by Councilmember Roh. Motion passed unanimously.*

The regular meeting recessed at 7:35 PM, and the executive session commenced at 7:40 PM in the Monticello Conference Room on the third floor of City Hall.

*At 8:10 PM, a motion to extend the executive session by 45 minutes was made by Councilmember Roh, seconded by Councilmember Stuke. Motion passed unanimously.*

Mayor Boehm announced the extension in the Community Forum although no one was present or still waiting in the public meeting room and then returned to the Monticello Conference Room.

The executive session closed at 8:55 PM, and the Governing Body reconvened in the Community Forum at 9:00 PM. No votes were taken or decision made during the executive session.

## **ADJOURN**

Meeting adjourned at 9:00 PM.

/s/ Danielle Dulin

Danielle Dulin

Assistant to the City Administrator/

Interim City Clerk

The Olathe City Council toured the new Olathe School District facility, Mill Creek Center, located at 311 E. Park Street that began at 5:15 p.m. prior to the regular session meeting.

The Olathe City Council met in regular session at 7:00 p.m. with Mayor Copeland presiding. Councilmembers McCoy, Vogt, Randall, Bacon, Campbell and Brownlee were present. Also present were City Manager Wilkes, Assistant City Manager Sherman and City Attorney Shaver.

**1. EXECUTIVE SESSION – 6:30 P. M.**

Consideration of a motion to recess into an executive session to discuss the following items:

- A. Under the exception provided under the Kansas Open Meetings Act to discuss data relating to financial affairs or trade secrets of corporations, pertaining to a development agreement.
- B. Under the exception provided under the Kansas Open Meetings Act for consultation with attorneys for the City for matters deemed privileged in the attorney-client relationship pertaining to Kriesel, et al. v. City of Olathe and the pending special use permit application SU-16-002.
- C. Under the exception provided under the Kansas Open Meetings Act for consultation with attorneys for the City for matters deemed privileged in the attorney-client relationship pertaining to a contract.

**Motion**

Motion by Randall, seconded by Bacon, that the Olathe City Council recess into executive session for the following. Passed 7-0.

**Executive Session Item A**

To discuss data relating to financial affairs or trade secrets of a corporation pertaining a development agreement pursuant to the exception provided in K.S.A. 75-4319(b)(4).

**Executive Session Item B**

For consultation with the City's attorneys which would be deemed privileged in the attorney-client relationship related to Kriesel, et. al. v City of Olathe and the pending special use permit application Su-16-002 pursuant to the exception provided in K.S.A. 75-4319(b)(2).

**Executive Session Item C**

For consultation with the City's attorneys which would be deemed privileged in the attorney-client relationship related to a contract pursuant to the exception provided in K.S.A. 75-4319(b)(2).

**Executive Session Item D**

To discuss personnel matters of nonelected personnel pertaining to the City Auditor position pursuant to the exception provided in K.S.A 75-4319(b)(1).

**2. RECONVENE FROM EXECUTIVE SESSION**

Meeting reconvened at 6:55 P.M.

**3. CALL TO ORDER**

**4. BEGIN TELEVISED SESSION – 7:00 P. M.**

**5. PLEDGE OF ALLEGIANCE**

**6. SPECIAL BUSINESS**

**PRESENTATIONS**

- A. Presentation on Johnson County by County Commissioners Mike Brown and Michael Ashcraft.

Presentation by Mike Brown and Michael Ashcraft. In the presentation strategic priorities, budget overview and projects were reviewed.

- B. Presentation of service award to Vivian Avery, former Human Relations Commission member.

Mayor Copeland invited Hector Silva, Chairman of the Olathe Human Relation Commission to join him at the podium. Mr. Silva spoke about Ms. Avery's passion, community involvement and leadership. Mr. Silva invited Ms. Avery to join him and the Mayor at the podium.

Mayor Copeland presented Ms. Avery with a service award and Mayor Pro-Tem Randall gave Ms. Avery a bouquet of flowers.

Ms. Avery thanked everyone for their support and read a quote from Dr. Martin Luther King, Jr.

**PROCLAMATION**

- C. Proclamation designating February 2018, as "National African American History Month".

Mayor Copeland presented the proclamation to Vivian Avery. Ms. Avery spoke about the people who have impacted her life.

**APPOINTMENTS**

- D. Resolution No. 18-1012 appointing members to the Human Relations Commission was considered.

Human Relations Commission Chairman Hector Silva introduced new and reappointed members. Ben Hillman, Ryan Weltz, Shakil Haider, and Marti Wilson. Darnell Hunt was unable to attend.

Motion by Randall, seconded by Bacon to approve Resolution No. 18-1012. Motion carried 7-0.

- E. Resolution No. 18-1013 reappointing members to the Mahaffie Stagecoach Stop & Farm Foundation Board was considered.

Mayor Copeland presented Mahaffie Foundation Board Chair Connie Snider with a certificate of reappointment.

Ms. Snider introduced member Bob Courtney and noted that Jan Heinen and Kelly Peetoom were unable to attend.

Mayor Copeland presented Mr. Courtney with a certificate of reappointment.

## 7. **CONSENT AGENDA**

Councilmember McCoy requested item H be considered separately.

Motion by Randall, seconded by Bacon to approve the Consent Agenda except for item H. Motion carried 7-0.

### **MINUTES**

- A. Council meeting minutes of January 23, 2018 were approved.

### **LICENSES**

- B. Drinking establishment license application for Mayor's Cabaret, located at 1318-1320 E Park was approved.
- C. New cereal malt beverage license application for QuikTrip #182R located at 1234 E Santa Fe was approved.

### **AGREEMENT**

- D. Resolution No. 18-1014 consenting to the delivery of an assignment and assumption of lease agreement and related bond documents and a subjection of fee to mortgage instrument in connection with \$1,210,428 aggregate maximum principal amount of industrial revenue bonds (RKDBD, LLC Project), Series 2010, of the City of Olathe, Kansas was approved.

### **TRAVEL**

- E. Business expense statement for Mayor Michael Copeland for expenses incurred to attend the Conference of Mayors in Washington DC, January 24-27, 2018 was approved.

### **PROJECTS**

- F. Resolution No. 18-1015, PLN 18-001, requesting the city's consent to the enlargement of Consolidated Main Sewer District (Johnson County Executive Airport) was approved.
- G. Consent Calendar was approved.
  - 1) Project Completion Certificates
    - a) Walnut Acres – 5-D-004-17 – Waterlines was approved.

- b) Prairie Farms 10th Plat – 3-D-042-17 – Storm Sewers was approved.
- c) Prairie Farms 10th Plat – 5-D-033-17 – Waterlines was approved.

- 2) Change Orders
  - a) none
- 3) Final Payment to Contractors
  - a) none

- H. Resolution No. 18-1016 authorizing the 2018 Sidewalk Construction Project, PN 3-C-072-18. **REMOVED FOR SEPARATE CONSIDERATION.**

#### **CONTRACTS**

- I. Award of contract to PCiRoads, LLC for construction of the Black Bob Road Bridge Maintenance Project, PN 3-G-002-16 was approved.
- J. Award of contract to Pure Technologies U.S. Inc. (d/b/a Wachs Water Services) for water valve and hydrant exercise, inspections and the fire flow testing was approved.

#### **PROJECTS**

- K. Purchase of Kennedy Fire Hydrants from Olathe Winwater Works for the Hydrant Replacement Project, PN 5-C-030-18 was approved.

#### **ITEMS FOR SEPARATE CONSIDERATION:**

##### **PROJECTS**

- Item H: Resolution No. 18-06 authorizing the 2018 Sidewalk Construction Project, PN 3-C-072-18 was approved.

Councilmember McCoy expressed that he was pleased to see the increase in the budget for this year's sidewalk construction project.

Motion by Randall, seconded by Bacon, to approve. Motion carried 7-0.

#### **8. NEW BUSINESS – PUBLIC WORKS**

##### **REZONING**

- A. Ordinance 18-06 requesting a rezoning (RZ 17-011) from CP-1 to C-2 district and preliminary development plan for Anderson Pointe on 0.87± acres; located in the vicinity of 127<sup>th</sup> Street and Black Bob Road was considered. Owner: Aaron Mesmer/127 Land Investors, LLC. Applicant: Curtis Holland-Polsinelli. Engineer: Greg Watson-SKW. Engineer: Audrey Knight-NSPJ. *Planning Commission recommends approval 6-1.*

Dan Fernandez, Planner II, gave a presentation which reviewed changes to the site plan, the stipulations recommended by staff and the requested waivers. Mr. Fernandez reviewed the prohibited uses and reported the applicant is agreeable with the prohibited uses.

Motion by Randall, second by Bacon, to approve. Motion carried 7-0.

**SPECIAL USE PERMIT**

- B. Resolution No. 18-1017 for approval of a special use renewal (SU-17-008) for motor vehicle sales (Qually's Auto Sales); located at 900 E. Santa Fe Street was considered. Owner: Shawn M. Hutchinson Family Partnership. Applicant: Don Qually-Qually's Auto Sales. *Planning Commission recommends approval 7-0.* (Aimee Nassif/Dan Fernandez)

Dan Fernandez, Planner II, gave a presentation reviewing the stipulations.

Councilmember Bacon inquired about the curbing and why it was put in that way. Mr. Bacon stated he did not think it was conducive to have grass in that area due to the curbing.

Mr. Bacon also inquired why there wasn't a sidewalk there, and noted, there was a sidewalk further north on Mahaffie and that Council just approved for a sidewalk a block north of this location.

Mr. Fernandez stated he did not know why that type of curb was installed, and that there has not been a recommendation for a sidewalk from public works for that area.

Celia Duran, Deputy Director-Public Works Director, explained that this area was not part of the walking map which is what was used in the prioritizing of sidewalks.

Councilmember McCoy stated that he concurred with Councilmember Bacon regarding the buffer.

Ms. Duran, stated the curb that is there, is a ribbon curb and it would keep landscaping in.

Mayor Copeland asked why this was a special use permit.

Mr. Fernandez stated any car dealership requires a special use permit.

Mr. Copeland asked if the special use permit was required regardless of zoning.

Mr. Fernandez explained it was except for certain zoning such as C3, C4, M1 & M2. Mr. Copeland then stated not all require a special use permit. Mr. Fernandez stated those would be the ones that were grandfathered in, those who were operating prior the special use requirement.

Mr. Copeland asked why the special use requirement was implemented. Mr. Fernandez stated that he would have to go back and look, but he thinks at some point the City Council and/or the Planning Commission decided they did not want every empty lot becoming a car dealership.

Mr. Copeland asked why the recommendation was for ten (10) years.

Mr. Fernandez stated the Planning Commission thought that since the business has been in operations for five (5) years, there have been no issues or complaints regarding the business and that the Planning Commission thought ten (10) years was an okay time limit.



Councilmember Campbell asked if the improvements were part of the Planning Commissions decision and Mr. Fernandez stated they were.

Councilmember Campbell asked who came up with April 16, 2018 and Mr. Fernandez stated the Planning Commission did. Mr. Campbell proposed giving them till June due to that may be a very busy time for concrete companies.

Mr. Fernandez stated to ease some of the concerns, that the landscaping stipulation could be removed and just have it be sodded.

Mr. Bacon stated he thought it would be difficult to maintain the sod because of the curbing.

Councilmember Vogt noted that when rain gardens are done there's no curbing and asked if staff has worked with the applicant regarding the type of landscaping.

Ms. Duran recommended staff work with the applicant on the landscaping.

Mr. Fernandez explained this item could still be approved with amendments to the stipulations. Mr. Fernandez read proposed revised stipulations; that all graveled areas outside of the right-of-way shall be paved prior to June 16, 2018 unless otherwise authorized by the planning official and a five (5) foot buffer shall be included along Mahaffie Street and staff shall work with the applicant to come up with an appropriate solution within that buffer.

Councilmember Campbell clarified that the SUP was for 10 years.

Motion by Randall, seconded by Vogt, to approve Resolution No. 18-1017 with the text changes as provided by the Planning Staff.

## **9. NEW BUSINESS – ADMINISTRATION**

### **MUNICIPAL CODES**

- A. Consideration of Ordinance 18-07 concerning amendments to the Olathe Municipal Code related to Private Clubs was considered.

Motion by Randall, seconded by Bacon to approve Ordinance 18-07.  
Motion carried 6-1, with Councilmember Bacon voting nay.

- B. Consideration of Ordinance No. 18-08 creating the Olathe Community Foundation was considered.

Councilmember Bacon stated he would like to table this and bring it back at the second meeting in April after they have a chance to look at it a little more.

Motion by Bacon, seconded by Vogt, to table Ordinance No. 18-08 to the second meeting in April. Motion carried 7-0.

- C. Consideration of Ordinance No. 18-02 for amendment to the Olathe Municipal Code regarding the City's Automatic Alarm Systems Ordinance was considered. **(Continued from the January 9, 2018, City Council meeting).**

Motion by Randall, seconded by Bacon, to approve Ordinance 18-02.  
Motion carried 7-0.

#### **BONDS**

- D. Consideration of Resolution No. 18-1018 authorizing the public sale of Water and Sewer System Revenue Bonds, Series 2018 was considered.

Motion by Randall, seconded by Bacon, to approve Resolution 18-1018.  
Motion carried 7-0.

### **10. NEW CITY COUNCIL BUSINESS**

Councilmember McCoy commented on the great opportunity he had to travel to Topeka yesterday for Legislative Day and congratulated Councilmember Campbell on his new position as State Budget Director.

Councilmember Randall commented on the wonderful job fair that was held recently at the American Legion for Veterans.

Councilmember Brownlee thanked the employees who drive the snowplows.

Mayor Copeland announced that \$151,432.90 was raised in the 2017 Mayor's Christmas Tree Fund Campaign and that the Olathe Schools contributed \$27,072.85 from their Pennies for Shoes Campaign.

### **11. END OF TELEVISED SESSION**

### **12. GENERAL ISSUES AND CONCERNS OF CITIZENS**

James Griffith, 2445 W. Park Street, expressed his concerns with the demolition of the Hubbard House.

Aimee Nasiff, Chief Planning and Development Officer, shared that staff's preservation efforts have not stopped and even though the Hubbard House was demolished, there were stipulations in the zoning that the developer is to celebrate the house, and celebrate the history of the site.

Ms. Nasiff also noted the developer is required to put in story boards throughout the new clubhouse for the new development, with pictures and renderings of the site and family. Ms Nasiff stated there were pieces of the Hubbard House interior and exterior that was preserved which will be inside the clubhouse as well. Ms. Nasiff stated conversation with the Olathe Historic Preservation Board continue to find ways to celebrate the Hubbard and Tanker family in other ways and other projects throughout the City.

### **13. CONVENE FOR PLANNING SESSION**

Reports are prepared for informational purposes and will be accepted as presented. There will be no separate discussion unless a Councilmember requests that a report be removed and considered separately.

**A. REPORTS**

**BONDS**

1. Report on a request by Ace Properties, LLC for issuance of industrial revenue bonds and tax abatement for the construction of new light industrial (warehouse/flex space) located on property on Lindenwood Drive near west of E. Prairie Circle was accepted.

**14. EXECUTIVE SESSION**

Consideration of motion to recess into an executive session to discuss the following items:

- D. Consideration of a motion to recess into an executive session under the exception provided under the Kansas Open Meetings act to discuss personnel matters of non-elected personnel pertaining to the City Auditor position.

Motion by Randall, seconded by Bacon to move back into executive session for twenty (20) minutes. The motion carried 7-0.

The meeting recessed at 8:35 P.M.

**15. RECONVENE FROM EXECUTIVE SESSION**

The meeting reconvened at 8:55 P.M.

**AGREEMENT**

- A. Motion by Randall, seconded by Bacon to approve the amendments to the development agreement as directed by the Governing Body. Motion carried 7-0.

**LITIGATION**

- B. Motion by Randall, seconded by Bacon to authorize staff to proceed with the strategies as discussed with the Governing Body. Motion carried 7-0.

**CONTRACT**

- C. Motion by Randall, seconded by Bacon to authorize staff to proceed with the strategies as discussed with the Governing Body. Motion carried 7-0.

**16. ADDITIONAL ITEMS**

Councilmember Bacon noted that on the news at 5:00 PM they mentioned that Olathe was going to be ready this time indicating that Olathe was behind and not ready for the snow on Sunday.

Councilmember Campbell clarified that it was an Olathe Company that got the bid for the purchase of hydrants and wanted to say thank you.

Councilmember Brownlee noted that the national weather service missed Sunday's weather and thought staff did a great job. Ms. Brownlee also shared that people should measure the stock market in percentage and not in points.

Mayor Copeland reported that the Civic Academy is coming up, and the Council Retreat is scheduled for March 1-3.

Councilmember Randall asked if appointments are to meet with Senators and Representative at the NLC. City Manager Wilkes stated that appointments have not been made but staff has reached out to them. Mr. Randall also asked if the Youth Council and Chamber of Commerce were going which Mr. Wilkes said they were.

**17. ADJOURNMENT**

Meeting adjourned at 9:02 P.M.

Kimberly Hubbard, CMC  
Assistant City Clerk

**City Council Meeting**  
August 21, 2017  
7:00 p.m. Regular Meeting



Mayor Ward opened the meeting at 7:00 p.m. with the pledge of allegiance. Council members present were Jim Truesdell, Curtis Oroke, Chris Donnelly, and Kara Reed. Andy Gilner was absent. Also in attendance were City Manager George Brajkovic, Assistant City Manager Jamie Shockley, and City Attorney Shannon Marcano.

**Approval of Minutes and Consent Agenda**

- Mr. Oroke moved to approve the minutes from August 7, 2017. Ms. Reed seconded. All ayes. Motion carried.
- Ms. Reed moved to approve the consent agenda for August 21, 2017. Mr. Donnelly seconded. All ayes. Motion carried.

**Open Agenda**

- Steve Skeet, President of the Tonganoxie Library Board, introduced their selected firm for library construction to the Council. The Library Board selected JE Dunn, who they've engaged to begin a feasibility study on several different sites.
- Monica Gee, 612 E. 4<sup>th</sup> Street, addressed the Council and updated on them for the plans for the sunflower stroll throughout town over Labor Day weekend.

**New Business**

**Presentation of Lifesaving Award**

- Mr. Holcom presented a lifesaving award to Joe Byrne.

**Ordinance 1427: Granting a Special Use Permit for in-home daycare at 215 S. Whilshire Drive**

- Mr. Donnelly moved to approve Ordinance 1427. Mr. Truesdell seconded. All ayes. Motion carried.

**Presentation from Springsted Financial regarding potential refunding of bonded debt**

- Tom Kaleko, the City's financial advisor with Springsted Financial, presented a refunding of debt opportunity for the Council to consider.
- The Council requested that city staff move forward with working with Springsted to draft documents to refund the proposed debt.

**Consider approval to purchase rock salt for snow and ice control.**

- Mr. Donnelly moved to authorize the Public Works director to purchase 150 tons of rock salt from Hutchinson Salt Company in an amount not to exceed \$7,365. Mr. Oroke seconded. All ayes. Motion carried.

**Consider approval to purchase asphalt for maintenance on Smiley Road**

- Mr. Donnelly moved to authorize the Public Works Director to purchase asphalt from Lawrence Asphalt at an amount not to exceed \$40,000, to be paid for out of the Special Highway fund. Mr. Truesdell seconded. All ayes. Motion carried.

**Consider approval to purchase 2018 Dodge Charger**

- Mr. Brajkovic explained that a police department vehicle was recently involved in an accident during a vehicle pursuit and was deemed a total loss by the City's insurance carrier. As a result, the City needs to replace the totaled vehicle.
- Ms. Reed moved to authorize the Chief of Police to purchase a 2018 Dodge Charger from Davis Moore Chrysler in an amount not to exceed \$25,000.

**Consider amendment to Fire Equipment Reserve Fund due to receipt of Assistance to Firefighters Grant**

- Chief Holcom explained to the council the requirements of the grant that was received and requested a budget amendment in the Fire Department Equipment Fund in order to spend the grant on necessary equipment.
- Mr. Donnelly moved to amend the Fire Equipment Reserve budget from \$252,200 to \$310,300. Mr. Truesdell seconded. All ayes. Motion carried.

**Consider approval to purchase equipment with the Assistance to Firefighters Grant**

- Mr. Donnelly moved to authorize the fire department to purchase authorized equipment under the AFG grant from Conrad Fire and Weis Fire Safety in an amount not to exceed \$58,100.

**Consider approval to purchase 2017 Quick Attack/Wildland Firefighting Unit**

- Mr. Holcom explained that the Council voted unanimously back in January to sell the fire engine and unanimously voted this past spring to authorize the Fire Department to go out for bids on a new Quick Attack vehicle. The bids were opened on August 2, and the Fire Department recommended purchasing the quick attack unit from the company with the low bid, Weis Fire, at a cost not to exceed

\$164,500. The purchase would be made out of the Fire Equipment Fund, which is earmarked solely for fire department equipment. Ms. Shockley added that the fund had adequate budget authority to make this purchase in 2017.

- Mr. Truesdell moved to authorize the Fire Department to accept the low bid and purchase a new quick attack unit from Weis Fire & Safety in an amount not to exceed \$164,500. Ms. Reed seconded. Mr. Oroke stated that he did not agree that this vehicle was a necessity for the department and he viewed it as wasteful spending that could be used instead for additional staff or infrastructure improvements. Ms. Shockley reminded the Council that the money in the Fire Department Equipment Fund could only be used for equipment for the fire department and could not be used for personnel costs or given to another department for infrastructure improvements. 3 ayes. 1 no. Motion carried 3-1.

#### **City Manager Agenda**

- Ms. Shockley provided the July financial report to the Council.

#### **Mayor Agenda**

- Mr. Donnelly moved to appoint Jake Dale and Patti Gabel to the Planning Commission for a term to expire in 2019. Ms. Reed seconded. All ayes. Motion carried.
- Mr. Donnelly moved to appoint John Morgan, Steve Gumm, and Zack Stoltenberg to the Planning Commission for a term to expire in 2020. Ms. Reed seconded. All ayes. Motion carried.
- Mr. Truesdell moved to enter into executive session for the purposes of discussing data relating to the financial affairs or trade secrets of a corporation, pursuant to the economic development exception, KSA 75-4319b for a period of 20 minutes to include the governing body, city attorney, city manager, and assistant city manager. Mr. Donnelly seconded. All ayes. Motion carried.
- Mr. Donnelly moved to return from executive session after 20 minutes and make a note that no action was taken. All ayes. Motion carried.

Mr. Donnelly moved to adjourn. Ms. Reed seconded. All ayes. Motion carried.

Submitted by:

Jamie Shockley  
Assistant City Manager

Approved on September 5, 2017

**City of Westwood, Kansas**  
**Regular City Council Meeting**  
**4700 Rainbow Boulevard**  
**January 11, 2018 – 7:00 p.m.**

Council Present: John M. Yé, Mayor  
Jason Hannaman, Council President  
Lisa Cummins, Councilmember  
Paul Day, Councilmember  
David Waters, Councilmember  
Jeff Harris, Councilmember

Staff Present: Fred Sherman, CAO/City Clerk  
Greg O'Halloran, Chief of Police  
Mitch Landis, Public Works  
Ryan Denk, City Attorney

**Call to Order**

Mayor Yé called the meeting to order at 7:00 p.m. on January 11, 2018. The City Clerk called the roll. A quorum was present.

**Visitors**

Cindy Carlson, 2505 W 50th Place is being nominated to fill the open Planning Commission seat created with Jeff Harris' election to the City Council. Motion by Councilmember Waters to confirm the appointment of Cindy Carlson to the Westwood Planning Commission for a term that expires in May 2020. Second by Councilmember Hannaman. Motion carried by a unanimous 5-0 voice vote.

John P. Martin, with Higdon & Hale, presented the results of the FY2016 Independent Auditor's Report. No issues were noted.

**Comment on Non-Agenda Items**

None

**Approval of Meeting Minutes**

Motion by Councilmember Hannaman to approve the December 14, 2017 Council Meeting Minutes. Second by Councilmember Cummins. Motion carried by a unanimous 5 to 0 voice vote.

**City Treasurer's Report**

**Approval of Financial Statement – December 2017**

Mr. Mills referred to the Treasurer's Report and offered to answer any questions. December 2017 revenues for the general fund were in the amount of \$131,917 and expenses for the month were in the amount of \$321,691 with a decrease in the fund balance for the month of December 2017 of \$189,774.

Motion by Councilmember Waters to approve the December 2017 financial statements as submitted. Second by Councilmember Cummins. Motion carried by a unanimous voice vote.

### **Appropriation Ordinance 686**

Motion by Councilmember Hannaman to approve appropriation ordinance #686 in the amount of \$323,720.12. Second by Councilmember Waters. Motion carried by unanimous voice vote.

### **City Attorney Report.**

#### **Woodside CID #2**

City Attorney Denk noted that the City Council authorized the Mayor to sign the Petition for the creation of a Community Improvement District on the Woodside Club property at the March 9, 2017 meeting, since the City of Westwood owns the club property. The boundary of the proposed South Woodside Village CID includes the entire northern Woodside Club property, and only the area of the parking structure for Phase 2 of the Woodside Village project, located on the south side of 47th Place.

Resolution No. 58-2017 was approved at the May 11, 2017 Council meeting establishing June 8, 2017 City Council meeting as the public hearing date concerning the creation of the proposed new Community Improvement District (CID). The public hearing was conducted at the June 8, 2017 City Council meeting, and no comments from the public were made.

The proposed ordinance will create the new Community Improvement District (CID) in the amount of 0.9%. The collection of the CID Sales Tax shall commence on July 1, 2018, or on such later date mutually agreed to by the parties to the Development Agreement, and shall expire 22 years from such commencement date.

Motion by Councilmember Hannaman to approved Ordinance No. 988 authorizing the creation of the South Woodside Community Improvement District in the City of Westwood, Kansas. Second by Councilmember Waters. Motion carried by a unanimous 5 to 0 voice vote.

### **Administrative Report**

#### **United Community Services of Johnson County - Human Service Fund payment**

Motion by Councilmember Waters to authorize the payment of \$1,375 to United Community Services of Johnson County for the City of Westwood's FY 2018 contribution to the Human Services Fund. Second by Councilmember Day. Motion carried by a unanimous 5 to 0 voice vote.

### **Public Safety/Court Report**

Chief O'Halloran referred to the December 2017 Public Safety report and offered to answer questions.

#### **Northeast Animal Control Commission payment**

Motion by Councilmember Day to authorize the payment of \$13,545.86 to Northeast Animal Control Commission for animal control services for the City of Westwood. Second by Councilmember Harris. Motion carried by a unanimous 5 to 0 voice vote.

### **Public Works Report**

Mr. Landis referred to the December 2017 Public Works report and offered to answer questions.



**Public Works Service Agreement Addendum's for the City of Mission Woods and the City of Westwood Hills**

Motion by Councilmember Waters to authorize the Mayor to execute the Public Works Service Agreement Addendum's for FY 2018 for the City of Mission Woods and the City of Westwood Hills. Second by Councilmember Cummins. Motion carried by a unanimous 5 to 0 voice vote.

**Committee Reports**

**A. Administration & Compensation Committee**

Note that staff and the committee continue to work with Ben Hart, Springsted Inc., regarding funding options for capital improvement projects.

**B. Business & Community Affairs Committee**

Councilmember Cummins had nothing to report.

**C. Public Safety Committee**

Councilmember Day had nothing new to report.

**D. Public Works Committee**

Councilmember Waters had nothing new to report.

**E. Parks & Recreation Committee**

Councilmember Day had nothing to report.

**F. Mayor's Report**

**Council Committees**

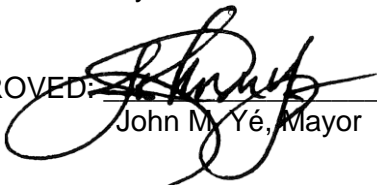
Mayor Yé presented the following Council Committee assignments:


- Admin &Comp: Hannaman, Chair, Cummins;
- Business and Community Affairs: Cummins, Chair Harris;
- Public Works: Waters, Chair, Hannaman;
- Public Safety: Day, Chair, Waters;
- Parks and Rec: Harris Chair, Day

Motion by Councilmember Day to nominate Jason Hannaman as Council President. Second by Councilmember Cummins. Motion carried by a unanimous 5 to 0 voice vote.

**Adjournment**

Motion by Councilmember Day to adjourn the meeting. Second by Councilmember Cummins. Motion carried by unanimous voice vote at 7:56 p.m.

APPROVED:  \_\_\_\_\_  
John M. Yé, Mayor

ATTEST:  \_\_\_\_\_  
Frederick L. Sherman, City Clerk

**MAYOR'S ANNOUNCEMENTS**  
**Monday, March 5, 2018**

**Committee meetings scheduled for the next two weeks include:**

Board of Zoning Appeals	03/06/2018	6:30 p.m.
Planning Commission	03/06/2018	7:00 p.m.
Tree Board	03/07/2018	6:00 p.m.
Environment/Recycle Education Subcommittee	03/08/2018	5:30 p.m.
Prairie Village Arts Council	03/14/2018	5:30 p.m.
Park & Recreation Committee	03/14/2018	6:30 p.m.
Council Committee of the Whole	03/19/2018	6:00 p.m.
City Council	03/19/2018	7:30 p.m.

=====  
The Prairie Village Arts Council is pleased to feature a mixed media exhibit in the R.G. Endres Gallery featuring Anne Garney, Kathleen Connors and Nancy Kramer Bovee during the month of March. The artist reception will be held at 6:30 p.m. on Friday, March 9, 2018.

North Park Planning Open meeting will be held on Tuesday, March 6<sup>th</sup> from 4:30 to 6:30 p.m. in the Community Center.

Mark your calendar for the 2018 NLC Congressional City Conference in Washington, D.C. March 11-14, 2018.

The 2018 State of the County Address will be given on Tuesday, March 27<sup>th</sup> at the Ritz Charles from 11:30 a.m. to 1:15 p.m. Please let Meghan know if you want to attend.

**INFORMATIONAL ITEMS**  
**March 6, 2018**

1. Council Committee of the Whole minutes - February 20, 2018
2. Board of Zoning Appeals Agenda - March 6, 2018
3. Planning Commission Agenda - March 6, 2018
4. VillageFest Committee Minutes - January 25, 2018
5. Environment/Recycle Committee Minutes - January 24, 2018
6. Environment/Recycle Committee Minutes - November 9, 2017
7. March Plan of Action
8. Mark Your Calendar

**COUNCIL COMMITTEE OF THE WHOLE**  
**February 20, 2018**

The Council Committee of the Whole met on Tuesday, February 20, 2018 at 6:00 p.m. in the Council Chambers. The meeting was called to order by Council President Dan Runion with the following members present: Mayor Wassmer, Chad Herring, Jori Nelson, Serena Schermoly, Ronald Nelson, Tucker Poling, Andrew Wang, Sheila Myers, Dan Runion, Courtney McFadden and Ted Odell.

Staff Members present: Tim Schwartzkopf, Chief of Police; Keith Bredehoeft; Public Works Director; Katie Logan, City Attorney; Wes Jordan, City Administrator; Jamie Robichaud, Assistant City Administrator; Alley Porter, Assistant to the City Administrator; Lisa Santa Maria, Finance Director and Joyce Hagen Mundy, City Clerk. Also present was Jeff White with Columbia Capital, City's Financial Consultant.

**Tax Increment Financing (TIF) Update - Meadowbrook**

Jeff White, City Financial Consultant with Columbia Capital, provided an assessment of the performance of the Meadowbrook Tax Increment Financing (TIF) Development Project and its latest projections. Mr. White noted the performance of the TIF is driven in roughly equal measure from four housing types in the project: single family; townhomes; apartments and senior living (plus the inn). For each of these components, the key drivers of TIF revenue are timing of completion and the valuation for tax purposes. Johnson County's tax valuation of the single family and townhome components is expected to be driven by the combination of land purchase price and costs for construction. The valuation for the apartments and senior living will be valued using cost information, but also the value of comparable properties and the financial performance of the components.

Mr. White stated that to their knowledge, VanTrust is in good standing with respect to all of its obligations under its development agreement with the City. The project is developing more slowly than anticipated for the senior living component, but construction/sales values and expected completed values for the homes and townhomes are higher than initially modeled. Based upon updated projections, he expects the TIF revenues will materialize less quickly than expected, but will ultimately be higher than initially modeled.

Mr. White noted the City issued full faith and credit TIF bonds in the par amount of \$11.3 million to support the project, the proceeds of which were used to acquire the parkland and to construct public infrastructure. The City is obligated to make principal and interest payments on the bonds in full and on time. Mr. White stated the bonds were structured to pay interest only through 2019, with amortization commencing in 2020. In addition the bonds were structured to fund capitalized interest to make bond proceeds available to pay interest on the bonds through a portion of the expected construction period. Capitalized interest will cover the City's debt service obligations on the bonds through most of 2019. He added once the amortization commences in 2020, the principal amounts due ramp up over three years, providing the City with an additional

cushion as the TIF projects reach completion and start to be fully assessed for tax purposes.

Jeff White reviewed a chart reflecting an updated modeling of the Meadowbrook Development TIF. The “Debt Service Coverage” shows the amount of TIF revenues projected to be available each year for each dollar of debt service due. The current projection is that \$1.29 in TIF revenues will be available for each \$1.00 of debt service due. Ideally, this figure will always be 1.00x or higher. When revenues do exceed 1.00x, the City will bank “excess” TIF revenues to be used in subsequent years to cover debt service shortfalls that may occur. Mr. White noted that even though 2020 and 2022 are projected to have shortfalls in revenue, the City will have more than sufficient balances from prior years’ surpluses to cover the temporary shortfalls in those years. Commencing in 2022, accumulated excess revenues not needed to cover debt service will automatically be used to reduce the balance of bonds outstanding.

In conclusion, Mr. White stated he continues to believe that TIF revenues will be sufficient to pay debt service due on the bonds and that the City should not have to use its general resources to cover debt service costs in any year. VanTrust continues to make significant progress toward construction completion of each of the four major areas of the project. However, these projections are subject to change. The amount of TIF revenues ultimately produced by the project relies on the strength of the economy, the ability of VanTrust to complete the project in a timely manner, the consistency of Johnson County in appraising properties for tax purposes in a consistent manner over time, the stability over time of the total property tax levy for Prairie Village businesses and residences and the continued demand for the mix of housing provided by the development.

Courtney McFadden questioned if the four components were roughly equal and noted action on the Inn and/or Senior Living Component have not commenced. Mr. White responded the Planning Commission recently gave final development plan approval for the Inn and VanTrust anticipates breaking ground on that project soon. Dial Realty is scheduled to close on the purchase of Lot 1 for the senior living component on March 1<sup>st</sup>.

Mrs. McFadden asked if Mr. White had heard any concerns regarding the proposed Inn. He responded that he had not and noted that VanTrust would be operating the Inn themselves. They have not had any outside parties interested in operating the inn due to its small size.

Mrs. McFadden asked if the revenue projections were the same for all components or if they were pro-rated by size and what would happen if the Inn or senior living component did not work out. Could VanTrust change the makeup of the development noting the other components appeared to be successful? Mr. White responded based on his conversations with VanTrust, they expect the Inn and the senior living component to be developed completely. He further explained the revenue breakdown is  $\frac{1}{4}$  for town homes,  $\frac{1}{4}$  for single family residences,  $\frac{1}{4}$  for the apartments and  $\frac{1}{4}$  for the Inn and senior living component. The project can be viable without development of all components as expected. They have the ability to amend the final development plan with the approval of the City. Mr. White noted that proceeds are proposed to be

divided with 50% going toward payment of the city's bonds and 50% toward payment of the developer's bonds. In the development agreement, the developer agrees to take from their 50% to cover any shortfall for the city's bonds.

Courtney McFadden thanked Mr. White for being the city's advocate in the project.

Jori Nelson asked what the projected shortfall in real dollars was and where funds would come from to cover the shortfall. Mr. White replied the estimated shortfall is \$100,000 to \$150,000 and would be funded by excess funds received from previous years.

Sheila Myers asked if VanTrust had any experience in operating an Inn. Mr. White responded he did not know. Mrs. Myers added that VanTrust would probably be open to having someone else operate the Inn. Mr. White replied that he wasn't sure, but that would be a possibility if someone was interested.

Dan Runion asked how the projections were built into the model compared to what is being seen. Mr. White responded that single family residences are 30% over projections and townhomes may be as much as double the projections. He added that they have not included in their projections the partial value payments as of January 1<sup>st</sup> on the entire project.

### **2019 Budget Process and Calendar**

Finance Director Lisa Santa Maria reviewed the proposed 2019 Budget Calendar. She noted the calendar included discussion at the regular city council meeting on March 19<sup>th</sup> and a special meeting on March 26<sup>th</sup> to discuss "decision packages" and receive revenue and expenditure forecasts. It was suggested the meeting on March 26<sup>th</sup> be rolled into the meeting on March 19<sup>th</sup>. The consensus of the council was to combine the two meetings. It was noted the meeting on the 19<sup>th</sup> follows spring break, but most council members indicated they would be in attendance.

Mrs. Santa Maria noted the department budget reviews would be held from April 9<sup>th</sup> to April 13<sup>th</sup> and council members were welcome to sit in on any of these. Directly after the department presentations, a draft budget would be presented to the Finance Committee based on the department submittals. On May 5<sup>th</sup> the updated preliminary budget would be presented to the Finance Committee for review before it is presented to the City Council.

Tucker Poling confirmed the entire budget would be presented to the City Council on May 21<sup>st</sup> and would be available to the public at that time. Mrs. Santa Maria replied the proposed budget would be available to the public on the city's website on May 7<sup>th</sup>. She noted a vote is not taken on the budget until June 18<sup>th</sup> when the council authorizes the publication of the budget.

Mrs. Santa Maria stated as part of the March 19<sup>th</sup> presentation the preliminary CIP budget would also be presented. She noted at that meeting last year, presentations were made by the committees of their funding requests for 2019.

Dan Runion asked for clarification on the “decision packages”. Mrs. Santa Maria replied these would be discussions of anything outside of the normal general operating accounts or any new programs or staff. The goal would be to prioritize these and determine if they should be built into the 2019 budget.

Mayor Wassmer stated she has asked Mrs. Santa Maria to provide at that meeting an estimate of potential available excess funds. The Council will need to determine where these funds should be designated. She wants to know the dollars available when making these decisions. If the Council wants to fund beyond the level of funds available, it will need to decide where the additional funds would come from, i.e., bonding, increase in mil levy or taken from the CIP program for streets.

Jori Nelson asked if excess funds were always spent. Mayor Wassmer responded they were not.

Dan Runion asked why discussion of “decision packages” was considered before presentation of the operating budget. Mrs. Santa Maria replied the discussion of “decision packages” will identify and discuss new ideas. This will allow staff to take these items and provide related costs to the council at a later meeting. Jori Nelson noted the discussion at the council work session regarding additional codes inspectors. Mrs. Santa Maria replied if this was identified as a desired decision package staff would come back with the projected costs to add this to the budget. One of the things to be considered is if this would come from an existing revenue source or if it could be covered by increased fees.

Wes Jordan thanked the council for being open to try this new approach for the preparation of the budget.

### **Review of the Final Draft of the Citizen Survey**

Alley Porter presented the proposed final draft of the Citizen Survey incorporating the changes made at the council work session.

Sheila Myers asked for the removal of the sentence regarding the communication stipend on question #25 noting that she felt it was confusing and unnecessary. Council members agreed with the suggested removal.

Jori Nelson stated she received an ETC survey in the mail from Johnson County and noted that if she had not looked at it closely, she would have thrown it in the trash. She shared the envelope with council members noting there was nothing that stood out as to what the document was. She expressed concern that Prairie Village surveys would be tossed aside without residents opening them. Mayor Wassmer acknowledged the concern. Sheila Myers noted that ETC are professionals in conducting surveys. Alley Porter stated the survey would include a letter from the Mayor on city letterhead. Council members asked if the city logo or an identifying element could be placed on the envelope to draw attention to the survey.

Tucker Poling asked if ETC was also sending out the survey via e-mail. Mrs. Porter replied they would be conducting follow-up on unreturned surveys by email and phone.

Jori Nelson asked about the on-line survey. Mrs. Porter stated the on-line survey would be a general survey and not part of the analyzed survey. Ms. Nelson asked if there would be a link to the survey that could be sent to other residents. Mrs. Porter replied there would be.

Dan Runion asked how the initial contact would be made by ETC noting concern if the initial contact would be via e-mail, he felt several residents would be missed. Mrs. Porter stated the initial contact would be via mail.

Alley Porter provided the proposed timeline noting that the survey would be mailed out March 5<sup>th</sup> with responses back and analyzed by late April and a report presented to the City Council in early May.

Sheila Myers asked if council members would be excluded from the survey. Mrs. Porter responded the survey distribution would be a random distribution allowing council members to potentially receive the survey.

#### **COU2018-11 Consider approval of Policy Revisions to CP001: City Committees**

Jamie Robichaud reported the Committee on Committees presented suggested revisions to Council Policy 001 - City Committees at the last Council meeting on February 5. Based on feedback received at that meeting and from the Council work session on February 10, the suggested revisions have been amended as follows:

- Keep the Environmental Committee and Parks and Recreation Committee.
- Add a requirement that the Arts Council, Environmental Committee, and Finance Committee will have a City Council Member serve as voting members in the positions of Chair and Vice-Chair, as appointed by the Mayor (current policy already requires this for the Parks and Recreation Committee and the Insurance Committee. It also requires a Council Member to serve as Chair of the Finance Committee, but does not have a requirement for Vice-Chair).
- Revise the attendance policy to require 75% attendance of meetings held (instead of a majority of meetings, as the policy currently reads).
- Amend the removal process for appointed committee members and volunteers, which would no longer require approval by the City Council in a public meeting, but instead would require a recommendation of removal by the Council Liaison and City Administrator, with final approval by the Mayor.
- Require all appointed committee members and city volunteers to sign a liability & photo waiver; the policy revisions would not include a requirement for a background screening.
- Require all committee chairs, who are not Council Members, to be elected or appointed at least every two years (unless otherwise specified by ordinance).
- Keep the Planning Commission meeting start time at 7:00 p.m.
- Changed the meeting frequency for the Arts Council to read that the Arts Council will meet "every month, as needed", instead of "every other month." This change is suggested to reflect current practice, as the Arts Council is currently meeting at least once per month.



In the process of making the revisions above, staff discovered a number of items that were in need of clarification and/or cleanup in the policy:

- The Police Pension Board of Trustees/Employee Retirement Board policy requires the Mayor to appoint a Council Member as Chair; however, the retirement plan requires only the appointment to the Board of Trustees. The policy was cleaned up to match retirement plan, which requires three voting members on the Board: two City representatives and one member elected by the Police Department employees.
- The Police Civil Service Commission policy stated that the Chair would be selected by the Commission, but the Ordinance states that the Mayor will select the Chair without the consent of the City Council; the suggested revision changes the wording in the policy to match the Ordinance.
- Added a requirement for notice of all meetings to be posted on the City's website (to ensure compliance with Kansas Open Meetings Act)
- Changed the requirement for city staff to attend Committee meetings only when necessary, and added that Committees would be responsible for taking their own minutes.
- Added a requirement for Committee Members to notify the Committee Chair or Staff Liaison if unable to attend a meeting to ensure a quorum will be present.
- Changed the wording on the youth representative requirement from "will" to "may" on Parks and Recreation, Arts Council, and Environmental Committees. Current wording states that youth representatives "will" serve on the Committee; suggested wording states that youth representatives "may" serve on the Committee.
- Changed the Planning Commission policy to state that all members must reside in or within "3" miles of Prairie Village. The current policy reads that members should reside within "7" miles of Prairie Village; however, the City Code states that the members must reside within "3" miles, so the revision is suggested to be consistent with the Ordinance.
- Changed the requirement for the Chair and Vice-Chair of the Planning Commission to be elected once per year; current policy does not state how often the Chair and Vice-Chair should be elected, but the City Code states that they should be elected once per year.

Mayor Wassmer stated she would like to add an additional change to the policy. With the increased budget responsibility being added to the Finance Committee, she would like to have that committee increased from four members to six members.

Jori Nelson stated she would like to discuss allowing remote participation at committee meetings to allow travelling members to make the 75% attendance requirement.

Dan Runion felt the attendance policy would be difficult to administer and monitor. He stated he was not a proponent of telecommunication. Ms. Nelson stated she was asked by a committee member who is frequently out of town to raise the question as he wants to be able to continue to participate in the committee.

Ron Nelson noted the same concern would apply to an individual with a disability who was unable to physically attend a meeting. Tucker Poling replied under ADA the city would be able to make accommodations on request.

Mr. Tucker reported a member of the Arts Council had raised concerns regarding having Council members serve as chair and vice chair. He is a proponent of council members taking on more responsibility and ownership of committees, but sought input from other council members.

Sheila Myers stated she also was a proponent of council members taking on more leadership. She is not supportive of monthly meetings for the Arts Council. She questioned the need for monthly exhibits, noting from her experience these events were not well attended and had the same people attending each month. She suggested exhibits remain on display for two months allowing them to be seen by more people.

Ted Odell stated he felt it was difficult to achieve engagement with remote access. The ADA accommodation can be handled independently. He feels the chair and vice chair should be council members.

Chad Herring agreed with Mr. Odell that it was difficult to achieve engagement with remote access. He noted the 75% attendance requirement has flexibility and discretion noting the policy states "may be subject to removal". The proposed changes place more responsibility on the council. He would expect the new council chair will communicate with the previous chair. The overall point of the changes is for the council to provide clear direction and leadership. Mr. Herring questioned 4b of the policy stating that the Tree Board would meet as needed and adjourn no later than 6 p.m. This was different from what was reflected on the chart in the packet. Jamie Robichaud replied the Tree Board meets six times per year at 6 p.m.

Serena Schermoly stated it was important for the Arts Council to meet monthly and expressed concern with limiting the meetings to one hour. The Arts Council participates in 16 events during the course of the year and has grown from one juried show to three juried shows and anticipates expanding to six juried shows. Exhibits are selected by the committee one year in advance. She noted the Arts Council is experiencing a momentum and concerned the change in leadership will break the momentum. She added council members would not have the expertise or interest in spending 2.5 hours reviewing art and suggested that a subcommittee could be formed to do this.

Jamie Robichaud noted the policy calls for the Arts Council to meet monthly, as needed, and would not require them to meet every month if they didn't need to.

Jori Nelson stated she felt the Arts Council provides a great benefit to the city. She has attended several exhibit openings that were very well attended. She suggested the committee elect their chair. Mayor Wassmer replied that experts on the committee can still select the art. The councilmember's role as chair is to facilitate the meeting and provide direction. Ms. Nelson asked what the responsibility of the chair was. Mayor Wassmer replied the chair would set the agenda, run the meeting, approve minutes, oversee budget expenditures, manage the process and work with the committee. Mrs. Robichaud noted the Council Policy addresses the responsibility of the chairman.

Sheila Myers questioned if six juried art exhibits were necessary noting the additional time and expenses involved in juried shows. Mrs. Schermoly stated the Arts Council

had come a long way over the past years and she does not want to limit them but to grow the committee. She would like the Arts Council to have statutory oversight. She added there are several individuals interested in joining the Arts Council.

Ted Odell stated he supports anything that cultivates the arts. He feels the Arts Council is good for the City and has grown over the past years.

Mayor Wassmer stated that one of the benefits of a council member as chair is to keep in mind budget and staff resources when considering activities.

Dan Runion stated he did not feel Mrs. Myers question was to limit activities but to better understand the activities.

Tucker Poling stated he appreciated the comments from council members and stated he felt council members serving as chair and vice chair serves a purpose. He noted that this is a new direction and if it doesn't work out, it could be changed.

Mr. Poling noted in the staff memo it was stated that Planning Commission members can reside within three miles of the city and questioned why they would not be required to be residents of Prairie Village. Jamie Robichaud replied the language is based on state statutes. Mr. Poling stated he would like members to be residents.

Mayor Wassmer replied the city is very lucky to have the qualified individuals that currently serve on the Planning Commission. She would like to retain the flexibility allowed in the current ordinance. She noted the expertise and skill set that is desired for the Planning Commission and she would prefer to give that precedence over residency.

Ted Odell moved the City Council approve the proposed revisions to Council Policy 001: City Committees. The motion was seconded by Serena Schermoly.

Sheila Myers stated she would like to see a signup sheet at Arts Council events to verify how much of the broader community is being served by these events.

Jori Nelson agreed with Mr. Poling that Planning Commission members should be Prairie Village residents as they have the ability to make decisions that can change the face of the city. She would support the motion with that amendment. She does not feel there would be an issue to find qualified Prairie Village residents.

Tucker Poling noted the city's code would need to be amended to make this change. He suggested a compromise with language to be added that preference would be given to Prairie Village residents.

Mayor Wassmer replied the ordinance has been on the book for years and there has not been any problem with it.

Tucker Poling moved to amend the proposed Council Policy 001 Section 11a by adding that a preference is given to Prairie Village residents. The motion was seconded by Chad Herring.

Dan Runion questioned how qualifications would be compared to residency in determining a preference. Chad Herring replied the Mayor retains the ability to appoint. He likes the proposed compromise. Mayor Wassmer replied the current Commission members were interviewed and selected by a committee including staff, council president, mayor and planning consultant.

Council President Dan Runion called for a vote on the amendment. The amendment passed with Mr. Odell and Mr. Wang voting in opposition.

Dan Runion moved to amend the proposed Council Policy 001 Section 3a Finance Committee to consist of six members instead of four. The motion was seconded by Chad Herring. The proposed amendment was voted on and passed with Ted Odell voting in opposition.

Council President Dan Runion called for a vote on the motion to approve proposed Council Policy 001: City Committees with the two amendments made. The motion was voted on and passed unanimously.

Mayor Wassmer distributed Council committee assignments for 2018. She stated appointments were made based on council member's strengths, interests and availability. The changes were not a reflection of past council service. She thanked everyone for their past service and stated she is looking forward to working with the new council leadership on these committees.

## **STAFF REPORTS**

### **Public Safety**

- Chief Schwartzkopf announced the next "Coffee with a Cop" would be held on Friday, February 23<sup>rd</sup> from 7 to 9 a.m. at Starbucks.

### **Public Works**

- Keith Bredehoeft reported recent vandalism to the Prairie Fountain and playground equipment at Harmon Park.
- The public information meeting on the bike/pedestrian plan will be held on Wednesday, February 21<sup>st</sup> from 5 p.m. to 7 p.m.
- A public meeting has been scheduled to discuss the development of North Park for Tuesday, March 6<sup>th</sup> at the community center from 4:30 p.m. to 6:30 p.m.
- Demolition of the church at 4805 West 67<sup>th</sup> Street will begin on March 5<sup>th</sup> with interior work. Major demolition will take place in April.
- Mr. Bredehoeft reported that crews are anticipating weather related activities throughout the week. Crews were called in early to prepare for the ice event.
- Chad Herring expressed appreciation on behalf of the residents on 69th Street for the city's willingness to explore other options than the proposed one-way street.

### **Administration**

- Jamie Robichaud reported the Committee on Design Guidelines - Phase 2 met last week and has finalized the first draft of proposed changes. These will be presented to the Planning Commission on March 6<sup>th</sup> and then the committee will

meet again to review their comments before bringing a recommendation to the City Council in early April.

- Mr. Jordan stated a corrected committee assignment listing would be distributed.
- Council pictures will be taken on March 5<sup>th</sup> with individual pictures taken at 5 p.m. and the group photo taken at 5:30 p.m.
- The City will be recognizing Sonia Warshawski at the March 5<sup>th</sup> meeting. Mr. Jordan stated she is a remarkable woman and Holocaust survivor featured in the documentary entitled "Big Sonia". Mayor Wassmer encouraged council members to view the documentary showing at Ranchmart Theatre if possible. Sonia is an inspirational woman and resident of Prairie Village. Sheila Myers noted this movie was the highest grossing movie in 2017 for Ranchmart and it only opened in October.

### **ADJOURNMENT**

Tucker Poling moved the Council Committee of the Whole meeting be adjourned. The motion was seconded by Sheila Myers and passed unanimously. Council President Dan Runion adjourned the Council Committee of the Whole meeting at 7:25 p.m.

Prepared by Joyce Hagen Mundy  
City Clerk

Reviewed by Dan Runion  
Council President

**BOARD OF ZONING APPEALS  
CITY OF PRAIRIE VILLAGE, KANSAS  
AGENDA  
March 6, 2018  
6:30 P.M.**

I. ROLL CALL

II. APPROVAL OF MINUTES - February 6, 2018

III. PUBLIC HEARINGS

BZA2018-01 Variance from Section 19.08.025(a) "Side Yard" of the Zoning Ordinances to reduce the west side yard setback from 6 feet to 4 feet  
4111 West 73<sup>rd</sup> Terrace  
Zoning: R-1b Single Family Residential District  
Applicant: John Schutt

IV. OTHER BUSINESS

V. ADJOURNMENT

If you cannot be present, comments can be made by e-mail to  
[Cityclerk@Pvkansas.com](mailto:Cityclerk@Pvkansas.com)

**PLANNING COMMISSION AGENDA  
CITY OF PRAIRIE VILLAGE  
TUESDAY, MARCH 6, 2018  
7700 MISSION ROAD  
7:00 P.M.**

I. ROLL CALL

II. APPROVAL OF PLANNING COMMISSION MINUTES - February 6, 2018

III. PUBLIC HEARINGS

PC2018-01 Request for Special Use Permit - Homestead Country Club  
4100 Homestead Court  
Zoning: R-1a  
Applicant: 73016, LLC  
**(Continued to April 3rd Planning Commission meeting)**

PC2018-03 Request for Rezoning from R-1a to R-1b &  
PC2018-103 Request for Lot Split  
7540 Reinhardt  
Applicant: John Moffitt, MoJo Built, LLC

PC2018-04 Request for Renewal of Special Use Permit for Animal DayCare  
8827 Roe Avenue  
Zoning: CP-1 Planned Restricted Business District  
Applicant: Christine Jennings

IV. NON-PUBLIC HEARINGS

PC2018-104 Request for Site Plan Approval  
5200 West 95<sup>th</sup> Street  
Zoning: C-0  
Applicant: Garen Miller Architect

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](mailto: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.**

## **VillageFest Committee**

**January 25, 2018**

### **Multi-Purpose Room**

1. Welcome & Introductions – Meghan Buum opened the committee meeting on behalf of committee chair Teresa Stewart, who was unable to attend the meeting. Teresa will be serving as the chair again for the 2018 event.

In attendance: Corbin Trimble, Courtney McFadden, Danny Pompey, Morgan Greer, Ted Fritz, Toby Fritz, Sgt. Travis Gray, Amber Fletcher, Alex Fletcher, Josh Sigler

2. Brief 2017 Wrap-Up – Because the 2017 festival was rained out, Meghan reported that the plan to essentially recreate the planned 2017 event for 2018. Meghan is working with the City Attorney to tweak contracts to ensure protection in case of another rainout.
3. Review “tried & true” components of VillageFest
  - a. Pancake Breakfast – Meghan has reserved Chris Cakes for the event, and will secure Starbucks as we get closer to the date. Dale Warman has agreed to coordinate this component of the event again this year. He typically contacts the Masons and Boy Scouts to assist.
  - b. Patriotic Ceremony – Meghan will ask Dale to coordinate the Boy Scouts for the presentation of colors. Corbin Trimble has coordinated with Kristy Lambert to sing the National Anthem.
  - c. Spirit Award – Toby Fritz passed out Spirit Award flyers and forms. Meghan has heard from a few people interested in nominating a deserving resident.
  - d. Outside Vendors (Petting zoo, face painters, rides, inflatables) – Meghan will again coordinate these contracts including the petting zoo, pony rides, wacky hair, face painters, mechanical rides, puppet show, and inflatables.
  - e. Children’s Crafts in Community Center – Meghan reported on behalf of Patty Jordan that she plans to use the items purchased last year for the craft projects: a patriotic emoji magnet and a patriotic wreath.
  - f. Children’s Parade – Travis Gray suggested including the PVPD’s new bicycle unit in the parade.
  - g. Slip & Slide – Meghan reported that the City has the materials from the 2017 event. We still need to find someone to spearhead the slide on event day to meet/instruct volunteers and supervise the slide.
  - h. Craft Fair Vendors – Danny Pompey reported that his wife, Ainslie, would be taking over this component. Because of the rainout last year, those who paid the 2017 fee would have that waived in 2018.



- i. Live Entertainment – Corbin reported that Danny would be “shadowing” him in 2018 to take over the entertainment coordinator role for the 2019 festival. Mr. Stinky Feet, Funky Mama, and the Multiphonics will be returning in 2018.
  - j. Food Vendors – Meghan will coordinate these contracts. We agreed to waive the fee for those vendors who paid for the 2017 festival.
  - k. Pie Baking Contest – Susan Forrest reported that she will be getting a subcommittee together for the pie contest volunteers.
  - l. YMCA Interactive Booth – Meghan reported that Jamie Parrett was unable to attend, but she has committed the YMCA to participate again in 2018.
  - m. Historic Display – Ted Fritz reported that he is planning to focus on the three trails history exhibit again in 2018.
  - n. “Wow” Event - Meghan reported that she had spoken with Dale, who was going to get the WWII flyover rescheduled for 2018.
  - o. Information Booth – Courtney McFadden did not have an update.
  - p. Day of Volunteers – Morgan Greer will be recruiting volunteers, so please send any volunteer needs to him.
  - q. Police/Fire Display – No updates at this time.
4. Identify new coordinators – Meghan reported that we need a few new coordinators for different components of the event:
- a. Marketing – Due to changes in Kathleen’s schedule, she will be unavailable to participate this year, so we need a member to update Facebook and create signage and other materials.
  - b. Water Sales – Morgan volunteered Serve Community Church to spearhead this effort to raise donations for charity.
  - c. Car show – This component hasn’t really taken off, but with the right coordination has the potential to be a fun new aspect of the event.
  - d. Slip & Slide – The slide doesn’t take advance coordination but needs day of supervision.
5. Committee reminders
- a. Find someone to donate to “Friends of VillageFest”
  - b. Recruit a friend to volunteer for 2-4 hours on event day
  - c. Encourage someone to submit a Spirit Award
  - d. Buddy up with someone so there is a backup for each work group
  - e. Next meeting: Thursday, February 22 at 5:30 p.m.

## PRAIRIE VILLAGE ENVIRONMENT AND RECYCLE COMMITTEE

January 24, 2018

Pete Jarchow, Chairperson, opened the meeting at 5:30 p.m.

Members attending were Pete, Karin McAdams, Devin Scrogum, Thomas O'Brien (by phone), Linda Marcusen and Deborah English. Margaret Goldstein, former member, attended as did two prospective members, Magda Born and Nathan Kovac. Alley Porter attended for the city; a council representative will be appointed in February.

The minutes were approved as corrected.

**Announcement:** Pete Jarchow has been appointed to the board of the Shawnee Parks and Recreation Department.

### **Committee report: Earth Fair:**

- Because the time is so short and the committee so small at this time, it seems necessary to postpone Earth Fair until 2019. However, doing something for Earth Day would help keep up the momentum from past years. Ideas:
  - Al Pugsley would be willing to host an electric vehicle event. Perhaps talking with e.v. dealers would give us more to work with. The event could be held at the City Hall parking lot. Devin offered to talk to electric car dealers to see if we could enlist their cooperation.
  - February 7 is the deadline for submitting material for the March *Village Voice*. Nathan offered to write an article for it.
  - Pete will contact Al Pugsley about managing a car event.
  - Thomas O'Brien moved that the committee not hold the traditional Earth Fair in 2018 but instead hold a smaller event. The motion was seconded and passed.
  - More ideas for the event:
    - Call it *Earth Appreciation Day*
    - Have it from 1 pm to 3 pm
    - To work on plans, there will be a meeting of the Education Committee, open to all, on Wednesday January 31.
- **Old business:**
  - The report on the Council presentation on the climate agreement has to wait until Penny Mahon can be present.
- **City updates:**
  - KCPL with First Washington can provide three electric charging stations at Corinth Square and three at the Village Shops. Harmon Park would be a good location for two; perhaps the city could provide them.
  - Committee membership is down to seven people. Alley reported that the city has received quite a few applications and will be meeting next Tuesday (January 30) to discuss committee applications. Linda Marcusen offered to call the prospective members.

- **New Business:**

- Deb is willing to head up the PVERC activities at Village Fest this year. Tom is working on a more usable bike that will illustrate a way of generating electricity.
- The plastic bag ban came up again as a target for an educational campaign.

Pete adjourned the meeting at 6:45. The next meeting will be held at 5:30 on Wednesday, February 28.

Respectfully submitted,

Karin McAdams

## PRAIRIE VILLAGE ENVIRONMENT AND RECYCLE COMMITTEE

November 29, 2017

Pete Jarchow, for the Steering Committee, opened the meeting at 5:35 p.m.

Members attending were Pete, Karin McAdams, Devin Scrogum, Linda Marcusen, Penny Mahon, Deb English and Al Pugsley. Thomas O'Brien participated by phone. Margaret Goldstein, no longer a member, attended the meeting as did Nathan Kovac, a prospective member. Alley Porter attended on behalf of the city, and Chad Herring came as the newly appointed City Council representative to the committee.

The minutes were approved as written.

### **Recent business:**

- Penny Mahon reported on the committee's recent presentation to the City Council.
- The presentation included an explanation of the committee's wish to see the city progress environmentally in support of the spirit of the Paris Climate Accord. It included slides and information on the state of climate in Kansas and proposals for action.
- Mayor Wassmer asked the committee to present further information on what the city would need to do to carry out the proposals. This will be the next task of the committee, especially the education/steering committee: to decide what part of the responsibility should fall on PVERC and what should be done by the city.
- Johnson County should be able to help us with the sustainability inventory process, as they have done it.

### **Committee reports:**

#### **Community Gardens:**

- This year the gardeners, who raise food primarily for their own use, still produced some 850 pounds of vegetables to donate to the community through the Meneilly Center.
- Now the gardens have fresh compost and are ready for winter. About 10 plots will be available, and the committee is accepting applications.

**Education/Steering Committee:** The next meeting will be held here on the second Thursday in January. Anyone is welcome to attend.

#### **Special Events/Earth Fair Committee:**

- There are problems with the upcoming Earth Fair. One is that the time is short for planning. Another is that attendance has lagged in recent years.
- One solution would be to skip this year's fair and put extra time and creativity into Earth Fair 2019. Some ideas:
  - Consider a different venue. It still should be in Prairie Village.
  - Reconsider the types of vendors and activities featured in the fair. It needs to be interactive and able to put across the message that it is designed for.
  - Vendors could be charged a fee.
  - Instead of the fair there could be a one-shot event, perhaps at a different time.

- If we don't use the Earth Fair funds this year, could we use them for a different purpose?

### **New Business: Membership**

- The membership is down by at least four.
- Do we need a recruitment committee?
- We can encourage our council members to spread the word about our need and availability. We can ask the same of our homes associations; they could include it in their newsletters. The Village Voice could publish information.
- When people apply, they need to be contacted immediately.
- Alley is willing to work with a volunteer from our committee. Devin offered to be that person.

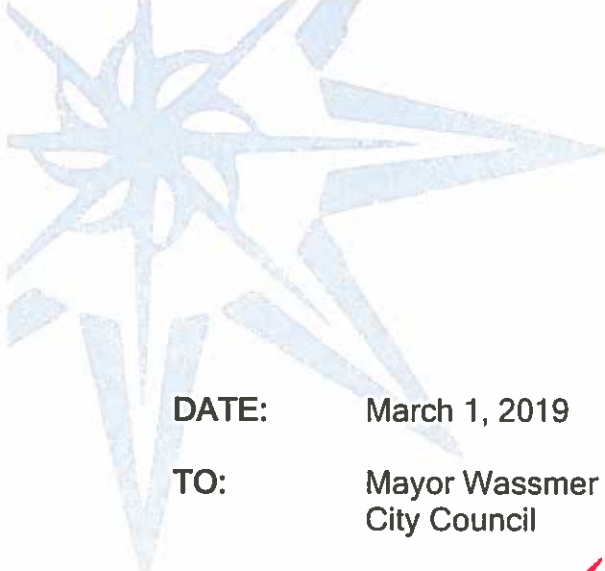
### **City Update:**

- Alley reported that KCPL is considering putting EV charging stations into Corinth Square.
- Stations are good for business; they also encourage the use of electric vehicles, which benefits the manufacturers. Perhaps we can talk with shopping center owners about paying for more stations.
- Johnson County Health and Environment has a grant for expanding its recycling message. There will be more information shortly.

The meeting was adjourned at 6:50 p.m. The next meeting will be held at 5:30 on Wednesday, January 24.

Respectfully submitted,

Karin McAdams



# THE CITY OF PRAIRIE VILLAGE

STAR OF KANSAS

**DATE:** March 1, 2019  
**TO:** Mayor Wassmer  
City Council  
**FROM:** Wes Jordan *WJ*  
**SUBJECT:** MARCH PLAN OF ACTION

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

- Coordination w/CEDAW for Presentation - Alley (03/18)
- CP-001 Revisions - Jamie/Alley/Wes (03/18)
- Committee Chair Transitions - Alley/Jamie/Wes (03/18)
- Coordination of Sculpture Presentation w/Arts Council - Alley (03/18)
- E-Ticketing Equipment Replacement - Chief (03/18)
- 2019 Budget Process - Staff (03/18)
  - Council Budget Goals & Objectives
  - CIP Presentation
  - Committees Funding Requests
  - Insurance Cost Assumptions
  - Personnel Assumptions
  - Police Pension
- Service Line Warranty Program Renewal - Jamie (03/18)
- Queen of Paw Special Use Permit - Jamie (03/18)
- Building Design Update to Planning Commission/City Council - Jamie (03/18)
- 2017 Year-End Expenditure Reviews - Dept. Heads (03/18)
- Preliminary CIP Presentation - Keith/Melissa/Lisa/Wes (03/18)
- Environmental Earth Fair Event - Alley (03/18)
- Pool Opening Preparation - Alley (03/18)
- JOCO Parks Programming Agreement - Alley (03/18)

### In Progress

- Work Comp Code Reclassifications - Amy/Wes (02/18)
- 6800 Blk. of Mission Road Flooding Study - Keith/Melissa (02/18)
- Storm Debris Reimbursement Submission - James/Keith/Wes (02/18)
- Village Voice Format Update - Meghan (02/18)
- Santa Fe Trail National Historical Registry - Alley (02/18)

## In Progress cont'd

- Construction Start Time Article - Jamie (02/18)
- Homestead Special Use Permit Application - Jamie/Keith/Wes (02/18)
- 2017 Annual Report - Meghan/Staff (02/18)
- Village Voice Articles/Publication - Megan/Staff (02/18)
- VillageFest Contract Revisions - Meghan/Wes (02/18)
- Council Meeting Format - Jamie/Wes (02/18)
- Council Photos - Meghan (02/18)
- "Sonia" Council Recognition - Meghan (02/18)
- Annual Records Purge - Staff (01/18)
- Insurance Bid - Insurance Committee/Lisa/Amy (01/18)
- Meadowbrook Project Schedule - Katie/Jeff White/Lisa (01/18)
- Organization of City Records/Contracts - Joyce/Staff (01/18)
- Committee Appointments - Joyce/Wes/Mayor (12/17)
- Environmental Committee Presentation Follow Up - Alley/Wes (11/17)
- Banner Policy - Dan/Keith/Melissa (11/17)
- Phase II Building Design Initiative - Chris/Jamie/Wes (11/17)
- Village Vision Update Process - Chris/Jamie/Wes (11/17)
- 69<sup>th</sup> Street One-Way Signage/Community Input - Keith (11/17)
- 67<sup>th</sup> Street Traffic Calming/Community Input - Keith (11/17)
- Council Policy Website Update - Meghan/Joyce (11/17)
- JOCO Park Programming Partnership - Alley/Wes (11/17)
- Active Shooter Training - Capt. Roberson (10/17)
- Meadowbrook Expenditure Review - Lisa/Keith/Wes (10/17)
- Drone Ordinance - David Waters (10/17)
- Citizen Survey Project - Dan/Alley/Jamie/Wes (09/17)
- Meadowbrook Transit Stop - Keith/Wes (07/17)
- Bike/Ped Plan - Keith/Wes (05/17)
- Update and amend Job Description(s) - Amy/Wes (02/17)
- Franchise Agreements for Small Cells - David Waters/Wes (02/17)
- Cell Tower SUP's - Shannon/Jamie (11/16)
- Revise Cell Tower Contracts - Shannon/Jamie (10/16)
- Zoning Ordinance Update on SUP's/CUP's - Chris (10/16)
- Amend Wireless Facilities Zoning - David Waters/Wes (10/16)

## Completed

- Citizen Survey Final Draft - Alley (02/18)
- Small Cell Franchise Fees - David Waters/Wes (06/17)
- Council Retreat Session - Mayor/Lisa/Wes (12/17)

- Committee Assignments - Joyce/Wes/Mayor (12/17)
- 2019 Budget Calendar Presentation - Lisa/Wes (02/18)
- City-owned Cell Tower Inspections - Jamie (02/18)
- CEDAW Research/Presentation - Dan/Staff (02/18)
- Committee on Committee Report Presentation - Jamie/Alley/Wes (02/18)
- Priority List Draft Policy - Dan Hanover (02/18)
- Construction Start Time Affixed to Permit - Jamie (02/18)
- Harmon Park/Village Square Presentation - Keith/Alley/Wes (02/18)
- North Park Design Agreement - Keith/Melissa (02/18)
- Tidal Wave Special Use Permit Application - Jamie/Keith/Wes (02/18)
- Meadowbrook Boutique Inn Application - Jamie/Keith/Wes (02/18)
- Committee Outline - Jamie/Alley (02/18)
- City Hall Roof Replacement - PW/Mitch (04/15)

#### Tabled

- Website Update by Ward - Meghan (10/17)
- Skate Park Usage Project - Alley (07/17)
- MARC Solar Initiative - Wes (05/15)
- Site Plan Audit/Reinspection - (05/15)
- Reinspection Process (Per Mayor) - Wes (09/15)
- Abatement limitations on Private Property - Wes/Katie (06/16)
- Social Media Policy - (11/17)

#### Ongoing

- Statuary Maintenance - Alley (07/17)



**Council Members  
Mark Your Calendars  
March 5, 2018**

<b>March 2018</b>	<b>Mixed Media Exhibit in the R.G. Endres Gallery featuring Anne Garney, Kathleen Connors and Nancy Kramer Bovee</b>
March 9	Artist Reception in the R.G. Endres Gallery
March 11-14	NLC Congressional Cities Conference in Washington, D.C.
March 19	City Council Meeting
March 27	2018 State of the County address at the Ritz Charles 11:30 a.m. to 1:15 p.m.
<b>April, 2018</b>	<b>Future of the Arts Exhibit in the R.G. Endres Gallery</b>
April 1	Recreational Memberships go on Sale
April 2	City Council Meeting
April 13	Artist Reception in the R.G. Endres Gallery
April 14	Large Item Pick up for 75 <sup>th</sup> Street and north
April 16	City Council Meeting
April 21	Large Item Pick up for south of 75 <sup>th</sup> Street