

**COUNCIL MEETING AGENDA
CITY OF PRAIRIE VILLAGE
Council Chambers
Monday, June 04, 2018
6:00 PM**

I. CALL TO ORDER

II. ROLL CALL

III. PLEDGE OF ALLEGIANCE

IV. APPROVAL OF THE AGENDA

V. INTRODUCTION OF STUDENTS & SCOUTS

VI. PRESENTATIONS

Statuary maintenance update - Paul Benson

VII. PUBLIC PARTICIPATION

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

VIII. 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 - May 21, 2018
2. Ratify the Mayor's appointment of Braden Perry to the Prairie Village Civil Service Commission

IX. COMMITTEE REPORTS

X. MAYOR'S REPORT

XI. STAFF REPORTS

XII. OLD BUSINESS

COU2018-28 Consider approval of the proposed boundary for the Harmon Park Swale to be listed in the Register of Historic Kansas Places and the National Register of Historic Places by the Kansas State Historic Preservation Office.
Alley Porter

XIII. **NEW BUSINESS**

COU2018-29 Consider approval of a construction contract with O'Donnell and Sons
Construction for the residential street rehabilitation program
Melissa Prenger

XIV. **COUNCIL COMMITTEE OF THE WHOLE**

- a. Council Committee, ordinarily presided over by Council President;
- b. Council will reconvene at conclusion

Discuss the proposed geometric improvement at the intersection of
Cherokee and 71st Street
Melissa Prenger

COU2018-30 Consider approval of amendments to lease agreements with Sprint,
Verizon, and AT&T for City-owned cell tower
Jamie Robichaud

Neighborhood Design Phase II Standards Update
Jamie Robichaud/Chris Brewster

City Planning Consultant contract update
Jamie Robichaud

Budget discussion - decision packages
Wes Jordan/Lisa Santa Maria

XV. **ANNOUNCEMENTS**

XVI. **ADJOURNMENT**

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



**CITY COUNCIL
CITY OF PRAIRIE VILLAGE
May 21, 2018**

The City Council of Prairie Village, Kansas, met in regular session on Monday, May 21, 2018, at 6:00 p.m. in the Council Chambers at the Municipal Building, 7700 Mission Road, Prairie Village, Kansas. Mayor Laura Wassmer presided.

ROLL CALL

Roll was called by the City Clerk with the following Council Members in attendance: Chad Herring, Jori Nelson, Serena Schermoly, Ronald Nelson, Tucker Poling, Andrew Wang, Brooke Morehead, Dan Runion, Courtney McFadden, Ted Odell and Terrence Gallagher.

Staff present: Tim Schwartzkopf, Chief of Police; Captains Ivan Washington and Byron Roberson; Keith Bredehoeft, Public Works Director; Melissa Prenger, Senior Project Manager; James Carney, Field Superintendent; Katie Logan, Acting City Attorney; Wes Jordan, City Administrator; Jamie Robichaud, Assistant City Administrator; Alley Porter, Assistant to the City Administrator and Joyce Hagen Mundy, City Clerk. Also present were Chris Brewster, City Planning Consultant, Stacey Hammond with Berberich Trahan & Company, and Jason Morado with ETC.

PLEDGE OF ALLEGIANCE

APPROVAL OF AGENDA

Brooke Morehead moved the approval of the agenda for May 21, 2018 as presented. The motion was seconded by Serena Schermoly and passed unanimously.

INTRODUCTION OF STUDENTS & SCOUTS

A boy scout from Troop 98 was in attendance for his communications badge.

PRESENTATIONS

Introduction of New and Promoted Public Works Employees

James Carney acknowledged the promotions of Chris Kraft to mechanic and Robert Turner to Crew Leader. He welcomed and introduced the following new Public Works Employees: Bridget Tolle, Colby Brim, Juan Guevara and Patrick Lisky.

Presentation of 2017 Audit

Stacey Hammond, with Berberich, Trahan and Company, presented the results of their audit of the City's 2017 Financial Statements. The audit found the financial statements for the year ending December 31, 2017, presented fairly in all material respects in accordance with accounting principles generally accepted. Ms. Hammond reviewed the findings of the audit with the City Council and commended the City staff for their excellent recordkeeping.



PUBLIC PARTICIPATION

With no one was present to address the City Council, public participation was closed at 6:10 p.m.

CONSENT AGENDA

Mayor Wassmer asked if there were any items to be removed from the consent agenda and discussed.

Dan Runion moved for the approval of the Consent Agenda of May 21, 2018:

Approval of the regular City Council meeting minutes for May 7, 2018

Approval of Claims Ordinance 2966

Approval of Interlocal Agreement with the City of Overland Park for 95th & Roe stormwater improvements (Meadowbrook SMAC)

Approval of the purchase of digiTICKET electronic ticket software at a cost of \$40,659.37

A roll vote was taken with the following votes cast: “aye” Herring, J. Nelson, Schermoly, R. Nelson, Poling, Morehead, Runion, McFadden, Odell and Gallagher.

COMMITTEE REPORTS

Planning Commission

PC2018-01 Consider approval of Homestead Country Club Special Use Permit

City Planning Consultant Chris Brewster stated a new permit is required due to renovations proposed on the site that include enclosing four tennis courts, adding a fitness center, restaurant and offices to the existing clubhouse. Initial concerns with the drainage impact of these changes have been addressed by a drainage study/plan approved by the City which will include the use of underground detention facilities and rain gardens.

A public hearing was held on May 21, 2018 with the Planning Commission unanimously recommending approval of the requested Special Use Permit subject to conditions outlined in Ordinance 2385, which included conditions from the current special use permit as well as additional conditions addressing drainage, lighting and landscaping. The permit will be issued for a period of five years.

Questions were raised regarding the lighting, landscaping and mass of the building. Dennis Hulsing, owner of the club, responded that the new lighting to be installed on the south would be directional lighting meeting the requirements of the Commission. The lighting on the north would be replaced with new directional lighting by the end of 2019.

Serena Schermoly moved the Governing Body adopt Ordinance 2385 approving a Special Use Permit for the operation of a country club/private club at 6510 Mission Road. The motion was seconded by Ron Nelson.



A roll call vote was taken with the following votes cast: “aye” Herring, J. Nelson, Schermoly, R. Nelson, Poling, Wang, Morehead, Runion, McFadden, Odell, Gallagher and Wassmer.

Comprehensive Plan

Jamie Robichaud noted the discussion of the Comprehensive Plan at the May 7th Council Committee of the Whole meeting was meant to provide direction to staff to move forward with the proposed process for updating the Comprehensive Plan. Direction to staff generally does not require a formal motion. If the Council chooses to move forward with directing staff to begin the process, the next step would be for staff to come back to the Council with a detailed process and scope of services to be completed by Gould Evans, as well as a detailed budget. Mrs. Robichaud stated the goal would be to present this information to the Council for approval in June.

Chad Herring moved the Council direct staff to move forward establishing the scope for the proposed comprehensive plan. The motion was seconded by Serena Schermoly and passed by a vote of 11 to 1 with Mr. Odell voting in opposition.

MAYOR’S REPORT

Mayor Wassmer stated she recently attended the following events on behalf of the City: Northeast Johnson County Mayor’s meeting and graduation ceremonies for the 2018 Leadership Northeast Program including Prairie Village Assistant City Administrator Jamie Robichaud and Human Resources Manager Amy Hunt.

STAFF REPORTS

Public Safety

- Chief Schwartzkopf thanked Councilmen Tucker Poling and Terrence Gallagher for their attendance at the National Police Officers Memorial Day ceremony held on May 15th.
- The department has prepared a security plan that due to its nature will need to be presented to the Council in executive session. Chief asked for direction as to the best time to do so. Council agreed the presentation should be done prior to a City Council meeting.
- Chad Herring asked for an update on the recent car break-ins. Chief reported there were 13-14 reported break-ins last week and all of the vehicles were unlocked. He stressed the importance of individuals locking their vehicles. Tucker Poling commended the department on their prompt and professional response to these events.

Public Works

- Keith Bredehoeft reported the municipal campus parking lot will be paved this Wednesday, May 23.
- The city is still awaiting clearances for the demolition permit for the church at 67th & Roe.



- In recognition of Public Works Week the department will be hosting its second annual “Touch a Truck” event featuring public works operations and equipment on Wednesday, May 23rd from 4:30 to 6:30 p.m.

Administration

- Alley Porter reported 1651 pool memberships have been sold to date, an increase of approximately 300 memberships.
- Terrence Gallagher asked for an update of lifeguard hiring. Mrs. Porter replied she believes the City will be able to hire 60 guards. The process is continuing.
- Wes Jordan reported on his joint presentation at the Congress for the New Urbanism with Justin Duff on the Meadowbrook project. The presentation was well received with a growing interest in private/public partnerships.
- Wes Jordan reviewed upcoming agenda items for the June 4th meeting.

OLD BUSINESS

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

NEW BUSINESS

COU2018-27 Consider award of the construction contract for the 2018 CARS Program

Melissa Prenger stated the 2018 CARS program includes work on Mission Road, 85th Street to 95th Street, which will be done in conjunction with the City of Leawood, and Roe Avenue, 67th Street to 75th Street. She added the scope of the Mission Road work has been changed due to scheduled work in this area by Johnson County Wastewater. The work will focus on concrete work and a refreshing of the pavement. A full mill and overlay will be delayed until after Johnson County Wastewater completes their work. Two bids were received for the project with the low bid being submitted by O'Donnell & Sons Construction in the amount of \$2,267,586.90. Mrs. Prenger stated the contract would be awarded for \$2,400,000, which is the budgeted amount for this project.

Chad Herring moved the City Council authorize the Mayor to execute the construction contract with O'Donnell and Sons Construction Company for the 2018 CARS Program in the amount of \$2,400,000. The motion was seconded by Tucker Poling and passed unanimously.

Dan Runion moved the City Council go into the Council Committee of the Whole portion of the meeting. The motion was seconded by Ron Nelson and passed unanimously.

COUNCIL COMMITTEE OF THE WHOLE

Council President Dan Runion presided over the Council Committee of the Whole.

Discussion of the 2018 City of Prairie Village Citizen Survey Draft Report

Alley Porter distributed copies of the draft report on the statistical survey. She noted the results of the on-line survey will be received later. Acknowledging the size of the report, Mrs. Porter stated that Jason Morado with ETC will provide an overview of the report for



the Council. The report will be made available to the public on the city's website. The Council will discuss the survey in detail and how to proceed at a later meeting.

Jason Morado stated the purpose of the survey was fourfold: to objectively assess citizen satisfaction with the delivery of City services; to set a baseline for future surveys; to compare Prairie Village's performance with other communities regionally and nationally and to help determine priorities for the community.

Mr. Morado reviewed the methodology followed by ETC in conducting the survey and noted the excellent return of surveys with more than 700 surveys completed representing all areas of the city. The confidence level for the survey responses is 95% with a 3.7% margin for error.

The following major findings were reflected in the survey:

- Residents have a very positive perception of the City
- The City is moving in the right direction
- Satisfaction with City services is much higher in Prairie Village than in other communities
- The top community priorities
 - Maintenance of city streets, sidewalks and infrastructure
 - Enforcement of codes and ordinances

Council members sought clarification on who was included in the KC Metro and national benchmark comparisons and some of the ratings compared to the City's last survey. Mr. Morado stressed that Prairie Village ranked 39% above the national average and 32% above the KC metro average in the overall quality of services provided. Mr. Morado responded that some benchmarking was done with the city's 1999 study and noted that methodology used in 1999 was different and added the general perception of government has changed.

When asked how often a survey should be conducted, Mr. Morado responded the average length of time between surveys is two years.

After reviewing survey findings, Staff agreed to post the Citizen Survey on the website and continue discussion at a later meeting date.

2018 Preliminary Budget

Dan Runion acknowledged the new process followed for the preparation of the 2018 budget with staff preparing an "all in number" proposed budget and presenting it to the Finance Committee. Wes Jordan reviewed the evolution of the new process and thanked the Finance Committee for its participation in the process.

The "all in number" for expenditures in the 2019 General Fund represents a 2% increase in comparison to the 2018 budget - \$23,361,519 versus \$22,890,562. The Mill levy rate remains at 19.311. The proposed budget is under the tax lid cap. The operations budget



remains relatively flat or decreased. General Fund Contingency remains at \$500,000 (25% of fund balance). Finance Director Lisa Santa Maria reviewed the proposed department budgets, mill levy comparisons, and revenue and expenditure trends for 2015 - 2019. The total 2019 budget is \$39,134,704.

Wes Jordan presented the proposed Personnel Services portion of the budget noting that many items included in this category are required and not under the city's control. He reviewed the compensation study strategies approved last year and their impact on the budget. The proposed merit pool is 3.25%. The amount budgeted for health insurance reflects a 4% decrease due to a change in budget forecasting and projected favorable rates for the renewal of employee coverage. PD pension funding was discussed by the Police Pension Board with the Board recommending the City increase the annual contribution from \$620,000 to \$750,000. This change was approved by the Finance Committee and is reflected in the proposed budget.

Lisa Santa Maria presented the proposed contract services, commodities and capital outlay budgets. Chief Schwartzkopf noted the funding proposed for police body cameras is included in response to the legislature considering requiring them. These funds would serve as seed money to start the program, which is estimated to cost \$80,000 to \$100,000, if mandated by the State. Currently only the motorcycle units and SRO's have body cameras. Chief also addressed questions regarding the addition of security cameras at 83rd & Mission and at Harmon Park. Mrs. Santa Maria noted that outside agency funding generally follows the amounts budgeted for 2018. Mr. Jordan explained the increases in MARC and NE Johnson County Chamber funding.

Jamie Robichaud presented the solid waste budget which reflects an increase of 2.9% for 2019 increasing the residential rate charged per household from \$16 per month to \$17.25 per month. She noted the residential rates for 2017 and 2018 were subsidized by the City with excess fund balance that is no longer available.

CIP Presentation

Melissa Prenger reviewed the current 2018 Capital Improvement Projects and the 2018 condition summary on City infrastructure showing more than 90% of drainage infrastructure being rated as good or excellent. The street ratings for arterial streets were 71% good/excellent; residential streets 72%; curbs 97% and ramps 71%. Mrs. Prenger stated it costs one million dollars to improve a street rated as poor/fair to a good/excellent rating. The City has 100 miles of street infrastructure. Each year one to two miles of street fall into the poor/fail category. The current waiting period for those streets to be addressed is five years.

Mrs. Prenger shared a map showing the location of fair and poor streets within the city and reviewed the past five years rating history and projected history with the requested funding level of \$3M for the residential street program.



Keith Bredehoeft reviewed the proposed 2019 Capital Improvement Program of \$7,264,000 as follows:

Park Program	\$1,245,000
Drainage Program	\$ 850,000
Street Program	\$4,394,000
Building	\$ 50,000
Miscellaneous	\$ 725,000

Changes from the preliminary CIP presented earlier included funding for Salt Barn Roof (\$50,000); reduction to drainage program (-\$50,000) and increase to the residential street rehabilitation program funding level to \$3,000,000

Mr. Bredehoeft responded to questions noting that the Mission Road drainage project is being considered for SMAC funding and is not included in the 2019 CIP. The Delmar/Fontana project is in the design stage with anticipated construction in early 2019. The public works facilities study is still being conducted and findings would be brought to Council at a later meeting.

Lisa Santa Maria reviewed the funding sources for the Capital Infrastructure Fund, which includes a \$5.1M transfer from the General Fund along with special highway funds, stormwater utility funds and special parks funds.

Decision Packages

Lisa Santa Maria introduced the following decision packages:

- Codes Specialist Position (\$75,000)
- Infrastructure funding (funding above \$3,000,000)
- PD Pension Fund (funding above \$750,000)
- Funding for the Arts (\$51,551)
- Dark Store Theory Reserve
- Exterior Grant Program (funding beyond 2019)
- Comprehensive Plan Update (\$50,000 - \$80,000)
- Bike/Pedestrian Master Plan (\$50,000)

Mayor Wassmer noted that additional funding added for these items would require removal of funds elsewhere in the budget. Lisa Santa Maria noted there is estimated to be \$276,575 in unused expenses in the Economic Development Fund. These funds could be used for funding the Exterior Grant Program, Comprehensive Plan and Bike/Pedestrian Master Plan. Mayor Wassmer restated the \$276,575 should only be spent on one-time expenditures and any items requiring on-going funding needs to be built into the budget.

The status of Village Square (pending improvements recommended for Harmon Park) and its impact on the 2019 CIP was asked. Mr. Bredehoeft replied the 2019 CIP funding of the all inclusive playground equipment and the skate park replacement was part of the previous current park master plan. Discussion will be held at a later date concerning



Village Square. Mayor Wassmer added the two budgeted items for Harmon Park have been in the Parks Master Plan for years and are included independent of Village Square.

Mr. Bredehoeft added that although the funding is independent, the decisions on Village Square could possibly impact the placement of both the playground and skate park. A final decision will need to be made this year in order for the design and construction of these items in 2019.

Mr. Bredehoeft stated the \$50,000 included for the Bike/Pedestrian Master Plan is not for the implementation for the plan but to allow the process to start in 2019 with further implementation in subsequent years.

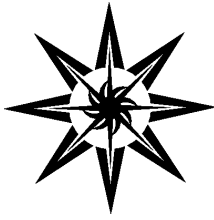
Ron Nelson moved to adjourn the Council Committee of the Whole portion of the meeting and return to the City Council meeting. The motion was seconded by Jori Nelson and passed unanimously.

ANNOUNCEMENTS

ADJOURNMENT

Brooke Morehead moved for the adjournment of the City Council meeting. The motion was seconded by Ron Nelson and passed unanimously. With no further business to come before the City Council, the meeting was adjourned at 9:05 p.m.

Joyce Hagen Mundy
City Clerk



MAYOR

Council Meeting Date: June 4th, 2018

Consider Appointment to Civil Service Commission

RECOMMENDATION

Mayor Wassmer requests Council ratification of the appointment of Braden Perry to the Prairie Village Civil Service Commission to fill the vacancy created by the resignation of David Evans.

BACKGROUND

Historically, the City of Mission Hills has had a representative on the Civil Service Commission, and the vacancy created by this recent resignation will allow us to fill that seat. Braden Perry is currently a member of their Governing Body and has served on their Crime Prevention and Safety Committee.

Braden has met with Police Department Staff, and they are in full support of his appointment. Braden's resume is attached for more information.

Ratification of his appointment will be included on the Consent Agenda.

PREPARED BY

Tim Schwartzkopf
Chief of Police
Date: May 22, 2018

BRADEN M. PERRY, JD, CAMS

KENNYHERTZ PERRY, LLC

Education:

2002 J.D., UNIVERSITY OF KANSAS SCHOOL OF LAW, Lawrence KS

- Member, Kansas Journal of Law and Public Policy

1999 B.S., Journalism, KANSAS STATE UNIVERSITY, Manhattan, KS

Civic Involvement:

- 2018 – Present, Appointed by Jeff Colyer, Governor of Kansas, as member of the Kansas State Board of Indigents' Defense Services (BIDS), pursuant to K.S.A. 22-4519
- 2018 – Present, Belinder Elementary PTA Legislative Liaison
- 2017 – Present, Northeast Johnson County Chamber of Commerce Board Member Emeritus and General Counsel
- 2016, Leadership Kansas
- 2015 – Present Member and President (2018-Present) of the City Council, City of Mission Hills, KS
- 2014, Discover Children's Mercy (Spring Session)
- 2014, Citizen's Police Academy, City of Prairie Village, KS
- 2013 – Present, Recording Secretary, Board Member, Kansas City Securities Association
- 2013 – Present, 2016 Chair, Board Member, Family Advisory Board, Children's Mercy Hospital
- 2011 – 2017, Director, Tomahawk Road Homes Association
- 2009 – 2015, Member and Chair (2014-2015) of the City of Mission Hills, KS, Board of Zoning Appeals
- 2007 – 2015, Member and Chair (2013-2015) of the City of Mission Hills, KS, Crime Prevention and Safety Committee

Charitable Involvement:

- 2018, Co-Chair of Cook for Courage, Child Protection Center
- 2016 – 2017, Board Member, Victory Project
- 2013 – 2017, 2016 Chair, Board Member, Family Advisory Board, Children's Mercy Hospital
- 2011 – 2017, Board Member, 2015 Co-Chair of the Hands & Hearts for Children Auxiliary, Children's Mercy Hospital

Employment History:

2011-Current Co-Founder/Partner, KENNYHERTZ PERRY, LLC, Kansas City, MO

- Consults with clients throughout the United States in areas of government inquiries and investigations, litigation, internal investigations, enforcement matters, regulatory issues, and corporate transactions, specializing in complex, novel, or emerging financial matters.
- Focuses include commodities, derivatives, securities, financial institutions, the Foreign Corrupt Practices Act (FCPA), technology, cybersecurity, and compliance.
- Certified Anti-Money Laundering Specialist (CAMS), assisting clients in all areas of BSA/AML policies and procedures, including advising on government inquiries involving suspicious behavior.
- Criminal Justice Act Panelist for the District of Kansas and the Western District of Missouri.
- Missouri Coalition for the Right to Counsel Pro Bono participant.
- Serves as an expert witness in complex regulatory and criminal matters.
- Engaged by the Office of the State Bank Commissioner of Kansas (OSBC) to review and revise long-standing policies and procedures for modernization and thoroughness from regulatory change (Kansas Public Bid Event ID 17300-EVT0005059).

- Selected to the Directors and Chief Risk Officers (DCRO) Cyber Risk Governance Council. The DCRO is an informal group of over 2,000 board directors, chief risk officers, and other c-level officers whose work involves the effective governance of risk. Members of the DCRO come from over 115 countries and represent diverse industries. Among our initiatives to establish and share best practices is the work of our Governance Councils, including that of this newly formed Cyber Risk Governance Council.
 - Selected to the Mediation and Conciliation Network (MCN) Panel of Expert Neutrals representing Kansas as Accredited Dispute Resolutions Professional (Mediator, Conciliator, Ombudsman, and Arbitrator).
 - Frequent speaker on financial and regulatory issues and contributor to legal publications.
- 2010-2011 Senior Vice President, Regulatory Affairs and Compliance/CCO, MARINER HOLDINGS, LLC, Leawood, KS
- Responsible for Broker-Dealer, multiple RIA, '40 Act, and hedge funds' compliance with policies and government/industry regulations, including identifying and assessing the compliance risks of the firms, implementing effective policies and procedures, including insider trading and related party transaction policies, and reviewing their continued adequacy and effectiveness.
- 2008-2010 Senior Trial Attorney, UNITED STATES COMMODITY FUTURES TRADING COMMISSION, Kansas City, MO
- Conducted investigations and litigation under the Commodity Exchange Act (Act) and the rules and regulations adopted by the Commodity Futures Trading Commission (CFTC) under the Act, including responsibility for all aspects of investigations of suspected violations, administrative proceedings, and civil actions in Federal district courts, including injunctive and subpoena actions.
 - Named as Liaison to the Office of General Counsel and led a 4-person, intra-agency task force charged with implementing new procedures for enforcement staff, focused on anticipated regulatory changes in the wake of financial reform.
 - Member of an SEC, FERC, and CFTC inter-agency task force on document retention risks in government agencies and drafted guidance for multiple agencies on risks related to data preservation and FOIA issues.
- 2002-2008 Attorney, HUSCH BLACKWELL SANDERS, LLP, Kansas City, MO
- Member of the White Collar Criminal Defense, Government Compliance, Investigations, and Litigation, Commercial and Business Litigation, and Digital Discovery and Records Management practice groups.
 - Represented clients in the prosecution and defense of complex business disputes in domestic and international jurisdictions, served as counsel to publicly and privately held companies undergoing both internal and external investigations, assisted clients in recognizing and avoiding the expanding risk of corporate criminal liability, and designing and implementing targeted corporate compliance programs.
 - Specialized in identifying risks associated with highly-regulated business and proactively limit risks through advising and counseling on government regulations and drafting policies and procedures to efficiently comply with the rules and regulations.
- 2001-02 Lecturer, Political Science 480, EMPORIA STATE UNIVERSITY
- Lectured survey course on legal concepts, including current topics in the practice of law.
- 2001-02 Judicial Clerkship Clinic, THE HONORABLE JOHN W. LUNGSTRUM, United States District Court for the District of Kansas
- Participated in judiciary duties as a clerk for the United States District Court for the District of Kansas, including conducting legal research and drafting orders and opinions.

Resume Addendum and References Available Upon Request.



ADMINISTRATION

Council Committee Date: April 16, 2018
City Council Meeting Date: June 4, 2018

COU2018-28: Consider Approval of the Proposed Boundary for the Harmon Park Swale to be listed in the Register of Historic Kansas Places and the National Register of Historic Places by the Kansas State Historic Preservation Office.

RECOMMENDATION

Staff recommends a motion to move forward with the nomination process by sending a letter to the Kansas State Historic Preservation Office indicating Prairie Village's support of the listing with the boundary created by the City.

MOTION

Approve moving forward with the nomination process of the Harmon Park Swale in the Register of Historic Kansas Places and the National Register of Historic Places with the proposed boundary.

BACKGROUND

Between 2012 and 2013, the Harmon Park Swale was determined eligible for the Register of Historic Kansas Places and the National Register of Historic Places by the Kansas State Historic Preservation Office (SHPO). The City objected at that time because state preservation law had an environs portion that gave SHPO a chance to comment on any permitted work within 500 feet of a listed property. Later in 2013, the Kansas Legislature reversed the environs portion to now only work occurring to or within the boundaries of a listed property would be reviewed by SHPO to determine if the project would "damage or destroy" the listed property. In other words, since there is no work planned that would disturb the Swale, there are no foreseen concerns with adding it to the Register.

Council Member Nelson contacted SHPO about trying to get the Harmon Park Swale listed in the National Register. This item was discussed at the March Parks & Recreation Committee meeting. While the Committee did not have a quorum, those present were in favor of moving the request forward to City Council. At the April 16 City Council meeting, Amanda Loughlin, National Register Coordinator with the SHPO, presented information on the process for designating the Harmon Park Swale in the Register and stated the City would need to submit a letter of consent for the application to be filed. The Committee of the Whole approved directing staff to move forward with the process.

Since that time, the Public Works Department created a boundary that the City believes protects the existing National Historic Trail monuments without impeding any future projects. The proposed boundary was sent to SHPO and they did not appear to have any concerns. If

approved, the City will send a letter to SHPO stating there is no longer objection to the nomination of the Swale. This would then be taken to the August 4 Historic Sites Board of Review meeting for their approval.

FUNDING

N/A

ATTACHMENTS

Proposed Harmon Park Swale Boundary

PREPARED BY

Alley Porter

Assistant to the City Administrator

Date: May 31, 2018



Johnson



PUBLIC WORKS DEPARTMENT

Council Meeting Date: June 4, 2018

CONSIDER CONSTRUCTION CONTRACT FOR THE 2018 RESIDENTIAL STREET REHABILITATION PROGRAM

RECOMMENDATION

Move to authorize the Mayor to sign the construction contract with O'Donnell and Sons Construction for the 2018 Residential Street Rehabilitation Program for \$2,750,000.

BACKGROUND

This project includes work on many streets throughout the City and includes new curb/gutter, sidewalk, and an asphalt mill and overlay. It is funded by the 2018 Paving Program.

Street Projects

On May 7, 2018, the Governing Body authorized staff to bring a contract before Council with a selected Contractor for award for the 2018-2020 Paving Program. The Contractor, O'Donnell and Sons was selected based on an evaluation of services and competitive pricing from 2015-2018.

The Engineer and City Staff have reviewed the bid proposal submitted for the 2018 Program and has confirmed the reasonableness of the offered unit pricing based upon established bids, with 14 of the items being priced the same or less than the 2017 submitted unit pricing and the other unit pricing being based on the 2018 CARS project awarded as the low bid on May 21, 2018.

FUNDING SOURCES

2018 Residential Street Rehabilitation Program (PAVP2018)	\$2,750,000
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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. Construction Agreement with O'Donnell and Sons Construction
2. Map of 2018 Paving Program

PREPARED BY

Melissa Prenger, Senior Project Manager

May 30, 2018

CONSTRUCTION AGREEMENT



**PAVP2018
2018 PAVING PROGRAM**

BETWEEN

CITY OF PRAIRIE VILLAGE, KS

AND

O'DONNELL AND SONS CONSTRUCTION

CONSTRUCTION CONTRACT
FOR
PAVP2018 2018 PAVING PROGRAM

BETWEEN
THE CITY OF PRAIRIE VILLAGE, KANSAS
AND
O'DONNELL AND SONS CONSTRUCTION

THIS AGREEMENT, is made and entered into this ____ day of _____, 20____, by and between the City of Prairie Village, Kansas, hereinafter termed the “City”, and O'DONNELL AND SONS CONSTRUCTION, hereinafter termed in this agreement, “Contractor”, for the construction and completion of Project 2018 PAVING PROGRAM , (the “Project”) designated, described and required by the Project Manual and Bid Proposal, to wit:

WITNESSETH:

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

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

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

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

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

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

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

1.1 Following words are given these definitions:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2. ENTIRE AGREEMENT:

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

3. INTENT AND INTERPRETATION

- 3.1 The intent of the Contract is to require complete, correct and timely execution of the Work. Any Work that may be required, including construction, labor, materials, tools, equipment and transportation, implied or inferred by the Contract Documents, or any one or more of them, as necessary to produce the intended result, shall be provided by the Contractor for the Contract Price.
- 3.2 All time limits stated in the Contract Documents are of the essence of the Contract.
- 3.3 The Contract is intended to be an integral whole and shall be interpreted as internally consistent. What is required by any one Contract Document shall be considered as required by the Contract.

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

- 3.13 The apparent silence of the Project Manual as to any detail, or the apparent omission from them of a detailed description concerning any point, shall be regarded as meaning that only the best general practice is to be used. All interpretations of the Project Manual shall be made on the basis above stated.
- 3.14 The conditions set forth herein are general in scope and are intended to contain requirements and conditions generally required in the Work, but may contain conditions or requirements which will not be required in the performance of the Work under contract and which therefore are not applicable thereto. Where any stipulation or requirement set forth herein applies to any such non-existing condition, and is not applicable to the Work under contract, such stipulation or requirement will have no meaning relative to the performance of said Work.
- 3.15 KSA 16-113 requires that non-resident contractors appoint an agent for the service of process in Kansas. The executed appointment must then be filed with the Secretary of State, Topeka, Kansas. Failure to comply with this requirement shall disqualify the Contractor for the awarding of this Contract.

4. CONTRACT COST

The City shall pay the Contractor for the performance of the Work embraced in this Contract, and the Contractor will accept in full compensation therefore the sum (subject to adjustment as provided by the Contract) of TWO MILLION SEVEN HUNDRED FIFTY THOUSAND AND 00/100 DOLLARS (\$2,750,000.00) for all Work covered by and included in the Contract; payment thereof to be made in cash or its equivalent and in a manner provided in the Contract Documents.

5. WORK SUPERINTENDENT

- 5.1 The Contractor shall provide and maintain, continually on the site of Work during its progress, an adequate and competent superintendent of all operations for and in connection with the Work being performed under this Contract, either personally or by a duly authorized superintendent or other representative. This representative shall be designated in writing at the preconstruction meeting.
- 5.2 The superintendent, or other representative of the Contractor on the Work, who has charge thereof, shall be fully authorized to act for the Contractor, and to receive whatever orders as may be given for the proper prosecution of the Work, or notices in connection therewith. Use of Subcontractors on portions of the Work shall not relieve the Contractor of the obligation to have a competent superintendent on the Work at all times.
- 5.3 The City shall have the right to approve the person who will be the Superintendent based on skill, knowledge, experience and work performance. The City shall also have the right to request replacement of any superintendent.
- 5.4 The duly authorized representative shall be official liaison between the City and the Contractor regarding the signing of pay estimates, change orders, workday reports and other forms necessary for communication and Work status inquiries. Upon Work commencement, the City shall be notified, in writing, within five (5) working days of any changes in the Contractor's representative. In the absence of the Contractor or representative, suitable communication equipment, which will assure receipt of messages within one (1) hour during the course of the workday, will also be required.

5.5 The Contractor will be required to contact the Project Manager daily to advise whether and/or where the Contractor and/or the Subcontractor's crews will be working that day, in order that the Project Manager's representative is able to monitor properly the Work.

6. PROJECT MANAGER

6.1 It is mutually agreed by and between the parties to this Agreement that the Project Manager shall act as the representative of the City and shall observe and inspect, as required, the Work included herein.

6.2 In order to prevent delays and disputes and to discourage litigation, it is further agreed by and between the parties to this Agreement that the Project Manager shall, in good faith and to the best of its ability, determine the amount and quantities of the several kinds of work which are to be paid for under this Contract; that the Project Manager shall determine, where applicable, questions in relation to said Work and the construction thereof; that Project Manager shall, where applicable decide questions which may arise relative to the execution of this Contract on the part of said Contractor; that the Project Manager's decisions and findings shall be the conditions precedent to the rights of the parties hereto, to any action on the Contract, and to any rights of the Contractor to receive any money under this Contract provided, however, that should the Project Manager render any decision or give any direction which, in the opinion of either party hereto, is not in accordance with the meaning and intent of this Contract, either party may file with the Project Manager and with the other party, within thirty (30) days a written objection to the decision or direction so rendered and, by such action, may reserve the right to submit the question to determination in the future.

6.3 The Project Manager, unless otherwise directed or agreed to by the City in writing, will perform those duties and discharge those responsibilities allocated to the Project Manager as set forth in this Contract. The Project Manager shall be the City's representative from the effective date of this Contract until final payment has been made. The Project Manager shall be authorized to act on behalf of the City only to the extent provided in this Contract. The City and Project Manager may, from time to time, designate Inspectors to perform such functions.

6.4 The City and the Contractor shall communicate with each other in the first instance through the Project Manager.

6.5 The Project Manager shall be the initial interpreter of the requirements of the Project Manual and the judge of the performance by the Contractor. The Project Manager shall render written graphic interpretations necessary for the proper execution or progress of the Work with reasonable promptness on request of the Contractor.

6.6 The Project Manager will review the Contractor's Applications for Payment and will certify to the City for payment to the Contractor those amounts then due the Contractor as provided in this Contract. The Project Manager's recommendation of any payment requested in an Application for Payment will constitute a representation by Project Manager to City, based on Project Manager's on-site observations of the Work in progress as an experienced and qualified design professional and on Project Manager's review of the Application for Payment and the accompanying data and schedules that the Work has progressed to the point indicated; that, to the best of the Project Manager's knowledge, information and belief, the quality of the Work is in accordance with the Project Manual (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of

any subsequent tests called for in the Project Manual, to a final determination of quantities and classifications for Unit Price Work if such is called for herein, and to any other qualifications stated in the recommendation); and that Contractor is entitled to payment of the amount recommended. However, by recommending any such payment Project Manager will not thereby be deemed to have represented that exhaustive or continuous on-site inspections have been made to check the quality or the quantity of the Work beyond the responsibilities specifically assigned to Project Manager in the Project Manual or that there may not be other matters or issues between the parties that might entitle Contractor to be paid additionally by the City or the City to withhold payment to Contractor.

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

- Contract and will issue a final Certificate for Payment to the City upon compliance with the requirements of this Contract.
- 6.13 The Project Manager's decisions in matters relating to aesthetic effect shall be final if consistent with the intent of this Contract.
- 6.14 The Project Manager will **NOT** be responsible for Contractor's means, methods, techniques, sequences, or procedures or construction, or the safety precautions and programs incident thereto and will not be responsible for Contractor's failure to perform the Work in accordance with the Project Manual. The Project Manager will not be responsible for the acts or omissions of the Contractor or any Subcontractor or any of its or their agents or employees, or any other person at the site or otherwise performing any of the Work except as may otherwise be provided.
- 6.15 Any plan or method of work suggested by the Project Manager, or other representatives of the City, to the Contractor, but not specified or required, if adopted or followed by the Contractor in whole or in part, shall be used at the risk and responsibility of the Contractor, and the Project Manager and the City will assume no responsibility therefore.
- 6.16 It is agreed by the Contractor that the City shall be and is hereby authorized to appoint or employ, either directly or through the Project Manager, such City representatives or observers as the City may deem proper, to observe the materials furnished and the work performed under the Project Manual, and to see that the said materials are furnished, and the said work performed, in accordance with the Project Manual therefore. The Contractor shall furnish all reasonable aid and assistance required by the Project Manager, or by the resident representatives for proper observation and examination of the Work and all parts thereof.
- 6.17 The Contractor shall comply with any interpretation of the Project Manual by the Project Manager, or any resident representative or observer so appointed, when the same are consistent with the obligations of the Project Manual. However, should the Contractor object to any interpretation given by any subordinate Project Manager, resident representative or observer, the Contractor may appeal in writing to the City Director of Public Works for a decision.
- 6.18 Resident representatives, observers, and other properly authorized representatives of the City or Project Manager shall be free at all times to perform their duties, and intimidation or attempted intimidation of any one of them by the Contractor or by any of its employees, shall be sufficient reason, if the City so decides, to annul the Contract.
- 6.19 Such observation shall not relieve the Contractor from any obligation to perform said Work strictly in accordance with the Project Manual.
- 7. WORK SCHEDULE:**
- 7.1 The Work is comprised of one large project (sometimes referred to as "**Total Project Work**") and, in some cases, is partitioned into smaller subprojects referred to in this Agreement as "**Project Segments**." A Contract Time shall be stated in the Contract Documents for both the Total Project Work and, when applicable, the Project Segments.
- 7.2 At the time of execution of this Contract, the Contractor shall furnish the Project Manager with a schedule ("**Work Schedule**") setting forth in detail (in the critical path method) the sequences proposed to be followed, and giving the dates on which it is expected that

Project Segments will be started and completed within the Contract Time. The Work Schedule is subject to approval by the City.

- 7.3 Monthly Work Schedule reports shall accompany the Contractor's pay request for Work completed. Where the Contractor is shown to be behind schedule, it shall provide an accompanying written summary, cause, and explanation of planned remedial action. Payments or portions of payments may be withheld by the City upon failure to maintain scheduled progress of the Work as shown on the approved Work Schedule.
- 7.4 At a minimum the Contractor shall update and submit the Work Schedule for review weekly, unless otherwise agreed upon by the City.
- 7.5 The Contractor, within ten (10) calendar days after being instructed to do so in a written notice from the City, shall commence the Work to be done under this Contract.
- 7.6 If at any time, in the opinion of the Project Manager or City, proper progress is not being maintained; changes shall be proposed in the Work Schedule and resubmitted for consideration and approval.
- 7.7 If the Contractor has not completed Project Segments and is within a non-performance penalty period, it shall not be allowed to undertake a new Project Segment until the Project Segment in dispute is completed, unless expressly permitted by the City.
- 7.8 The operation of any tool, equipment, vehicle, instrument, or other noise-producing device is prohibited to start before or continue after the hours of 7 AM and 10 PM, Monday through Friday (except Fridays which shall be until Midnight) and 8 AM and midnight on Weekends (except Sunday which shall be 10 PM). Violation of this requirement is Prima Facia Violation of City Municipal Code 11-202.
- 7.9 No work shall be undertaken on Saturdays, Sundays and Holidays (Christmas, New Years, Martin Luther King's Birthday, President's Day, Memorial Day, Independence Day, Labor Day and Thanksgiving) without the express written approval of the City Project Manager. If it is necessary to perform proper care, maintenance, or protection of work already completed or of equipment used, or in the case of an emergency verbal permission may be obtained through the Project Manager.
- 7.10 Night work may be established by the Contractor, as a regular procedure, with the written permission of the City; such permission, however, may be revoked at any time by the City if the Contractor fails to maintain adequate equipment for the proper prosecution and control of all operations performed as part of the Work.
- 7.11 The Contractor shall provide 24 hours notice prior to commencing any work to the City Project Manager. The Contractor shall communicate immediately any changes in the Work Schedule to the Project Manager for approval by the City.

8. DELAYS AND EXTENSIONS OF TIME

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

delays from any cause during the progress of the Work, or any portion thereof, included in this Contract.

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

9. ADVERSE WEATHER:

- 9.1 Extensions of time for Adverse Weather shall be granted only under the conditions as hereinafter provided.
- 9.2 For conditions of weather or conditions at the site, so unusual as not to be reasonably anticipated, as determined by the Project Manager, an average or usual number of inclement days when work cannot proceed are to be anticipated during the construction period and are not to be considered as warranting extension of time.
- 9.3 “**Adverse Weather**” is defined as atmospheric conditions or the impact thereof at a definite time and place, which are unfavorable to construction activities such that they prevent work on critical activities for 50 percent or more of the Contractor’s scheduled workday.
- 9.4 “**Unusually Severe Weather**” is defined as weather, which is more severe than the adverse weather anticipated for the season, location, or activity involved.
- 9.5 Time Extensions for Unusually Severe Weather: In order for any request for time extension due to Unusually Severe Weather to be valid, the Contractor must document all of the following conditions:
- The weather experienced at the Work site during the Contract period is more severe than the Adverse Weather anticipated for the Work location during any given month.
 - The Unusually Severe Weather actually caused a delay to the completion of the Work.
 - The delay must be beyond the control and without fault or negligence by the Contractor.
- 9.6 The following schedule of monthly-anticipated Adverse Weather delays will constitute the baseline for monthly weather time evaluations. The Contractor’s Work Schedule must reflect these anticipated adverse weather delays in all weather affected activities:

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

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

- 9.7 Upon receipt of the Notice to Proceed, and continuing throughout the Contract, the Contractor shall record on its daily construction report, the occurrence of Adverse Weather and resultant impact to the Work Schedule.
- 9.8 The number of actual Adverse Weather delay days shall include days affected by actual Adverse Weather (even if Adverse Weather occurred in the previous month), and shall be calculated chronologically from the first to the last day of each month, and be recorded as full workdays.
- 9.9 If the number of actual Adverse Weather delay days in a given month exceeds the number of days anticipated above, the difference shall be multiplied by 7/5 to convert any qualifying workday delays to calendar days. The resulting number of qualifying lost days shall be added to the Contract Time.
- 9.10 The determination that Unusually Severe Weather occurred does not automatically mean an extension of time will be granted. The Contractor must substantiate the Unusually Severe Weather delayed work activities on the critical path of the Work Schedule.
- 9.11 Full consideration for equivalent fair weather workdays shall be given. If the number of actual Adverse Weather delays in a given month is less than the number of days anticipated as indicated above, the difference shall be multiplied by 7/5 to convert any workday increases to calendar days. The resulting number of qualifying extra days will be accumulated and subtracted from any future month's days lost due to unusually severe weather.
- 9.12 The net cumulative total of extra days/lost days shall not result in a reduction of Contract Time and the date of Substantial Completion shall not be changed because of unusually favorable weather.
- 9.13 In converting workdays to calendar days, fractions 0.5 and greater shall be rounded up to the next whole number. Fractions less than 0.5 shall be dropped.
- 9.14 The Contractor shall summarize and report all actual Adverse Weather delay days for each month to the Project Manager by the tenth (10th) day of the following month. A narrative indicating the impact of Adverse Weather conditions on the Work Schedule shall be included.
- 9.15 Any claim for extension of time due to Unusually Severe Weather shall be submitted to the Project Manager within 7 days of the last day of the commencement of the event giving rise to the delay occurred. Resolution of any claim shall follow the procedures described above.
- 9.16 The Contractor shall include and indicate the monthly-anticipated Adverse Weather days, listed above, in the Work Schedule. (Reference Section 7.1 for Work Schedule requirements)
- 9.17 The Contractor shall indicate the approved Adverse Weather days (whether less or more than the anticipated days) in its Work Schedule updates.

10. LIQUIDATED DAMAGES

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

11. PAYMENT PROCEDURE

- 11.1 Based upon Applications for Payment submitted to the Project Manager by the Contractor and Certificates for Payment issued by the Project Manager, the City shall make progress payments on account of the contract sum to the Contractor as provided below and elsewhere in the Contract Documents.
- 11.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month or on a mutually agreed date by City and Contractor.
- 11.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the City no later than the time of payment. The Contractor further warrants that upon submittal on the first day of each month of an Application for Payment, all Work for which payments have been received from the City shall be free and clear of liens, claims, security interest or other encumbrances in favor of the Contractor or any other person or entity whatsoever.
- 11.4 Each application for payment must be submitted with Contractor's waiver for period of construction covered by application. Each Application for Payment will be submitted with executed waivers from the subcontractors or sub-contractors and suppliers for the previous period of construction covered by the previous application. The final payment application must be submitted together with or preceded by final or complete waivers from every entity involved with performance of the Work covered by the payment request.
- 11.5 The Contractor will submit waivers on forms, and executed in a manner, acceptable to City.
- 11.6 The Contractor shall promptly pay each Subcontractor out of the amount paid to the Contractor because of such Subcontractor's Work the amount to which such Subcontractor

is entitled. In the event the City becomes informed that the Contractor has not paid a Subcontractor as herein provided, the City shall have the right, but not the duty, to issue future checks in payment to the Contractor of amounts otherwise due hereunder naming the Contractor and such Subcontractor as joint payees. Such joint check procedure, if employed by the City, shall be deemed payment to the Contractor but shall create no rights in favor of any person or entity beyond the right of the named payees to payment of the check and shall not be deemed to commit the City to repeat the procedure in the future.

- 11.7 The Project Manager will, upon receipt of a written Application for Payment from the Contractor, review the amount of Work performed during the preceding period and the value thereof at the unit prices contracted. From the amounts so ascertained, there shall be deducted ten percent (10%) to be retained until after final completion of the entire Work to the satisfaction of the City. The Project Manager will submit an estimate each month to the City for payment to the Contractor, except that no amount less than \$500.00 will be submitted unless the total amount of the Contract remaining unpaid is less than \$500.00.
- 11.8 Deductions will be made from progress payments if the Contract includes a provision for a lump sum or a percentage deduction. Lump sum deductions will be that portion of the stated lump sum computed as the ratio that the amount earned bears to the Contract Price. Percentage deductions will be computed at the stated percentage of the amount earned.
- 11.9 No progress payment, nor any use or occupancy of the Work by the City, shall be interpreted to constitute an acceptance of any Work not in strict accordance with this Contract.
- 11.10 The City may decline to make payment, may withhold funds, and, if necessary, may demand the return of some or all of the amounts previously paid to the Contractor, to protect the City from loss because of:
- Defective Work not remedied by the Contractor;
 - Claims of third parties against the City or the City's property;
 - Failure by the Contractor to pay Subcontractors or others in a prompt and proper fashion;
 - Evidence that the balance of the Work cannot be completed in accordance with the Contract for the unpaid balance of the Contract Price;
 - Evidence that the Work will not be completed in the time required for substantial or final completion;
 - Persistent failure to carry out the Work in accordance with the Contract;
 - Damage to the City or a third party to whom the City is, or may be, liable;
 - Evidence that the Work is not progressing according to agreed upon schedule by both parties.
- 11.11 In the event that the City makes written demand upon the Contractor for amounts previously paid by the City as contemplated in this subparagraph, the Contractor shall promptly comply with such demand and refund such monies to the City.

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

12. COMPLETION AND FINAL PAYMENT

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

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

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

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

13. CLAIMS BY THE CONTRACTOR

13.1 All Contractor claims shall be initiated by written notice and claim to the Project Manager. Such written notice and claim must be furnished within seven calendar days after occurrence of the event, or the first appearance of the condition, giving rise to the claim.

13.2 The Contractor shall diligently proceed with performance of this Contract whether or not there be such a claim pending and the City shall continue to make payments to the Contractor in accordance with this Contract. The resolution of any claim shall be reflected by a Change Order executed by the City, the Project Manager and the Contractor.

13.3 Should concealed and unknown conditions which could not, with reasonable diligence, have been discovered in the performance of the Work (a) below the surface of the ground or (b) in an existing structure differ materially with the conditions indicated by this Contract, or should unknown conditions of an unusual nature differing materially from those ordinarily

encountered in the area and generally recognized as inherent in Work of the character provided by this Contract, be encountered, the Contract Price shall be equitably adjusted by the Change Order upon the written notice and claim by either party made within seven (7) days after the first observance of the condition. As a condition precedent to the City having any liability to the Contractor for concealed or unknown conditions, the Contractor must give the City written notice of, and an opportunity to observe, the condition prior to disturbing it. The failure by the Contractor to make the written notice and claim as provided in this Subparagraph shall constitute a waiver by the Contractor of any claim arising out of or relating to such concealed or unknown condition.

- 13.4 If the Contractor wishes to make a claim for an increase in the Contract Price, as a condition precedent to any liability of the City therefore, the Contractor shall give the City written notice of such claim within seven (7) days after the occurrence of the event, or the first appearance of the condition, giving rise to such claim. Such notice shall be given by the Contractor before proceeding to execute any additional or changed Work. The failure by the Contractor to give such notice and to give such notice prior to executing the Work shall constitute a waiver of any claim for additional compensation.
- 13.5 The City reserves the right to increase or decrease quantities, and alter the details of construction including grade and alignment as the Project Manager may consider necessary or desirable, by approved Change Order. Such modifications shall not invalidate the Contract nor release the surety. Unless such alterations and increases or decreases change the total cost of the Work, based on the originally estimated quantities and the unit prices bid, by more than 25 percent, or change the total cost of any major item, based on the originally estimated quantities and the unit price bid, by more than 25 percent, the Contractor shall perform the work altered, increased or decreased, at a negotiated price or prices. (A major item shall mean any bid item, the total cost of which exceeds 12-1/2 percent of the total Contract Price based on the proposed quantity and the contract unit price).
- 13.6 When the alterations cause an increase or decrease in excess of the 25 percent indicated above, either the Contractor or the Project Manager may request an adjustment of the unit price to be paid for the item or items.
- 13.7 If a mutually agreeable adjustment cannot be obtained, the City reserves the right to terminate the Contract as it applies to the items in question and make such arrangements as may be deemed necessary to complete the Work.
- 13.8 In connection with any claim by the Contractor against the City for compensation in excess of the Contract Price, any liability of the City for the Contractor's costs shall be strictly limited to direct costs incurred by the Contractor and shall not include standby costs, indirect costs or consequential damages of the Contractor. The City shall not be liable to the Contractor for claims of third parties.
- 13.9 If the Contractor is delayed in progressing any task which at the time of the delay is then critical or which during the delay becomes critical, as the sole result of any act or neglect to act by the City or someone acting in the City's behalf, or by changes ordered in the Work, unusual delay in transportation, unusually adverse weather conditions not reasonably anticipated, fire or any causes beyond the Contractor's control, then the date for achieving Final Acceptance of the Work shall be extended upon the written notice and claim of the Contractor to the City, for such reasonable time as the City may determine. Any notice and claim for an extension of time by the Contractor shall be made not more than seven

calendar days after the occurrence of the event or the first appearance of the condition-giving rise to the claim and shall set forth in detail the Contractor's basis for requiring additional time in which to complete the Work. In the event the delay to the Contractor is a continuing one, only one notice and claim for additional time shall be necessary. If the Contractor fails to make such claim as required in this subparagraph, any claim for an extension of time shall be waived.

- 13.10 The Contractor shall delay or suspend the progress of the work or any part thereof, whenever so required by written order of the City, and for such periods of time as required; provided, that in the event of such delay or delays or of such suspension or suspensions of the progress of the work, or any part thereof, the time for completion of work so suspended or of work so delayed by such suspension or suspensions shall be extended for a period equivalent to the time lost by reason of such suspension or suspensions; but such order of the City or Project Manager shall not otherwise modify or invalidate in any way, any of the provisions of this Contract. In the event that the work shall be stopped by written order of the City, any expense, which, in the sole opinion and judgment of the City, is caused by the City, shall be paid by the City to the Contractor.
- 13.11 In executing the Contract Documents, the Contractor expressly covenants and agrees that, in undertaking to complete the Work within the time herein fixed, it has taken into consideration and made allowances for all hindrances and delays incident to such work, whether growing out of delays in securing materials or workers or otherwise. No charge shall be made by the Contractor for hindrances or delays from any cause during the progress of the work, or any portion thereof, included in this Contract, except as provided herein.
- 13.12 In addition to the Project Manual particular to Mobilization found elsewhere in this document, additional mobilization shall not be compensable for work outside of the designated areas for work deemed essential by the City. A quantity of work equal to as much as 10% of the total Contract may be required to be performed beyond the boundaries of the designated work areas

14. CHANGES IN THE WORK

- 14.1 Changes in the Work within the general scope of this Contract, consisting of additions, deletions, revisions, or any combination thereof, may be ordered without invalidating this Contract, by Change Order or by Field Order.
- 14.2 The Project Manager shall have authority to order minor changes in the Work not involving a change in the Contract Price or in Contract Time and consistent with the intent of the Contract. Such changes shall be effected by verbal direction and then recorded on a Field Order and shall be binding upon the Contractor. The Contractor shall carry out such Field Orders promptly.
- 14.3 Any change in the Contract Price resulting from a Change Order shall be by mutual agreement between the City and the Contractor as evidenced by the change in the Contract Price being set forth in the Change Order, and, together with any conditions or requirements related thereto, being initialed by both parties.
- 14.4 If no mutual agreement occurs between the City and the Contractor relative to a change in the Work, the Contractor shall proceed with the Work that is the subject of the Change

Order, and the change in the Contract Price, if any, shall then be determined by the Project Manager on the basis of the reasonable expenditures or savings of those performing, deleting or revising the Work attributable to the change, including, in the case of an increase or decrease in the Contract Price, a reasonable allowance for direct job site overhead and profit. In such case, the Contractor shall present, in such form and with such content to the City, as the Project Manager requires, an itemized accounting of such expenditures or savings, plus appropriate supporting data for inclusion in a Change Order. Reasonable expenditures or savings shall be limited to the following: reasonable costs of materials, supplies or equipment, including delivery costs, reasonable costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and worker's compensation insurance, reasonable rental costs of machinery and equipment exclusive of hand tools, whether rented from the Contractor or others, permit fees, and sales, use or other taxes related to the Work, and reasonable cost of direct supervision and job site field office overhead directly attributable to the change. In no event shall any standby time or any expenditure or savings associated with the Contractor's home office or other non-job site overhead expense be included in any change in the Contract Price. Further, in no event shall the Contractor's overhead expense exceed ten (10%) percent of the reasonable expenditures. Pending final determination of reasonable expenditures or savings to the City, payments on account shall be made to the Contractor on the Project Manager's Certificate for Payment.

- 14.5 If unit prices are provided in the Contract, and if the quantities contemplated are so changed in a proposed Change Order that the application of such unit prices to the quantities of Work proposed would cause substantial inequity to the City or to the Contractor, the applicable unit prices shall be equitably adjusted.
- 14.6 The execution of a Change Order by the Contractor shall constitute conclusive evidence of the Contractor's agreement to the ordered changes in the Work, this Contract as thus amended, the Contract Price and the Contract Time. The Contractor, by executing the Change Order, waives and forever releases any claim including impact against the City for additional time or compensation for matters relating to or arising out of or resulting from the Work included within or affected by the executed Change Order.

15. INSURANCE AND BONDS.

- 15.1 The Contractor shall secure and maintain, throughout the duration of the agreement, insurance (on an occurrence basis unless otherwise agreed to) of such types and in at least such amounts as required herein. Contractor shall provide certificates of insurance and renewals thereof on forms acceptable to the City. The City shall be notified by receipt of written notice from the insurer or the Contractor at least thirty (30) days prior to material modification or cancellation of any policy listed on the Certificate.
- 15.2 The Contractor, upon receipt of notice of any claim in connection with this Agreement, shall promptly notify the City, providing full details thereof, including an estimate of the amount of loss or liability. The Contractor shall monitor and promptly notify the City of any reduction in limits of protection afforded under any policy listed in the Certificate (or otherwise required by the Contract Documents) if the Contractor's limits of protection shall have been impaired or reduced to such extent that the limits fall below the minimum amounts required herein. The Contractor shall promptly reinstate the original limits of liability required hereunder and shall furnish evidence thereof to the City.
- 15.3 Minimum Requirements Commercial General Liability Policy Limits -

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

Policy MUST include the following conditions:

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

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

Limits (Same as Commercial General Liability) -

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

Policy MUST include the following condition:

NAME CITY OF PRAIRIE VILLAGE AS "ADDITIONAL INSURED"

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

Limits -

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

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

Workers' Compensation:	Statutory
Employer's Liability:	
Bodily Injury by Accident	\$100,000 each accident
Bodily Injury by Disease	\$500,000 policy limit
Bodily Injury by Disease	\$100,000 each employee

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

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

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

16. INDEMNITY

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

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

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

17. SUCCESSORS AND ASSIGNS

- 17.1 The City and Contractor bind themselves, their successors, assigns and legal representatives to the other party hereto and to successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in this Contract.
- 17.2 The Contractor shall not assign or sublet the work, or any part thereof, without the previous written consent of the City, nor shall it assign, by power of attorney or otherwise, any of the money payable under this Contract unless by and with the like written consent of the City. In case the Contractor assigns all, or any part of any moneys due or to become due under this Contract, the instrument of assignment shall contain a clause substantially to the effect that it is agreed that the right of the assignee in and to any moneys due or to become due to the Contractor shall be subject to all prior liens of all persons, firms and corporations for services rendered or materials supplied for the performance of the Work called for in this Contract.
- 17.3 Should any Subcontractor fail to perform in a satisfactory manner, the work undertaken, its subcontract shall be immediately terminated by the Contractor upon notice from the City. Performing in an unsatisfactory manner is defined as consistently having more than 10% of work unacceptable. The Contractor shall be as fully responsible to the City for the acts and omissions of the subcontractors, and of persons either directly or indirectly employed by them, as Contractor is for the acts and omissions of persons directly employed. Nothing contained in this Contract shall create any contractual relations between any Subcontractor and the City, nor shall anything contained in the Contract Documents create any obligation on the part of the City to pay or to see to the payment of any sums due any Subcontractor.
- 17.4 The Contractor shall not award subcontracts which total more than forty-five (45%) of the Contract Price and shall perform within its own organization work amounting to not less than fifty-five percent (55%) of the total Contract Price. Approval by the City of any

Subcontractor shall not constitute a waiver of any right of the City to reject Defective Work, material or equipment not in compliance with the requirements of the Contract Documents. The Contractor shall not make any substitution for any Subcontractor accepted by the City unless the City so agrees in writing.

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

18. NON-DISCRIMINATION LAWS

- 18.1 The Contractor agrees that:
- A. The Contractor shall observe the provisions of the Kansas Act Against Discrimination (K.S.A. 44-1001 et seq.) and shall not discriminate against any person in the performance of Work under the present contract because of race, religion, color, sex, disability, national origin, ancestry or age;
 - B. In all solicitations or advertisements for employees, the Contractor shall include the phrase, "equal opportunity employer," or a similar phrase to be approved by the Kansas Human Rights Commission (Commission);
 - C. If the Contractor fails to comply with the manner in which the Contractor reports to the commission in accordance with the provisions of K.S.A. 44-1031 and amendments thereto, the Contractor shall be deemed to have breached the present contract and it may be cancelled, terminated or suspended, in whole or in part, by the contracting agency;
 - D. If the Contractor is found guilty of a violation of the Kansas Act Against Discrimination under a decision or order of the Commission which has become final,

the Contractor shall be deemed to have breached the present contract and it may be cancelled, terminated or suspended, in whole or in part, by the contracting agency; and

- E. The Contractor shall include the provisions of Subsections A through D in every subcontract or purchase order so that such provisions will be binding upon such Subcontractor or vendor.
 - F. The provisions of this Section shall not apply to a contract entered into by a Contractor: (1) Who employs fewer than four employees during the term of such contract; or (2) Whose contracts with the City cumulatively total \$5,000 or less during the fiscal year of the City.
- 18.2 The Contractor further agrees that it shall abide by the Kansas Age Discrimination In Employment Act (K.S.A. 44-1111 et seq.) and the applicable provision of the Americans With Disabilities Act (42 U.S.C. 12101 et seq.) as well as all other federal, state and local laws.

19. FEDERAL LOBBYING ACTIVITIES

[THIS PROVISION ONLY APPLIES IF THE CITY IS RECEIVING FEDERAL FUNDS]

- 19.1 31 USCS Section 1352 requires all subgrantees, Contractors, Subcontractors, and consultants/Architects who receive federal funds via the City to certify that they will not use federal funds to pay any person for influencing or attempting to influence a federal agency or Congress in connection with the award of any federal contract, grant, loan, or cooperative agreements.
- 19.2 In addition, contract applicants, recipients, and subrecipients must file a form disclosing any expenditure they make for lobbying out of non-federal funds during the contract period.
- 19.3 Necessary forms are available from the City and must be returned to the City with other Contract Documents. It is the responsibility of the general contractor to obtain executed forms from any Subcontractors who fall within the provisions of the Code and to provide the City with the same.

20. RELATIONS WITH OTHER CONTRACTORS:

- 20.1 The Contractor shall cooperate with all other contractors who may be performing work on behalf of the City, and workers who may be employed by the City, or any other entity on any work in the vicinity of the Work to be done under this Contract, and the Contractor shall so conduct his/her operations as to interfere to the least possible extent with the work of such contractors or workers. The Contractor shall be responsible for any injury or damage, that may be sustained by other contractors, workers, their work or employees of the City, because of any fault or negligence on the Contractor's part, and shall, at his/her own expense, repair or pay for such injury or damage. If the work of the Contractor is delayed because of any acts or omissions of any other Contractor or Contractors, the Contractor shall have no claim against the City on that account other than for an extension of time.
- 20.2 When two or more Contracts are being executed at one time in such manner that work on one Contract may interfere with that on another, the City shall decide which Contractor shall progress at which time.

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

21. RIGHT OF CITY TO TERMINATE

- 21.1 If the Contractor persistently or repeatedly refuses or fails to prosecute the Work in a timely manner, or supply enough properly skilled workers, supervisory personnel or proper equipment or materials, or if it fails to make prompt payment to Subcontractors or for materials or labor, or persistently disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or if this Contract is assigned by Contractor without authorization or if Contractor is adjudged as bankrupt, or if a general assignment of assets be made for the benefit of creditors; or if a receiver is appointed, or otherwise is guilty of a substantial violation of a provision of this Contract, then the City may by written notice to the Contractor, without prejudice to any right or remedy, terminate the employment of the Contractor and take possession of the site and of all materials, equipment, tools, construction equipment and machinery thereon owned by the Contractor and may finish the Work by whatever methods it may deem expedient. In such case, the Contractor and its surety shall be liable to the City for all excess cost sustained by the City because of such prosecution and completion including any additional legal, Project Manager or bid-letting costs therefore. In such case, the Contractor shall not be entitled to receive further payment. In the event the Contractor is found in a court of law to have been wrongfully terminated for cause, then such termination shall be deemed a termination for convenience and the Contractor shall be compensated as provided herein. Any termination of the Agreement for alleged default by Contractor that is ultimately determined to be unjustified shall automatically be deemed a termination for convenience of the City.
- 21.2 The City, within its sole discretion, may elect to terminate the Contract with the Contractor for convenience upon three (3) days written Notice to Contractor. In the event of such termination, Contractor shall cease immediately all operations and shall be compensated for all work performed as of the date of termination in accordance with the terms of payment in this contract. Contractor shall not be entitled to any anticipatory profits, consequential damages or other costs other than direct costs of demobilization.

22. MISCELLANEOUS:

- 22.1 The Contractor warrants to the City that all labor furnished to progress the Work under the Contract will be competent to perform the tasks undertaken, that the product of such labor will yield only first-class results, that materials and equipment furnished will be of good

- quality and new unless otherwise permitted by this Contract, and that the Work will be of good quality, free from faults and defects and in strict conformance with the Project Manual. All Work not conforming to these requirements may be considered defective.
- 22.2 The Contractor shall obtain and pay for all permits, fees and licenses necessary or ordinary for the Work. The Contractor shall comply with all lawful requirements, including federal and state laws, City and County laws and ordinances and building codes, applicable to the Work and shall give and maintain copies of all notices required by applicable law pertaining to the Work.
- 22.3 Provision for Emergencies. Whenever, in the opinion of the City, the Contractor has not taken sufficient precaution for the safety of the public or the protection of the Work to be constructed under this Contract, or of adjacent structures or property which may be injured by process of construction, and whenever, in the opinion of the City, an emergency shall arise and immediate action shall be considered necessary in order to protect property interests and to avoid personal injury and/or death, then the City, with or without notice to the Contractor, shall provide suitable protection to the said interests by causing such Work to be done and materials to be furnished at places as the City may consider necessary and adequate. The cost and expense of such Work and material so furnished shall be borne by the Contractor and, if the same shall not be paid on presentation of the bills therefore, such costs shall be deducted from any amounts due or to become due the Contractor. The performance of such emergency Work shall in no way relieve the Contractor of responsibility for damages which may occur during or after such precaution has been duly taken.
- 22.4 Both the business address of the Contractor given in the Bid or proposal upon which this Contract is founded, and the Contractor's Office near the Work, is hereby designated as the places to which all notices, letters, and other communications to the Contractor may be mailed or delivered. The delivering at either of the above named addresses, or depositing in any mailbox regularly maintained by the Post Office, of any notice, letter or other communication so addressed to the Contractor, and the date of said service shall be the date of such delivery or mailing. Such addresses may be changed at any time by an instrument in writing, executed by the Contractor, presented, and delivered to the Project Manager and to the City. Nothing herein contained shall be deemed to preclude or render inoperative the service of any notice, letter, or communication upon the Contractor personally.
- 22.5 It is mutually agreed by and between the parties to this Contract that all royalties and fees for and in connection with patents, or patent infringement, claims for materials, articles, apparatus, devices or equipment (as distinguished from processes) used in or furnished for the work shall be included in the Contract Price and the Contractor shall satisfy all demands that may be made at any time for such, and the Contractor shall at its cost and expense, defend any and all suits or proceedings that may be instituted at any time against the City for infringement or alleged infringement of any such patents involved in the work, and Contractor shall pay any award of damages.
- 22.6 The right of general administration of the City shall not make the Contractor an agent of the City, and the liability of the Contractor for all damages to persons, firms, and corporations, arising from the Contractor's execution of the Work, shall not be lessened because of such general administration, but as to all such persons, firms, and corporations, and the damages, if any, to them or their property. The Contractor herein is an independent Contractor in respect to the work.

- 22.7 For a period of time, from the inception of the Contract to three (3) years from the date of final payment under the Contract, the Contractor and subcontractors shall maintain books, accounts, ledgers, invoices, drafts, pages and other records pertaining to the performance of this Contract. At all reasonable times during this period these records shall be available within the State of Kansas at a field or permanent business office for inspection by authorized representatives of the City or of any other agency, which has contributed funds in connection with the Contract or to which the City is obligated to make such inspections available. In addition, this requirement shall be included in all subcontracts entered into in connection with this Contract.
- 22.8 Titles, subheadings used herein, and other Contract Documents are provided only as a matter of convenience and shall have no legal bearing on the interpretation of any provision of the Contract Documents.
- 22.9 No waiver of any breach of this Contract shall be construed to be a waiver of any other subsequent breach.
- 22.10 Should any provision of this Agreement or other Contract Documents be determined to be void, invalid, unenforceable or illegal for whatever reason, such provision(s) shall be null and void; provided, however, that the remaining provisions of this Agreement and/or the other Contract Documents shall be unaffected thereby and shall continue to be valid and enforceable.
- 22.11 Without in any manner limiting Contractor's responsibilities as provided elsewhere in the Contract Documents, the Contractor shall assume full responsibility for the protection of all public and private property, structures, sewers, and utilities, for both above ground and underground facilities, along, beneath, above, across or near the site or sites of the Work being performed under this Agreement, or which are in any manner affected by the prosecution of the Work or the transportation of men/women or materials in connection therewith. Barriers shall be kept in place at all times to protect persons other than those engaged on or about the Work from accident, and the Contractor will be held responsible for all accidents to persons or property resulting from the acts of Contractor or its employees.
- 22.12 The Contractor shall keep fully informed of all existing and current regulations of the City, county, state, and federal laws, which in any way limit or control the actions or operations of those engaged upon the work, or affecting materials supplied, to or by them. The Contractor shall at all times observe and comply with all ordinances, laws, and regulations, and shall protect and indemnify the City and the City's officers and agents against any claims or liability arising from or based on any violation of the same.
- 22.13 Nothing contained in the Contract Documents shall create, or be interpreted to create, privity or any other contractual agreement between the City and any person or entity other than the Contractor.
- 22.14 Duties and obligations imposed by the Contract Documents, rights, and remedies available hereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.
- 22.15 No action or failure to act by the City, Project Manager or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to

act constitute approval or acquiescence in a breach hereunder, except as may be specifically agreed in writing.

- 22.16 Contractor specifically acknowledges and confirms that: (i) it has visited the site, made all inspections it deems appropriate and has read and fully understands the Contract Documents, including all obligations and responsibilities undertaken by it as specified herein and in other Contract Documents and knowingly accepts the same; (ii) it has furnished copies of all Contract Documents to its insurance carrier(s) and its surety(ies); and (iii) its insurance carrier(s) and surety(ies) agree to be bound as specified herein, in the Contract Documents and in the insurance policy(ies) and bonds as to liability and surety coverage.
- 22.17 It is specifically agreed between the parties executing this Agreement that the Contract Documents are not intended to create any third party beneficiary relationship nor authorize anyone not a party to this Agreement to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of this Agreement. The duties, obligations and responsibilities of the parties to this Agreement with respect to third parties shall remain as imposed by law.
- 22.18 This Agreement is entered into, under and pursuant to, and is to be construed and enforceable in accordance with the laws of the State of Kansas. Venue of any litigation arising in connection with this Agreement shall be the State courts of Johnson County, Kansas.

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

CITY OF PRAIRIE VILLAGE

(typed company name)

By: _____
(signed)

By: _____
(signed)

Laura Wassmer

(typed name)

Mayor

(typed title)

City of Prairie Village

(typed company name)

7700 Mission Road

(typed address)

Prairie Village, Kansas 66208

(typed city, state, zip)

(typed telephone number)

(date of execution)

(date of execution)

SEAL

ATTEST:

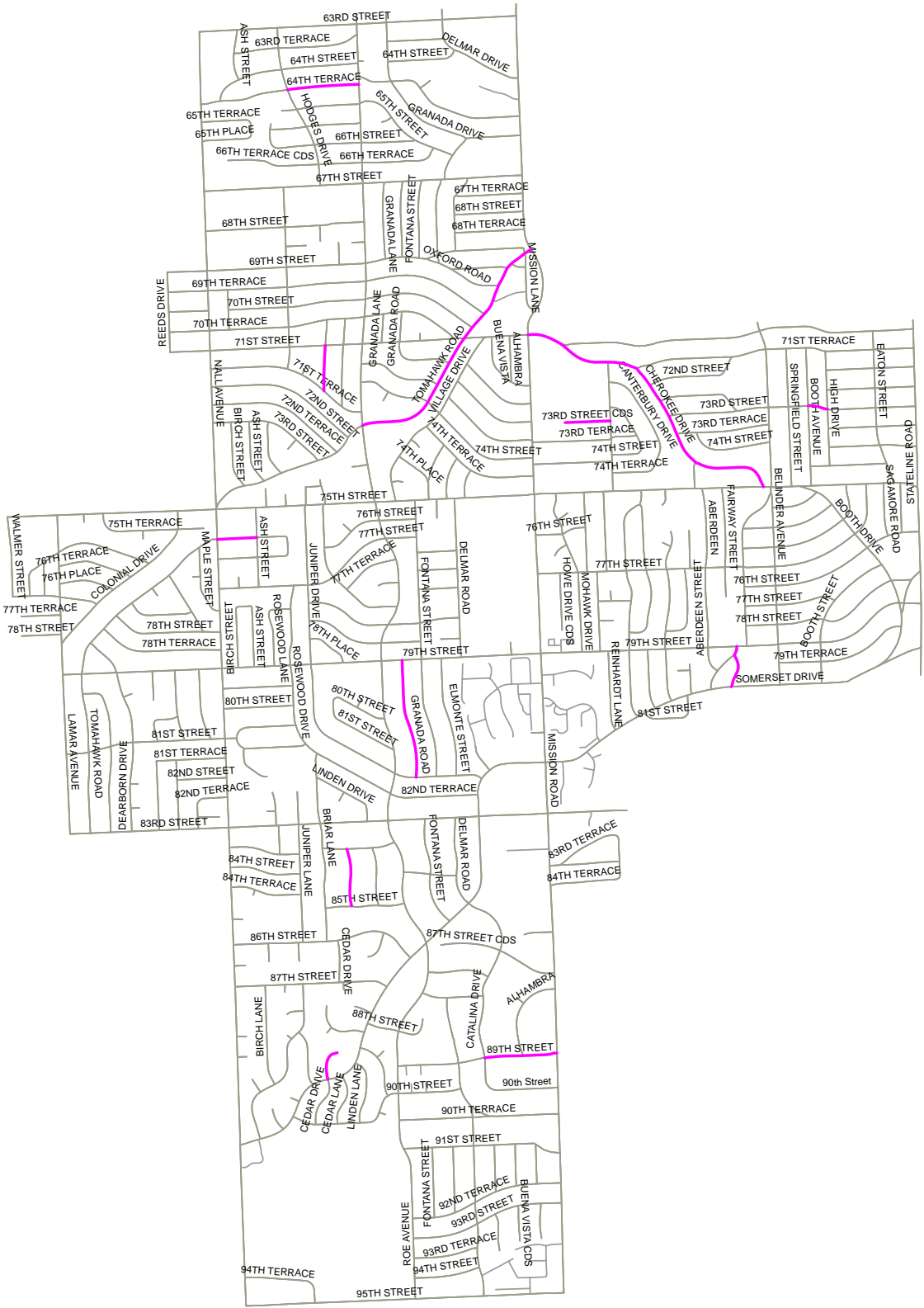
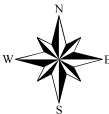
APPROVED BY:

City Clerk, Joyce Hagen-Mundy

City Attorney, David Waters

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

2018 Paving Program





PUBLIC WORKS DEPARTMENT

Council Meeting Date: June 4, 2018

DISCUSS INTERSECTION OF CHEROKEE AND 71ST STREET GEOMETRIC IMPROVEMENT

RECOMMENDATION

Move forward with completion of the design of the geometric improvement at Cherokee and 71st Street.

BACKGROUND

The intersection of Cherokee and 71st Street currently is a Y-intersection. The intersection is a high volume intersection which lacks protected pedestrian connection east to west. This type of intersection is popular and functional on lower volume streets in Prairie Village; however in this location, the Y makes it difficult to construct a safe pedestrian crossing and volume of traffic has generated 15 vehicular accidents in the past 3 years. Modeling shows no significant change in traffic patterns while improving the overall safety of the intersection and sight-line visibility.

The graphics below show the before and after geometric configuration.



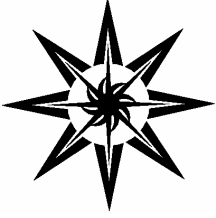
FUNDING SOURCE

The estimated cost of this improvement is \$200,000. 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.

PREPARED BY

Melissa Prenger, Sr Project Manager

May 30, 2018



ADMINISTRATION

Council Committee Meeting Date: June 4, 2018

Consider approval of amendments to lease agreements with Sprint, Verizon, and AT&T for City-owned cell tower

BACKGROUND

The City currently has lease agreements for the City Hall cell tower with three mobile service providers - Sprint, AT&T, and Verizon. All of the contracts with these service providers expired in April of 2017, and the City has been in discussions since 2016 to negotiate new agreements. When reviewing the existing agreements, staff found that the existing agreements were inconsistent and in need of updating to make our contracts equitable and consistent across the board for each service provider.

The proposed terms of the new agreements are below. Both Sprint and Verizon have agreed to these terms. Staff has been in communication continuously with AT&T, but due to turnover on their staff, they have not yet agreed to the terms. The City has informed them that the intent is that all three service providers have the exact same terms in their agreements and that the terms we have provided are the only terms we will agree to at this point, without specific direction from the City Council to change the provisions. The terms of the agreement are as follows:

1. Set a consistent lease amount for each service provider to \$3,322.16 per month

Currently, all three service providers pay different monthly rates. AT&T pays the City \$2,116 per month; Sprint pays the City \$3,421.83 per month, and Verizon is currently paying the City \$3,635.69 per month, which is 1.5 times their monthly rate. Their agreement requires them to pay a “holdover rate” of 150% of their normal rate if they occupy space on the tower once their agreement expires. Their actual monthly rate when not in holdover is \$2,423.80 per month. Staff researched what other nearby cities receive for cell tower lease rates, and we found that the new proposed monthly rate is competitive with nearby cities in Johnson County. The proposed new terms call for a 15% rate increase every 5 years.

2. Require service providers to use an engineer selected by the city to conduct and pay for a structural analysis any time equipment modifications are made to the tower

We currently require these structural analyses to be completed before modifications can be made, but service providers are currently permitted to use an engineer of their choosing. This has caused issues for the City in the past due to engineers for each service provider having conflicting findings in their actual load analysis. Staff is concerned about the accuracy of the findings since this is not an “on site” inspection process. Staff has proposed one engineer at the City’s direction perform the load assessment for consistent application, since the tower is at capacity. The estimated cost of this type of analysis is \$1,750.

- 3. The City will be responsible for the cost of maintenance on the cell tower - but providers will be responsible for repairing/replacing their equipment if causing issues on the tower**
When we discussed this topic with the City Council back in January of this year, the original recommendation was that the cost of maintenance should be split amongst the three service providers. Since that time, staff has spoken with other cities and found that it was typical for the cities to use the revenue from the leases to cover the maintenance on the tower. We also conducted a conditional inspection of the tower and found that there were no major deficiencies or maintenance needs currently on the tower. The enclosure around the tower is, however, in need of repair. Public Works is currently investigating the best way to repair this.
- 4. Set the lease term to five years, subject to renewal for three additional terms of 5 years, for a total of 20 years.**
The most recent AT&T agreement had a term of 25 years, with a rate increase every 5 years. The most recent Verizon agreement had a term of 25 years, with a 3% annual rate increase. The most recent agreement with Sprint had a term of 5 years, with an option to renew until the expiration of the Special Use Permit on April 1, 2017.
- 5. City has option to terminate lease agreements**
If the tower becomes terminally overloaded, the City has the ability to negotiate a reasonable time for termination of these lease agreements.

RECOMMENDATION

Make a motion to approve the attached lease amendments with Verizon, AT&T, and Sprint and move forward for approval at the June 18 City Council meeting.

PREPARED BY

Jamie Robichaud
Assistant City Administrator
Date: May 30, 2018

AMENDMENT NO. 1 TO LEASE AGREEMENT

This Amendment No. 1 to Lease Agreement (this “**Amendment**”), effective as of the date last signed below (“**Effective Date**”), amends a certain Lease Agreement between Sprint Spectrum Realty Company, LLC, a Delaware limited liability company, successor in interest to Sprint Spectrum L.P., a Delaware limited partnership (“**Tenant**”), and The City of Prairie Village, Kansas, a municipal corporation (“**Landlord**”), dated November 1, 2004 (the “**Agreement**”).

BACKGROUND

The Agreement expired on April 1, 2017 but was extended by that certain letter agreement between Tenant and Landlord dated April 10, 2017.

Tenant and Landlord desire to amend and extend the term of the Agreement, as set forth herein.

AGREEMENT

For good and valuable consideration the receipt and sufficiency of which are acknowledged, Landlord and Tenant agree as follows:

1. **Tower**. The definition of “Tower” shall be amended to include the equipment compound with associated equipment shelters used by both Landlord and current tenants.
2. **Term**. Notwithstanding the provisions of Section 3 of the Agreement, the term of the Agreement will be extended for 3 additional renewal terms of 5 years each (each, an “**Additional Extension Term**”), commencing upon expiration of the last remaining Extension Term of the Agreement, under the same terms and conditions as are set forth therein, and as otherwise amended. The Agreement will automatically be extended for each successive Additional Extension Term unless Tenant notifies Landlord of its intention not to renew prior to commencement of the succeeding Additional Extension Term.
3. **Rent**. Notwithstanding the provisions of Section 4 (a) and (b) of the Lease, beginning upon the first Additional Extension Term, Tenant will pay Landlord as rent the sum of \$3,322.16 per month, plus any applicable tax to Landlord. Rent shall be payable in advance on the first day of the month. Rent will be prorated for any partial month. All payments due under this Agreement shall be sent to the attention of the City Administrator

at the Landlord's address indicated below. Beginning on each Additional Extension Term rent shall be subject to an increase of 15% of rent from the previous Additional Extension Term.

4. **Inspections and Analysis**

- a. **TIA Conditional Inspection.** As of the Effective Date, the parties acknowledge that Landlord has performed a baseline TIA Conditional Inspection of the Tower at its cost, the results of which has been provided to Tenant. Landlord may perform additional TIA Conditional Inspections (each, a "**Supplemental TIA Conditional Inspection**") of the Tower at its cost from time to time as Landlord's engineering consultant deems appropriate. Notwithstanding anything to the contrary contained herein, such Landlord's engineering consultant shall not be compensated in whole or in part on a contingency fee basis.
- b. If any Supplemental TIA Conditional Inspection recommends that modifications be made to the Tower to remedy issues with the Tower, Landlord shall cause the modifications to be performed by an engineering consultant of Landlord's choosing. If the need for any of the modifications are specifically caused by Tenant's facilities, Tenant shall be invoiced for its pro rata share of the costs along with a written report explaining the results and conclusions of Landlord's engineering consultant. If, based upon the written report of Landlord's engineering consultant the Tower is overloaded and the issues cannot be mitigated, Landlord reserves the right to negotiate a reasonable time for termination of this Agreement and the removal of Tenant's facilities located on the Tower in accordance with Section 13 of the Agreement. Notwithstanding anything to the contrary contained herein, Tenant will not be liable for any costs in connection with any structural issues discovered by Landlord's engineering consultant provided that at the time Tenant installed the equipment at issue it received the written approval of Landlord. Further notwithstanding anything to the contrary contained herein, in any situation involving a possible termination of the Agreement, Landlord will treat Tenant in a non-discriminatory manner in relation to any other carrier on the Tower.

5. **Structural Analysis.**

- a. Upon future application for modifications to Tenant's equipment and/or facilities, including the switching out of facilities, located on the Tower, Tenant agrees to pay in full the costs of a structural analysis. Such structural analysis will be performed by an engineering consultant of Landlord's choosing, and will include, but not be limited to the study of the Tower's structural integrity, whether the Tower's capacity has been reached, and what remaining useful life the Tower possesses.
- b. In the event that the structural analysis finds that the Tower's capacity has been reached, no new facilities may be added by any tenant to the Tower. All applications for the switching out of facilities which will not result in an overload of the Tower's capacity shall be considered by Landlord on a first-come, first-serve basis.

The parties have executed this Amendment as of the Effective Date.

Landlord:

The City of Prairie Village, Kansas

Tenant:

Sprint Spectrum Realty Company, LLC

By: _____
(please use blue ink)

Name: _____

Title: _____

Date: _____, 2018
(Date must be completed)

By: _____

Name: James R. Moore

Title: Site Development Manager

Date: _____, 2018
(Date must be completed)

Exhibit D

(Memorandum of Amendment)

**RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:**

Sprint Property Services
Mailstop KSOPHT0101-Z2650
6391 Sprint Parkway
Overland Park, Kansas 66251-2650

[space above this line for Recorder's use]

MEMORANDUM OF AMENDMENT

THIS MEMORANDUM OF AMEMDMENT (“Amended Memorandum”), by and between The City of Prairie Village, Kansas, a municipal corporation (“Landlord”) and Sprint Spectrum Realty Company, LLC, a Delaware limited liability company, successor in interest to Sprint Spectrum L.P., a Delaware limited partnership (“Tenant”), evidences the LEASE AGREEMENT made and entered into between Landlord and Tenant dated November 1, 2004 (the "Agreement") has been amended by written agreement between the parties (the “Amendment”). The term Agreement hereinafter refers to and includes the Amendment. The parties caused to be recorded a Memorandum of Agreement with the Office of Johnson County Recorder, in the State of Kansas, as document number 20041116-0006041 on November 16, 2004.

The Agreement as amended provides in part that Landlord leases to Tenant certain real property owned by Landlord and located at 7700 Mission Road, City of Prairie Village, County of Johnson, State of Kansas (“Property”) for the purpose of installing, operating and maintaining a communications facility and other improvements. The Property is legally described in Exhibit A attached hereto. The portion of the Property leased to Tenant together with non-exclusive utility and access easements (the "Site") is further described in the Agreement.

The Amendment grants Tenant the option to extend the Agreement for three (3) extension terms of five (5) years, each that may be exercised by Tenant.

**EXHIBIT A
TO MEMORANDUM OF AMENDMENT**

Property Description:

**DESCRIPTION OF PREMISES OF TOWER
AND ASSOCIATED EQUIPMENT COMPOUND**

Commencing at the N.E. corner of the N ½ of the SE ¼ of the SE ¼ of Section 21, Township 12 South, Range 25 East, in the City of Prairie Village, Johnson County, Kansas; thence S 89° 57' 34" W along the North line of said N ½, SE ¼, SE ¼, a distance of 299.62 feet; thence S 00° 02' 26" E, a distance of 7.95 feet to the Point of Beginning of Lease Boundary; thence S 30° 17' 51" W, a distance of 44.17 feet; thence S 59° 42' 09" E, a distance of 22.67 feet; thence N 30° 17' 51" E, a distance of 13.71 feet; thence S 59° 42' 09" E, a distance of 14.00 feet; thence N 30° 17' 51" E, a distance of 44.39 feet; thence N 59° 42' 09" W, a distance of 20.33 feet; thence S 30° 17' 51" W, a distance of 13.94 feet; thence N 59° 42' 09" W, a distance of 16.34 feet to the Point of Beginning. Containing 1,711 square feet more or less.

**SECOND AMENDMENT TO
TOWER CONSTRUCTION AND LEASE AGREEMENT**

This Second Amendment to Tower Construction and Lease Agreement (“**Amendment**”) is made and entered into this ____ day of _____ 20__, by and between **The City of Prairie Village Kansas** (“City” or “**Landlord**”) and **Verizon Wireless (VAW) LLC d/b/a Verizon Wireless** (“**Tenant**”). Landlord and Tenant are at times collectively referred to hereinafter as the “**Parties**” or individually as the “**Party**”.

WHEREAS, Landlord is the owner of the property located at 7700 Mission Road, Prairie Village, Johnson County, Kansas (the “**Property**”);

WHEREAS, Landlord and Midwest Cellular Telephone Company d/b/a Cellular One, Tenant's predecessor in interest, entered into the Tower Construction and Lease Agreement dated April 20, 1992, as amended by the September 20, 2004 First Amendment to Tower Construction and Lease Agreement (collectively, the “**Lease**”), pursuant to which Landlord leases to Tenant a portion of the Property, for the construction, installation, maintenance, improvement and operation of a communications facility and uses incidental thereto; and

WHEREAS, the Parties desire to amend the Lease to grant Tenant options for additional renewal terms, among other things.

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

1. Any capitalized terms used in this Amendment that are not defined herein have the meanings given those terms in the Lease.
2. The definition of “Tower” shall be amended to include the equipment compound with associated equipment shelters used by both Landlord and current tenants.
3. Section 4 of the Lease is hereby amended to grant Tenant the option to extend the Lease for three (3) additional five (5) year renewal terms (the “**Additional Renewal Term**”), which shall be automatically exercised unless Tenant gives Landlord written notice of its intent to terminate at least ninety (90) days prior to the end of the then-current term.
4. Upon the renewal date, Tenant will pay Landlord as rent the sum of \$3322.16 per month, plus any applicable tax to Landlord. Rent shall be payable in

advance on the first day of the month. Rent will be prorated for any partial month. All payments due under this Agreement shall be sent to the attention of the City Administrator at Landlords address. Rent shall be subject to an increase of 15% at the beginning of each term.

5. Section 8 of the Lease is hereby deleted in its entirety and replaced with the following:

8. Termination. . If: (i) any of the applications for governmental approvals is finally rejected; (ii) any governmental approval issued to Tenant is canceled, expires, lapses, or is otherwise withdrawn or terminated by governmental authority; or (iii) Tenant determines that the Premises is no longer technically compatible for its use, Tenant shall have the right to terminate this Lease. Notice of Tenant's exercise of its right to terminate shall be given to Landlord in writing by certified mail, return receipt requested, and shall be effective upon the mailing of the notice by Tenant, or upon such later date as designated by Tenant. All rentals paid to said termination date shall be retained by Landlord. Upon such termination, this Lease shall be of no further force or effect except to the extent of the representations, warranties and indemnities made by each Party to the other in the Lease. Otherwise, the Tenant shall have no further obligations for the payment of rent to Landlord. If the lease is terminated, Tenant shall remove its equipment/facilities from the Tower within 120 days of the termination of this Agreement. Upon removal, Tenant shall return the Tower to substantially the condition existing on the commencement date of this Agreement, normal wear and tear excepted, or leave it in its improved condition, as reasonably appropriate under the circumstances.

6. Remove existing Section 10.

New Section 10a. Tower Maintenance. Tenant acknowledges that the rent paid under Section 4 anticipates the cost of regular maintenance of the tower, however, Tenant shall be fully responsible for the maintenance of its own equipment and service on the Tower and for any and all damage to the Tower and to persons or property caused by Tenant, its employees or agents. Such maintenance shall include structural repairs, lighting, marking of the Tower as required by applicable law, painting of the Tower, and maintaining the appearance of the Tower in a manner satisfactory to the Landlord.

7. New Section 10b. Inspections and Analysis

TIA Conditional Inspection. As of the date of execution of this Third Amendment, the Landlord has performed a baseline TIA Conditional Inspection of the Tower at its cost, the results of which have been provided to Tenant. The Landlord may perform additional TIA Conditional Inspections (“Supplemental TIA Conditional Inspection”) of the Tower at its cost from time to time as the Landlord’s engineering consultant deems appropriate. Notwithstanding anything to the contrary contained herein, such Landlord’s engineering consultant shall not be compensated in whole or in part on a contingency fee basis.

If any Supplemental TIA Conditional Inspection recommends that modifications be made to the Tower to remedy issues with the Tower, the Landlord shall cause the modifications to be performed by an engineering consultant of the Landlord’s choosing. If the need for any of the modifications are specifically caused by Tenant’s facilities, Tenant shall be invoiced for its pro rata share of the costs along with a written report explaining the results and conclusions of Landlord’s engineering consultant. If, based on the written report of Landlord’s engineering consultant the Tower is overloaded and the issues cannot be mitigated, Landlord reserves the right to negotiate a reasonable time for termination of this Agreement and the removal of Tenant’s facilities located on the Tower in accordance with this Agreement. Notwithstanding anything to the contrary contained herein, Tenant will not be liable for any costs in connection with any structural issues discovered by Landlord’s engineering consultant provided that at the time Tenant installed the equipment at issue it received the written approval of Landlord. Further notwithstanding anything to the contrary contained herein, in any situation involving a possible termination of the Agreement, Landlord will treat Tenant in a non-discriminatory manner in relation to any other carrier on the Tower.

Structural Analysis. Upon future application for modifications to Tenant’s equipment and/or facilities, including the switching out of facilities, located on the Tower, Tenant agrees to pay in full the costs of a Structural Analysis. Such Structural Analysis will be performed by an engineering consultant of the Landlord’s choosing, and will include, but not be limited to the study of the Tower’s structural integrity, whether the Tower’s capacity has been reached, and what remaining useful life the Tower possesses.

In the event that the Structural Analysis finds that the Tower’s capacity has been reached, no new facilities may be added by any tenant to the Tower. All applications for the switching out of facilities which will not result in an overload of the Tower’s capacity shall be considered by the Landlord on a first-com, first-serve basis.

8. Tenant may not assign or sublease this Agreement, in whole or in part, without Landlord’s prior written consent, which consent shall not unreasonably be withheld or delayed. The transfer of the rights and obligations of Tenant to a parent, subsidiary or other affiliate of Tenant, or to any successor in interest or entity acquiring 51% or more of Tenant’s stock or assets, shall not be deemed an assignment and shall not require Landlord’s consent. Tenant shall give Landlord at least 30 days prior written notice of any transfer for which Landlord’s consent is required hereunder. In the event of an assignment to which Landlord consents, Landlord shall release Tenant from further obligations hereunder, provided

that Tenant is then current on all payments owing under the terms and conditions of this Agreement. Any necessary Landlord approval for a sublease shall be in the form of a separate written agreement that provides at a minimum for: (i) Landlord's review and approval of any additional facilities or improvements; and (ii) additional rent for any such additional facilities or improvements. Any subtenant or assignee shall be subject to the appropriate provisions and obligations of Tenant under this Agreement.

9. Landlord and Tenant each hereby warrant to the other that the person executing this Amendment on behalf of the warranting Party has the full right, power and authority to enter into, and execute, this Amendment on that Party's behalf, and that no consent from any other person or entity is necessary as a condition precedent to the legal effect of this Amendment.

10. Except as specifically provided in this Amendment, the Lease shall remain in full force and effect and shall continue to be binding upon, and enforceable against, Landlord and Tenant in accordance with its terms. All covenants, terms and obligations of the Lease not modified by this Amendment are hereby ratified and affirmed. The terms and provisions of this Amendment shall control in the event of any inconsistency or discrepancy between the Lease and this Amendment.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, Landlord and Tenant have executed this Amendment effective as of the day and year first above written.

LANDLORD:

The City of Prairie Village Kansas

By: _____

Printed Name: _____

Title: _____

Date: _____

TENANT:

**Verizon Wireless (VAW) LLC
d/b/a Verizon Wireless**

By: _____

Printed Name: _____

Title: _____

Date: _____

THIRD AMENDMENT TO PRAIRIE VILLAGE TOWER LEASE AGREEMENT

THIS THIRD AMENDMENT TO LEASE (“**Third Amendment**”), dated as of the latter of the signature dates below, is by and between the City of Prairie Village, Kansas, a Kansas municipal corporation, having a mailing address of 7700 Mission Road, Prairie Village, KS 66208 (“**City**” or “**Landlord**”) and New Cingular Wireless PCS, LLC, a Delaware limited liability company, as successor in interest to Kansas City SMSA Limited Partnership, having a mailing address of 12555 Cingular Way, Suite 1300, Alpharetta, GA 30004 (“**Tenant**”), collectively referred to as “**Party**” or “**Parties**”.

WHEREAS, City and Tenant entered into the Prairie Village Tower Lease dated April 20, 1992, and a First Amendment to the Prairie Village Tower Lease (“**First Amendment**”) dated March 3, 2008, and a Second Amendment to the Prairie Village Tower Lease (“**Second Amendment**”) dated October 5, 2011, whereby the City leased to Tenant both ground space and equipment space at the 150’ level on the telecommunications tower located at 7700 Mission Road, Prairie Village, Johnson County, Kansas 66208 (collectively, the “**Lease**”); and

WHEREAS, City and Tenant desire to adjust the rent in conjunction with the modifications to the Lease contained herein; and

WHEREAS, City and Tenant desire to amend the Lease to clarify the scope of Tenant's permitted use of the Premises; and

WHEREAS, City and Tenant desire to amend the Lease to modify the notice section thereof; and

WHEREAS, City and Tenant, in their mutual interest, wish to amend the Lease as set forth below accordingly.

NOW THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, City and Tenant agree as follows:

The definition of “**Tower**” shall be amended to include the equipment compound with associated equipment shelters used by both Landlord and current tenants.

Section 3. Term. Upon the expiration of the initial term, the term of the Agreement will be extended for 3 renewal terms of 5 years (“**Renewal Term**”), commencing upon expiration of the Initial Term of the Agreement, under the same terms and conditions as are set forth therein, and

as otherwise amended. The Agreement will automatically be extended for such Renewal Term unless Tenant notifies City of its intention not to renew prior to commencement of the Renewal Term.

Section 4. Rental Upon the renewal date, Tenant will pay City as rent the sum of \$3322.16 per month, plus any applicable tax. Rent shall be payable in advance on the first day of each month. Rent will be prorated for any partial month. All payments due under this Agreement shall be sent to the attention of the City Administrator at City's address indicated below. The rent shall be subject to an increase of 15% at the beginning of each new term.

New Section 6a. Tower Maintenance. Tenant acknowledges that the rent paid under Section 4 anticipates the cost of regular maintenance of the tower, however, Tenant shall be fully responsible for the maintenance of its own equipment and service on the Tower and for any and all damage to the Tower and to persons or property caused by Tenant, its employees or agents.

New Section 6b. Inspections and Analysis.

TIA Conditional Inspection. As of the date of execution of this Third Amendment, the Landlord has performed a baseline TIA Conditional Inspection of the Tower at its cost., the results of which has been provided to Tenant. The Landlord may perform additional TIA Conditional Inspections (each, a "Supplemental TIA Conditional Inspection") of the Tower at its cost from time to time as the Landlord's engineering consultant deems appropriate. Notwithstanding anything to the contrary contained herein, such Landlord's engineering consultant shall not be compensated in whole or in part on a contingency fee basis.

If any TIA Conditional Inspection recommends that modifications be made to the Tower to remedy issues with the Tower, the Landlord shall cause the modifications to be performed by an engineering consultant of the Landlord's choosing. If the need for any of the modifications are specifically caused by Tenant's facilities, Tenant shall be invoiced for its pro rata share of the costs. If, based on the written report of Landlord's engineering consultant the Tower is overloaded and the issues cannot be mitigated, Landlord reserves the right to negotiate a reasonable time for termination of this Agreement and the removal of Tenant's facilities located on the Tower in accordance with this Agreement. Notwithstanding anything to the contrary contained herein, Tenant will not be liable for any costs in connection with any structural issues discovered by Landlord's engineering consultant provided that at the time Tenant installed the equipment at issue it received the written approval of Landlord. Further notwithstanding anything to the contrary contained herein, in any situation involving a possible termination of the Agreement, Landlord will treat Tenant in a non-discriminatory manner in relation to any other carrier on the Tower.

Structural Analysis. Upon future application for modifications to Tenant's equipment and/or facilities, including the switching out of facilities, located on the Tower, Tenant agrees to pay in full the costs of a Structural Analysis. Such Structural Analysis will be performed by an engineering consultant of Landlord's choosing, and will include, but not be limited to the study of the Tower's structural integrity, whether the Tower's capacity has been reached and what remaining useful life the Tower possesses.

In the event that the Structural Analysis finds that the Tower's capacity has been reached, no new facilities may be added by any tenant to the Tower. All applications for the switching out of facilities which will not result in an overload of the Tower's capacity shall be considered by the City on a first-come, first-serve basis.

Removal/Restoration. In addition to the terms set forth in the Lease, City agrees that the Communications Facility and any related equipment brought to the Premises by Tenant, its agents, contractors, predecessors-in-interest or subtenant, shall be and remain Tenant's personal property or the personal property of its subtenant(s), as the case may be. Tenant, in its sole discretion, may remove the Communications Facility or any portion of the Communications Facility at any time during the Term of the Lease, upon 30 days notice to the City. If the Agreement is terminated, Tenant shall remove its equipment/facilities from the Tower within 120 days of the termination of this Agreement. Upon removal, Tenant shall return the Tower to substantially the condition existing on the commencement date of this Agreement, normal wear and tear excepted, or leave it in its improved condition, as reasonably appropriate under the circumstances.

Sublease Rights. Existing language is hereby deleted in its entirety and replaced with the following:

Tenant may not assign or sublease this Agreement, in whole or in part, without Landlord's prior written consent, which consent shall not unreasonably be withheld or delayed. The transfer of the rights and obligations of Tenant to a parent, subsidiary or other affiliate of Tenant, or to any successor in interest or entity acquiring 51% or more of Tenant's stock or assets, shall not be deemed an assignment and shall not require Landlord's consent. Tenant shall give Landlord at least 30 days prior written notice of any transfer for which Landlord's consent is required hereunder. In the event of an assignment to which Landlord consents, Landlord shall release Tenant from further obligations hereunder, provided that Tenant is then current on all payments owing under the terms and conditions of this Agreement. Any necessary Landlord approval for a sublease shall be in the form of a separate written agreement that provides at a minimum for: (i) Landlord's review and approval of any additional facilities or improvements; and (ii) additional rent for any such additional facilities or improvements. Any subtenant or assignee shall be subject to the appropriate provisions and obligations of Tenant under this Agreement.

Notices. Paragraph 19 of the Lease is hereby deleted in its entirety and replaced with the following:

NOTICES. All notices, requests, demands and communications hereunder will be given by first class certified or registered mail, return receipt requested, or by a nationally recognized overnight courier, postage prepaid, to be effective when properly sent and received, refused or returned undelivered. Notices will be addressed to the parties as follows.

If to Tenant: New Cingular Wireless PCS, LLC
Attn: Network Real Estate Administration
Re: Cell Site #: 5025; Cell Site Name: Prairie Village (KS)
Fixed Asset #: 10000419
575 Morosgo Drive NE, 13F, West Tower
Atlanta, Georgia 30324

With a copy to: New Cingular Wireless PCS, LLC
Attn.: Legal Dept – Network Operations
Re: Cell Site #: 5025; Cell Site Name: Prairie Village (KS)
Fixed Asset #: 10000419
208 S. Akard Street
Dallas, TX 75202-4206

A copy sent to the Legal Department is an administrative step which alone does not constitute legal notice.

If to City: City of Prairie Village, Kansas
7700 Mission Road
Prairie Village, KS 66208
Attn: City Administrator

Either party hereto may change the place for the giving of notice to it by thirty (30) days prior written notice to the other as provided herein.

Termination. In addition to any rights that may exist in the Lease, Tenant may terminate the Lease at any time with thirty (30) days prior written notice to City for any or no reason. If the Agreement is terminated, Tenant shall remove its equipment/facilities from the Tower within 120 days of the termination of this Agreement. Upon removal, Tenant shall return the Tower to substantially the condition existing on the commencement date of this Agreement, normal wear and tear excepted, or leave it in its improved condition, as reasonably appropriate under the circumstances.

Other Terms and Conditions Remain. In the event of any inconsistencies between the Lease and this Third Amendment, the terms of this Third Amendment shall control. Except as expressly set forth in this Third Amendment, the Lease otherwise is unmodified and remains in full force and effect. Each reference in the Lease to itself shall be deemed also to refer to this Third Amendment.

Capitalized Terms. All capitalized terms used but not defined herein shall have the same meanings as defined in the Lease.

IN WITNESS WHEREOF, the parties have caused their properly authorized representatives to execute and seal this Third Amendment on the dates set forth below.

“CITY”

By: City of Prairie Village, Kansas

Name: _____

Title: _____

Date: _____

“TENANT”

New Cingular Wireless PCS, LLC

By: AT&T Mobility Corporation

Its: Manager

By: _____

Name:

Title: Area Manager-Real Estate &
Construction

MOKS Mobility

Date: _____

TENANT ACKNOWLEDGEMENT

STATE OF _____)
)ss:
COUNTY OF _____)

On the ____ day of _____, 2013 before me personally appeared _____, and acknowledged under oath that he is the Area Manager-Real Estate & Construction MO/KS Mobility of AT&T Mobility Corporation, the Manager of New Cingular Wireless PCS, LLC, the limited liability company named in the attached instrument, and as such was authorized to execute this instrument on behalf of the limited liability company.

Notary Public: _____
My Commission Expires: _____

CITY ACKNOWLEDGEMENT

STATE OF _____)
)
COUNTY OF _____)

I CERTIFY that on _____, 2013, _____ [name of representative] personally came before me and acknowledged under oath that he or she:

- (a) is the _____ [title] of _____ [name of corporation], the corporation named in the attached instrument,
- (b) was authorized to execute this instrument on behalf of the corporation and
- (c) executed the instrument as the act of the corporation.

Notary Public
My Commission Expires: _____

EXHIBIT 1-A



Neighborhood Design Phase II Standards Update

BACKGROUND:

In 2016, the City Council adopted amendments to the zoning regulations, which resulted in revised side setback requirements, adjusted height and height interpretations, and amended first-floor elevation interpretations. At that time, the Council decided not to pursue further design standards, but has since created an ad hoc committee to analyze the issue and come up with recommendations for neighborhood design standards to incorporate into the City's zoning regulations.

At the April meeting when the original recommendations were presented, the Council asked staff to bring the recommendations back to the committee to revisit the greenspace requirement as it relates to allowing circle drives, as well as looking at the garage requirements. The committee met in late April to revisit their recommendations and has made the following changes to their recommendations:

1. Frontage Greenspace

- The committee recommended keeping the 60% frontage greenspace requirement on all lots, but allowing an exception to 50% for lots less than 70 feet wide on a collector or arterial street, to allow for a circle drive for safety reasons, though staff did find that most narrow lots could still make a circle drive work with the 60% greenspace requirement. Other options would be to rely on the overall greenspace requirement on the entire lot and not set a requirement for just the frontage.

2. Garage limits

- The committee recommended changing the original recommendation from 8 feet wide single bays to 9 feet wide single bays. They also recommended changing the standard to require no greater than 18 feet wide double bays instead of 16 feet wide, and they changed the height requirement to 8 feet high instead of 7 feet high.
- The committee also recommended changing the requirement for number of garages. Originally, the recommendation included only permitting two forward-facing garages, but the Committee has changed their recommendation based on feedback from the Council to allow more than two garage entries, but garage entries in addition to the first two would need to be set back by at least 2 feet or require side entry.

All of the committees' other recommendations for neighborhood design standards remained the same, which include:

Street Trees

- A requirement that all lots would have at least one street tree; two street trees would be required on lots with over 80 feet of street frontage.

Green Space - Entire Lot

- A requirement that the entire lot shall maintain at least 60% greenspace (on lots up to 10,000 square feet). The greenspace requirement on lots over 10,000 square feet would go up in increments to a maximum of 70% greenspace based on the total lot size.
- One exception to the greenspace requirement would be for decks on lots less than 10,000 square feet

Wall Plane and Side Setbacks

- Requires any wall plane over 500 square feet to have architectural details to break the plane into smaller masses.
- Any wall plane greater than 800 square feet on the side lot line would require at least 4 feet additional setback on at least 25% of the wall plane.

Windows and Entrances

- Requires 15% of all front facades or any street-facing side façade to be windows
- Requires 8% of all other side facades to be windows
- Requires 15% of rear façade to be windows

Garage Limits

- Single garage doors cannot exceed 9 feet wide and 8 feet high
- Double garage doors cannot exceed 18 feet wide and 8 feet high
- Garages that make up their own section on the front elevation can be no wider than 24 feet or greater than 40% of the total front elevation, whichever is greater.
- Garages cannot exceed 500 square feet if flush or set back from the building line; can't exceed 360 square feet if up to 4 feet in front of front building line, and can't exceed 216 square feet if projecting 4 feet to 12 feet from front building line (this option would require a front entry feature to be connected to the garage, such as a front porch).

The draft of the recommended standards is attached for the Council's review. The committee recommends that these standards should apply in the following situations:

1. When any new structure is built
2. When construction activity occurs that adds more than 200 square feet of building footprint to an existing structure
3. When construction activity occurs that alters the form or massing of the front elevation or roof structure.

ACTION NEEDED

Staff is looking for feedback from the Council on the proposed recommendations and approval to bring these recommendations (with any council changes made this evening) forward to the public through community forums to provide input. Once that input is received, final revisions would be made and then the proposed changes would move forward with a public hearing at a Planning Commission meeting before coming to the City Council for a final vote.

Chris Brewster will be present at the meeting to go over the proposed standards in greater detail and gather feedback from the City Council.

ATTACHMENTS

Draft of the Proposed Neighborhood Design Standards Presentation

PREPARED BY

Jamie Robichaud
Assistant City Administrator
Date: May 31, 2018

Proposed Amendments to Residential Zoning

Initial Draft – Revised 05/30/18

[Add the following new section to R-1A and R-1B (as 19.06.030 and 19.08.0925 respectively)]

[19.06.030 / 19.08.025] Neighborhood Design Standards.

- A. **Intent.** The intent of the Neighborhood Design Standards is to:
1. Maintain and enhance the unique character of Prairie Village neighborhoods.
 2. Promote building and site design that enhances neighborhood streetscapes.
 3. Reinforce the existing scale and patterns of buildings in neighborhoods for new construction.
 4. Manage the relationship of adjacent buildings promote compatible transitions.
 5. Enhance the quality, aesthetic character and visual interest within neighborhoods by breaking down larger masses and incorporating human scale details and ornamentation.
 6. Locate and orient buildings to maintain the existing grade of the street, block, and lot frontages, and design them in a manner that reduces the perceived massing from the streetscape and abutting lots.
- B. **Applicability.** These Neighborhood Design Standards shall be applicable to the following situations:
1. Any new structure.
 2. Construction activity that adds more than 200 square feet of building footprint to an existing structure.
 3. Construction activity that alters the form or massing of the front elevation or roof structure.
- With the exception of the street tree standards, the neighborhood design standards shall only apply to the extent of the proposed construction activity, and any portion of a building or site that does not conform to these standards but is existing and not part of the application, may remain.
- C. **Landscape and Frontage Design.** The following landscape and frontage design standards promote the character and quality of streetscapes, improve the relationship of lots and buildings to the streetscape, and provide natural elements and green space to compliment development.
1. **Street Trees.** All lots shall have at least one street tree. Lots with over 80 feet of street frontage shall have two trees to maintain an average spacing between 30 and 50 feet along the streetscape.
 - a. Existing trees count to this requirement provided the tree is healthy, and is protected from any damage during construction activity.
 - b. Street trees shall be selected from the latest version of Great Trees from the Kansas City Region, large street tree list, or other list officially adopted by the Tree Board.

- c. Street trees shall be at least 2.5-inch caliper at planting.
- d. Street trees shall be located in line with other trees along the block to create a rhythm along the streetscape and enclosure of the tree canopy. In the absence of a clearly established line along the block, the following locations, where applicable and in order of priority.
 - (1) On center between the sidewalk and curb where at least 6 feet of landscape area exists;
 - (2) 4 feet from the back of curb where no sidewalk exists; or
 - (3) Within the first 5 feet of the front lot line where any constraints on the lot or in the right-of-way would prevent other preferred locations.

2. **Green Space.** Lots shall maintain the following area as impervious area, planted with vegetation.

- a. Lots 10,000 square feet or less – at least 60% of the total lot.
- b. Lots more than 10,000 square feet – 60% for any portions of lot area 10,000 square feet or less, and 70% for any portions of lot area exceeding 10,000 square feet.
- c. Exception - any lot 10,000 square feet or less may have an unenclosed and uncovered deck or patio encroach up to 225 square feet into the required green space.
- d. In addition to the total lot greenspace requirements, all lots shall maintain frontage greenspace between the front building line and the front lot line as follows:
 - (1) Generally, all lots – at least 60% of the frontage;
 - (2) Exception – lots less than 70' wide and fronting on a collector or arterial street as designated in Section 13-203 of the City Code may reduce the frontage greenspace to 50% to allow for safe access and parking, provided the overall lot greenspace above be maintained.

D. **Building Massing.** The following massing standards breakdown the volume of the buildable area and height into smaller scale masses to improve the relationship of the building to the lot, to adjacent buildings and to the streetscape, and shall apply in addition to the basic setback and height standards.

- 1. **Wall Planes and Side Setbacks:** Wall planes along the side setback shall have varied massing by:
 - a. Wall planes over 500 square feet shall have architectural details that break the plane into distinct masses of at least 20% of the wall plane. Architectural details may include:
 - (1) Projecting windows, bays or other ornamental architectural details with offsets of a minimum of 1.5 feet;

- (2) Off-sets of the building mass such as step backs or cantilevers of at least 2 feet;
- (3) No projections shall exceed the setback encroachment limits of D.2 or D.3. below.
- b. No elevation along the side lot line shall be greater than 800 square feet without at least 4 feet additional setback on at least 25% of the elevation.
2. **Front Entry Encroachments.** *[part of a current standard 18.44.020.C. to be located here for better formatting, ease of interpretation, and clarification and improvement of the design standards associated with the exception, and eliminate car ports from the exception.]* Structures associated with the front entrance to the principal building, such as porches, stoops or porticos, may encroach up to 12 feet into the front setback, and up to 10 feet into any street side setback, provided:
- a. Any roof structure shall be single story, establishing an eave line between 7 feet and 9 feet above the top of foundation, and no gable or other part of the structure shall exceed 14 feet.
- b. The entry feature shall remain unenclosed on all sides encroaching into the setback, except for railings or walls up to 3 feet above the surface.
- c. The entry feature shall be integrated with the design of the principle structure including materials, roof form and pitch, and architectural style and details.
3. **Other Massing and Encroachments.** *[the remaining part current standard 18.44.020.C. to be located here for better formatting, ease of interpretation, and clarification and improvement of the design standards associated with the exception.]* Other portions of buildings may encroach into setbacks as follows:
- a. Bay, bow, oriel, dormer or other projecting windows may project into the required side setback up to 2 feet, and the required front or rear setback up to 4 feet, provided they are no more than 200 square feet per elevation.
- b. Architectural features including eaves, cornices, sills, belt courses, spouting, chimneys, brackets trellises and similar projections for ornamental purposes, and below grade window wells may project into the required yard up to 4 feet, but never more than 50% of the required setback.
- c. Unenclosed and uncovered structures such as porches, decks, or patios may encroach into the setbacks, but no closer than 3 feet to any property line provided all portions of the structure are below 36 inches, and provided the lot maintains all green space requirements. *[clarification and revision to the current 18.44.020.C.6.]*
4. **Windows and Entrances.** All facades shall have window and door openings covering at least
- a. 15% on all front facades or any street facing side facade; and
- b. 8% on all other side facades; and
- c. 15% on all rear facades.

Any molding or architectural details integrated with the window or door opening may count for up to 3% of this percentage requirement.

5. **Garage Limits.** The following garage door standards maintain a human scale for front facades, create a relationship between the façade and the streetscape, and limit the expression of the garage as the primary feature at the building frontage.
 - a. Garage doors shall not exceed more than 9 feet wide for single bays, or 18 feet wide for double bays, and 8 feet high.
 - b. Garages expressed, as a separate mass on the front elevation shall be limited to no wider than 24 feet or 40% of the elevation, whichever is greater. In no case shall the garage be greater mass than 50% of the elevation.
 - c. Any lot or building configuration that permits more than two front garage entries shall require at least one of them to be off-set by at least 2 feet, or require side orientation of the entrances.
 - d. Garage massing shall be limited based on its position in relation to the main mass as follows

Placement in relation to main mass	Mass / wall plane limits
<i>In front up to 4'</i>	Front wall plane for the garage mass shall be limited to 360 s.f. max.
<i>More than 4' but less than 12' in front</i>	Overall wall planes for the garage mass shall be limited to 360 s.f.; The wall planes with the garage door shall be limited to 216 s.f. max.; Any upper level gables, dormers or other wall planes shall cantilever or be offset at least 2' from the garage door plane; A front entry feature shall be established along at least 12' of the front elevation, and in front of or no more than 4' behind the garage entry.
<i>12' or more in front</i>	Prohibited, side oriented doors. Then subject to a wall plane limit of no more than 360 square feet.
<i>All others (flush or setback from the main mass)</i>	Limited to same standards as main mass on Section D.1. (i.e. 500 s.f. max elevations)

- e. **[this is a current standard from 19.34.020.A. relocated here for better formatting and interpretation.]** On corner lots, an attached garage constructed as an integral part of the principle structure may have a minimum rear setback of 18 feet, provided the driveway entrance is off the side street and the garage is setback at least 25 feet from the side lot line and the footprint of the garage is no more than 576 square feet.

E. Building Foundations. **[this is the current standard in 19.44.030, to be relocated here for better formatting and interpretation.]**

1. New residential structure shall establish the top of foundation between 6 inches and 24 inches above the finished grade along the front facade. The top of foundation measurement shall be limited to 6 inches above the highest point of the finished grade in situations where there is a significant grade change along

- the front facade (i.e. slope or hill) that results in more than 24 inches of foundation exposure at any point.
2. New residential structures or additions may raise the top of foundation an additional 6 inches for every additional 5 feet over the minimum side setback that the building sets back from both side property lines, up to 36 inches above the finished grade along the front facade.
 3. New residential structures or additions not meeting paragraphs 1. or 2. above shall be submitted to the Planning Commission for review. The planning Commission may grant an exception based on the following criteria:
 - a. The design of the building elevations, and specifically any design details that reduce the scale and massing of the building compared to what could otherwise be built under the zoning standards.
 - b. The relationship of the proposed dwelling to existing structures, and whether their grading, elevation, and design is appropriate for the context.
 - c. Any special considerations of the lot with respect to existing grades, proposed appropriate grades and the drainage patterns in relation to adjacent properties and the proposed structure.

F. **Accessory Structures.** *[a collection of existing standards in various other sections, located here for better formatting, organization and interpretation. Some modifications made to clear up current issues and conflicts. Need to confirm and coordinate revisions with related provisions in other sections throughout the zoning ordinance]* All lots used for residential buildings may have the following accessory buildings.

1. One minor accessory storage building not exceeding 120 square feet and no taller than 10 feet high. The building shall be setback at least 3 feet from the side and rear lot line, and located behind the principal building.
2. One major accessory building not exceeding 576 square feet and subject to the following design standards:
 - a. The height shall be no more than 20 feet, or no taller than the principal structure, whichever is less.
 - b. The building shall be designed compatible with the principal structure, including materials, windows and doors, roof form and pitch, and architectural style and details.
 - c. The building shall be setback at least 60 feet from the front lot line, and at least 20 feet from any street side lot line.
 - d. The building shall be setback at least 3 feet from the side and rear property line, except that any portion of the structure above 10 feet shall be set back a distance of at least 1/3 the height. For a pitched roof structure, portions of the structure may be up to 3 feet from the property, provided they are under 10 feet high, however any portion between 10 feet and 20 feet must be stepped back at least 1/3 the height.
4. Non-residential uses permitted in residential districts shall be allowed one accessory building for each 1 acre of lot area, up to a maximum of four structures. These buildings shall be limited to 300 square feet and 16 feet tall, provided they meet all principal building setbacks and are not visible or screened from the right of way by landscape. All other buildings shall be considered primary buildings and designed and approved subject to primary building standards.
5. All accessory buildings and structures over 36 inches high shall count towards the overall 30% lot coverage limit.

G. **Exceptions.** The Planning Commission may grant exceptions to the Neighborhood Design Standards in this section through the site plan review process, based upon the following criteria:

1. The exception shall only apply to the design standards in this section, and not be granted to allow something that is specifically prohibited in other regulations;
2. Any exception dealing with the placement of the building is consistent with sound planning, urban design and engineering practices when considering the site and its context within the neighborhood.
3. The placement and orientation of the main mass, accessory elements, garages and driveways considers the high points and low points of the grade and locates them in such a way to minimize the perceived massing of the building from the streetscape and abutting lots.
3. Any exception affecting the design and massing of the building is consistent with the common characteristics of the architectural style selected for the building,
4. The requested exception improves the quality design of the building and site beyond what could be achieved by meeting the standards – primarily considering the character and building styles of the neighborhood and surrounding properties, the integrity of the architectural style of the building, and the relationship of the internal function of the building to the site, streetscape and adjacent property.
5. The exception will equally or better serve the intent statements for this section and the particular standards being altered.

Neighborhood Design



Stakeholder Committee

- Stakeholder Meetings (7 meetings) (November - March)
- Planning Commission Update (April 3)
- City Council Update (April 16)
- Stakeholder Committee Review / Revisions (April 19)
- Council Update (tonight)
- Public Open House (TBD)
- Formal Recommendations, Public Hearings (TBD)

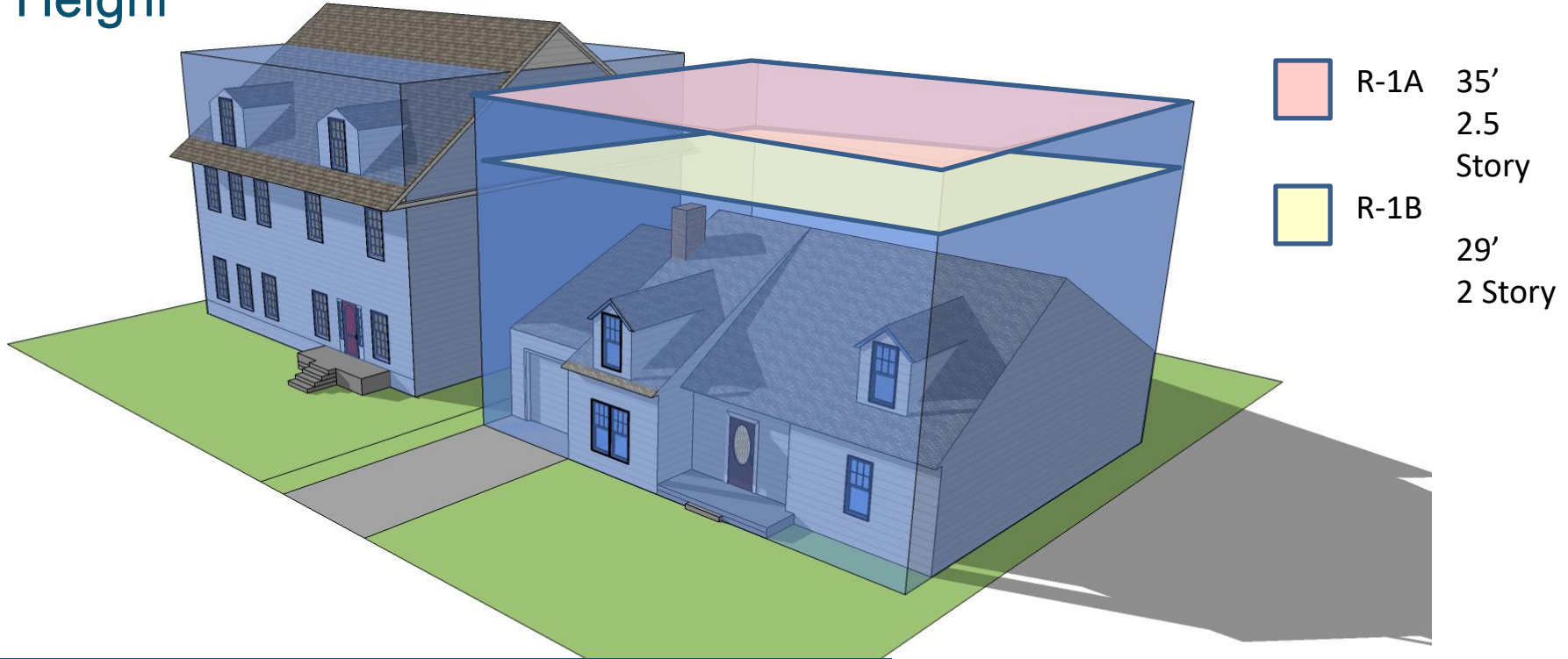
2014 - 2016

- Monitor teardowns and Neighborhood Association processes
 - Developer / Designer Stakeholder meetings (2)
 - Drafting Committee meetings (5)
 - Public Open House (3)
 - Council Work Session (1)
 - Adoption meetings (2)
-
- Revised side setbacks
 - Adjusted height and height interpretation
 - Amended first-floor elevation interpretation
 - Design standards NOT adopted



BACKGROUND / PREVIOUS EFFORT

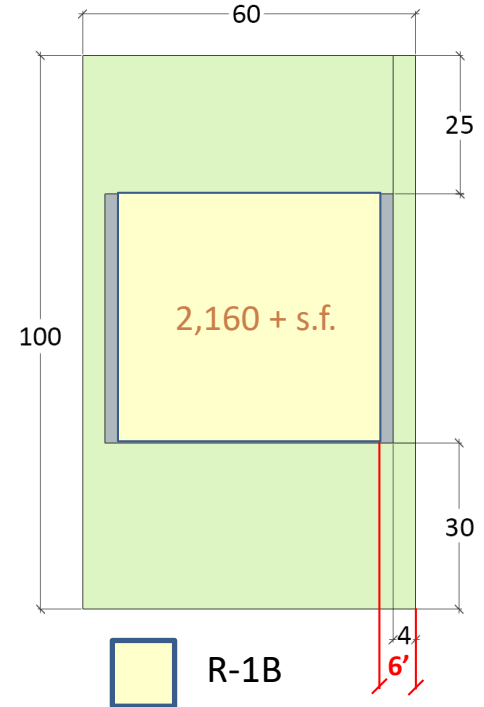
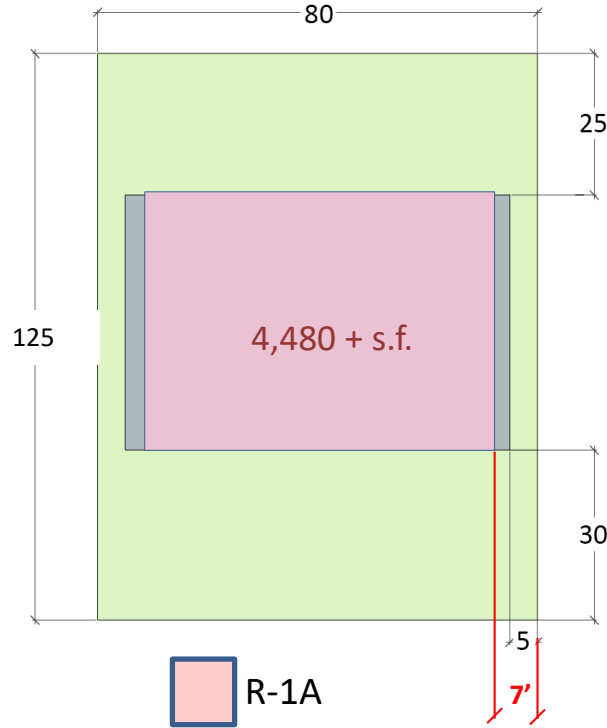
Height



BACKGROUND / PREVIOUS EFFORT

Side Setbacks

- Increased to 6' and 7' in R-1A and R-1B, respectively
- 20% of lot width between both sides
- May be limited further by 30% lot coverage



Basic Scale and Mass – Heights / Setbacks

- Zoning – Heights and Setbacks
- First-floor elevation
- Second story limits / half-story

Basic Scale and Mass – Volume / Massing

- Limit footprints [30% max]
- Break up larger wall planes
- Limit main mass; secondary mass or wings.
- Floor-area ratio
- Architectural massing elements
- Daylight planes

Basic Scale and Mass – Relationship to Streetscape

- Limit driveways / impervious surface
- Limit garage location and extent
- Entrance features requirements
- Façade design – Windows requirements

Streetscape

- Street tree requirements
- Landscape standards
- Curb-cut limits

Building Pattern

- Setback / Build-to lines
- Rhythm – mass to voids

Quality / Aesthetics

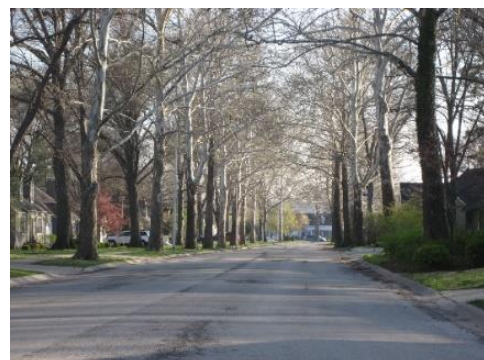
- Materials - primary and secondary
- Landscape standards
- Façade Design – details, ornamentation, proportions

Architecture Style / Historic Character

- Pattern books / architectural style requirements
- Historic preservation and documentation.
- Demolition review

- ❑ Street tree requirements
- ❑ Minimum frontage greenspace / coordination with PW overall lot greenspace
- ❑ Refine / limit current standards on setback encroachments
- ❑ Break up massing on larger wall planes
- ❑ Require minimum % of windows and doors
- ❑ Limit the extent, projection and massing of garages on front elevation
- ❑ Clarify / revise standards for accessory structures
- ❑ Create non-variance process and criteria to “design standards” only.

RECOMMENDED STRATEGIES





- ❑ Any new structure
- ❑ Addition of more than 200 square feet of building footprint
- ❑ Construction activity that alters the form or massing of the front elevation or roof structure.
- ❑ Not applicable to non-conformances that aren't subject to construction activity (i.e. existing wall planes, existing driveways) - except street trees.

APPLICABILITY



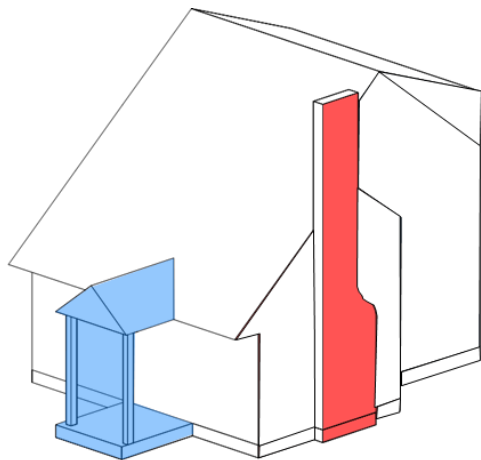
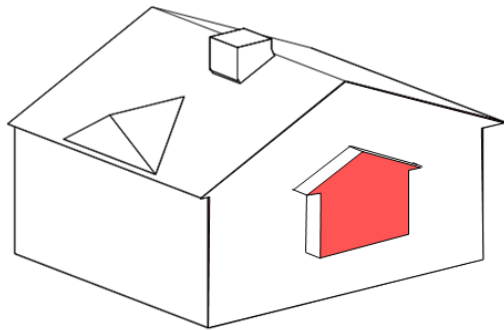
STREET TREES

- ❑ Require street trees where they don't exist (1 per 40' average spacing)
- ❑ Tree Board Recommended List / Great Trees for the Kansas City Region.
- ❑ 2.5 caliper
- ❑ Location priorities.



- ❑ 60% between required front setback and front lot line (with exception for lots less than 70 ft wide on busier roads)
- ❑ Must be pervious & planted with vegetation
- ❑ Coordinate with Public Works drainage permits / Overall 60% lot greenspace

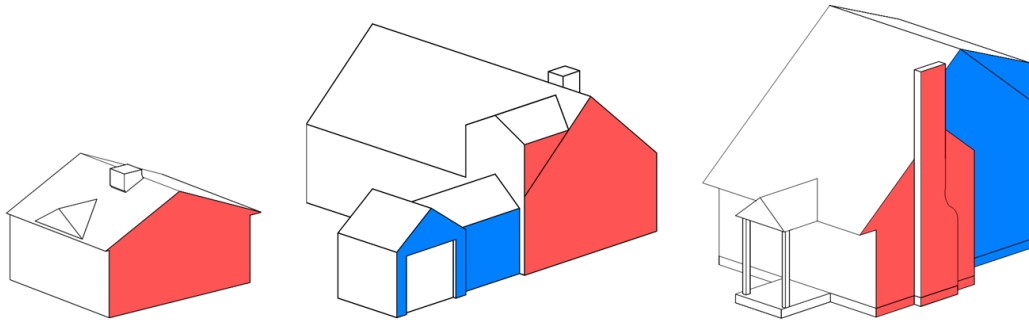
FRONTAGE GREENSPACE



- = Entrance Features
 - up to 12'
 - unenclosed (clarified)
 - integrated with design (new)
 - no longer eligible for car port (new)

- = Other Encroachments
 - up to 2'; 4' on front or back
 - 200 s.f. max (new)
 - no more than 50% of required setback
 - egress window added to list with 50% setback limit (new)

PERMITTED ENCROACHMENTS



■ = 500 s.f. or less
Basic setback

■ ■ = 501 s.f. - 800 s.f.
■ = 500 s.f. or less
■ = 20% minimum
2' offset and/or 1.5' bay projection

■ ■ = 801 s.f. or more
■ = 500 s.f. or less
■ = 4' additional setback (500 s.f. max)
on at least 25% of elevation



Wall Plane & Side Setbacks

- ❑ 500 s.f. or less = basic setback
- ❑ 501 s.f. to 800 s.f. = break up massing with
 - Projecting bays, windows, ornamental offsets - 1.5' min.
 - Step backs or cantilevers - 2' min
- ❑ 801 s.f. or more = 4' additional setback

Windows and Entrances

- ❑ 15% Front, rear, and street-facing sides
- ❑ 8% Sides (interior)

MASSING / SIDE RELATIONSHIPS



Wall Plane & Side Setbacks

- 500 s.f. or less = basic setback
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- 801 s.f. or more = 4' additional setback

Windows and Entrances

- 15% Front, rear, and street-facing sides
 - 8% Sides (interior)
- ? May require projections or setbacks to break up mass of façade between 500 - 800 square feet (approx. 500 -600)
- May require additional window or architectural details to get to 8% of elevation



Wall Plane & Side Setbacks

- 500 s.f. or less = basic setback
- 501 s.f. to 800 s.f. = break up massing with
 - Projecting bays, windows, ornamental offsets - 1.5' min.
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 - Projecting bays, windows, ornamental offsets - 1.5' min.
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- 801 s.f. or more = 4' additional setback

Windows and Entrances

- 15% Front, rear, and street-facing sides
 - 8% Sides (interior)
- ? May require projections or setbacks to break up mass of façade between 500 - 800 square feet (approx. 600 -700)



MASSING / SIDE RELATIONSHIPS

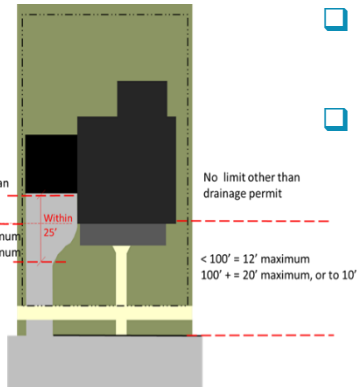
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Windows and Entrances

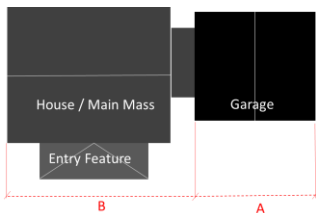
- 15% Front, rear, and street-facing sides
- ? 8% Sides (interior)

- ? May require additional window or architectural details to get to 8% of elevation

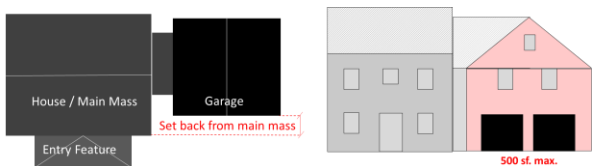


- ❑ Considered several alternatives.
- ❑ Decided against specific standard; defer to 60% frontage greenspace
- ❑ Coordinate with Public Works ROW permits.
- ❑ **Update:** Exception for 50% on narrow lots on busy streets

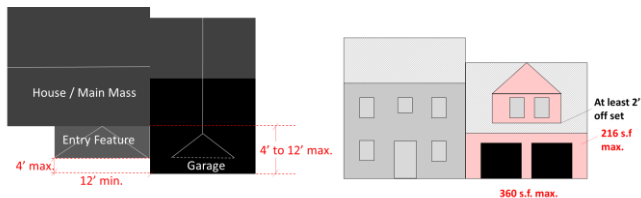
DRIVEWAY LIMITS



A = a maximum 24' or 40% of elevation, whichever is greater.
In no case more than B. (B = more than A in all cases).



Massing of the garage is limited by the same standards of the main mass (i.e. 500 s.f. wall planes).



No more than 4' forward of the main mass or front entry feature; 360 s.f. max. total garage wall; 216 s.f. max. garage door wall plane; remainder shall be off-set or cantilevered by at least 2'.

- ❑ Max. 40% of front elevation or 24', whichever is greater
- ❑ Massing / projection limits:
 - 500 s.f. if flush or set back from front building line
 - 360 s.f. up to 4' in front of front building line
 - 216 s.f. (plus dormers) 4' to 12' in front, with front entry feature requirement.
 - More than 12' only if side-entry and limited to 360 s.f. massing.
- ❑ 2 forward-facing doors in all cases

GARAGE PLACEMENT & EXTENT



GARAGE PLACEMENT & EXTENT

- ✓ Max. 40% of front elevation or 24', whichever is greater
- Massing / projection limits:
 - ✓ 500 s.f. if flush or set back from front building line
 - 360 s.f. up to 4' in front of front building line
 - 216 s.f. (plus dormers) 4' to 12' in front, with front entry feature requirement.
 - More than 12' only if side-entry and limited to 360 s.f. massing.
- ✓ 2 forward-facing doors, additional doors set back



GARAGE PLACEMENT & EXTENT

- ✓ Max. 40% of front elevation or 24', whichever is greater
- ❑ Massing / projection limits:
 - 500 s.f. if flush or set back from front building line
 - ✓ ▪ 360 s.f. up to 4' in front of front building line
 - 216 s.f. (plus dormers) 4' to 12' in front, with front entry feature requirement.
 - More than 12' only if side-entry and limited to 360 s.f. massing.
- ✓ 2 forward-facing doors; additional doors set back



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 - More than 12' only if side-entry and limited to 360 s.f. massing.
- ✓ 2 forward-facing doors; additional doors set back



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- ✓ 2 forward-facing doors; additional doors set back

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 - ✓ 500 s.f. if flush or set back from front building line
 - 360 s.f. up to 4' in front of front building line
 - 216 s.f. (plus dormers) 4' to 12' in front, with front entry feature requirement.
 - More than 12' only if side-entry and limited to 360 s.f. massing.
- ✓ 2 forward-facing doors - additional door set back

GARAGE PLACEMENT & EXTENT



- ✓ Max. 40% of front elevation or 24', whichever is greater
- ☐ Massing / projection limits:
 - 500 s.f. if flush or set back from front building line
 - 360 s.f. up to 4' in front of front building line
 - 216 s.f. (plus dormers) 4' to 12' in front, with front entry feature requirement.
- ✓ ▪ More than 12' only if side-entry and limited to 360 s.f. massing.
- ✓ 2 forward-facing doors - 4-car, side facing

GARAGE PLACEMENT & EXTENT



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- ☐ Massing / projection limits:
 - 500 s.f. if flush or set back from front building line
 - 360 s.f. up to 4' in front of front building line
 - ✗ 216 s.f. (plus dormers) 4' to 12' in front, with front entry feature requirement.
 - More than 12' only if side-entry and limited to 360 s.f. massing.
- ✓ 2 forward-facing doors; additional doors set back

- ✗ Prominent gable limited to 216 s.f. by offset of upper gable or dormer (see previous 2 examples) or brought back w/in 4' of main building



GARAGE PLACEMENT & EXTENT

- ✓ Max. 40% of front elevation or 24', whichever is greater
- ☐ Massing / projection limits:
 - 500 s.f. if flush or set back from front building line
 - 360 s.f. up to 4' in front of front building line
 - ✗ 216 s.f. (plus dormers) 4' to 12' in front, with front entry feature requirement w/in 4'.
 - More than 12' only if side-entry and limited to 360 s.f. massing.
- ✓ 2 forward-facing doors; additional doors set back
- ✗ Entry feature needs to project w/in 4' of garage;
- ✗ Prominent gable limited to 216 s.f. by offset of upper gable or dormer or brought back w/in 4' of main building



GARAGE PLACEMENT & EXTENT

- ❌ Max. 40% of front elevation or 24', whichever is greater
- ☐ Massing / projection limits:
 - 500 s.f. if flush or set back from front building line
 - 360 s.f. up to 4' in front of front building line
- ❌
 - 216 s.f. (plus dormers) 4' to 12' in front, with front entry feature requirement w/in 4'.
 - More than 12' only if side-entry and limited to 360 s.f. massing.
- ✅ 2 forward-facing doors; additional doors set back
- ❌ More than 24' / 40% of front elevation
- ❌ Entry feature needs to project w/in 4' of garage;
- ❌ Prominent gable limited to 216 s.f. by offset of upper gable or dormer or brought back w/in 4' of main building



GARAGE PLACEMENT & EXTENT

- ❌ Max. 40% of front elevation or 24', whichever is greater
- ☐ Massing / projection limits:
 - 500 s.f. if flush or set back from front building line
 - ❌ ▪ 360 s.f. up to 4' in front of front building line
 - 216 s.f. (plus dormers) 4' to 12' in front, with front entry feature requirement w/in 4'.
 - More than 12' only if side-entry and limited to 360 s.f. massing.
- ✅ 2 forward-facing doors; additional doors set back
- ❌ More than 24' / 40% of front elevation
- ❌ High profile needs to be brought down to 216 s.f. by or brought back w/in 4' of main building



GARAGE PLACEMENT & EXTENT

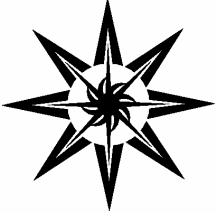
- ⊗ Max. 40% of front elevation or 24', whichever is greater
- Massing / projection limits:
 - 500 s.f. if flush or set back from front building line
 - 360 s.f. up to 4' in front of front building line
- ⊗
 - 216 s.f. (plus dormers) 4' to 12' in front, with front entry feature requirement w/in 4'.
 - More than 12' only if side-entry and limited to 360 s.f. massing.
- ⊗ 2 forward-facing doors; additional doors set back

- ⊗ More than 40% of front elevation
- ⊗ More than 4' - 12' in front; more than 216 360 s.f.
- ⊗ More than 2 forward facing bays without offset or side orientation

Stakeholder Committee

- Stakeholder Meetings (7 meetings) (November - March)
- Planning Commission Update (April 3)
- City Council Update (April 16)
- Stakeholder Committee Review / Revisions (April 19)
- Council Update (tonight)

- Public Open House (TBD)
- Formal Recommendations, Public Hearings (TBD)



ADMINISTRATION

Council Committee Meeting Date: June 4, 2018

City Planning Consultant Contract Update

BACKGROUND

In early 2015, the City issued an RFP for city planning consultant services. City staff and council members interviewed the firms that responded to the RFP and recommended entering into an agreement with Gould Evans for city planning services. That original agreement was entered into on June 15, 2015 and is set to expire on June 14, 2018. The agreement does automatically renew for successive one-year terms unless either party chooses to terminate the agreement.

The hourly rate in the current contract for city planning services is \$104. The contract allows for a 3% increase each year; however, the City's rate has remained at \$104 per hour for the past three years. We have not been notified of any plans for the rate to increase in the future. The City budgets \$45,000 per year for city planning services, and has spent the following the past three years:

2015:	\$43,310
2016:	\$50,591
2017:	\$40,348

City staff recommends continuing to utilize Gould Evans for city planning services. This contract plays an important role in our planning and development processes, and it is important to have this expertise and knowledge as we continue to see increased development in the community. In addition, we have several important projects currently in the works in which Gould Evans is playing an important role - this includes neighborhood design, updating the comprehensive plan, and zoning regulation updates.

RECOMMENDED MOTION

Make a motion to direct staff to allow the city planning contract to renew for a one-year term, as permitted in the current contract.

PREPARED BY

Jamie Robichaud
Assistant City Administrator
Date: May 30, 2018

Decision Packages not included in Preliminary 2019 Budget

Decision Packages (ranked by priority)	Funding Source	Description	Amount
Code Specialist Position (included in 2001 – 2011 budgets)	General Fund will be an on-going expense	Full Time Equivalent	\$75,000 Current 2019 budget can absorb (no Mill Levy increase or other cuts needed)
Infrastructure	General Fund Will be included in transfer to CIP	Option to increase funding for street maintenance and repair	To be determined
PD Pension Fund	General Fund will be an on-going expense	Funding for Police Pension	<u>OPTION</u> to increase funding to: \$800,000 or \$850,000
Funding for the Arts	General Fund	Dedicated funds for the Arts	\$2.00 per resident (21,805 x \$ 2 = \$43,610)
Exterior Grant Program	¹ Economic Development Fund	Set aside funding for 2020 and later years	\$50,000 to \$250,000
Comprehensive Plan Update (next chapter)	¹ Economic Development Fund 2019 only		\$50,000 - \$80,000
Bike / Pedestrian Master Plan	¹ Economic Development Fund		\$50,000

¹ Economic Development Funds are available from prior year unused allocation. 2019 ending balance should be approximately \$276,575.



2019 Budget Decision Package: Addition of Codes Support Specialist FTE

BACKGROUND:

The Codes Department is requesting the addition of a Codes Support Specialist FTE in the 2019 budget. There is currently one Codes Support Specialist in the department who is involved in all aspects of office operations. This employee's primary responsibilities include the following:

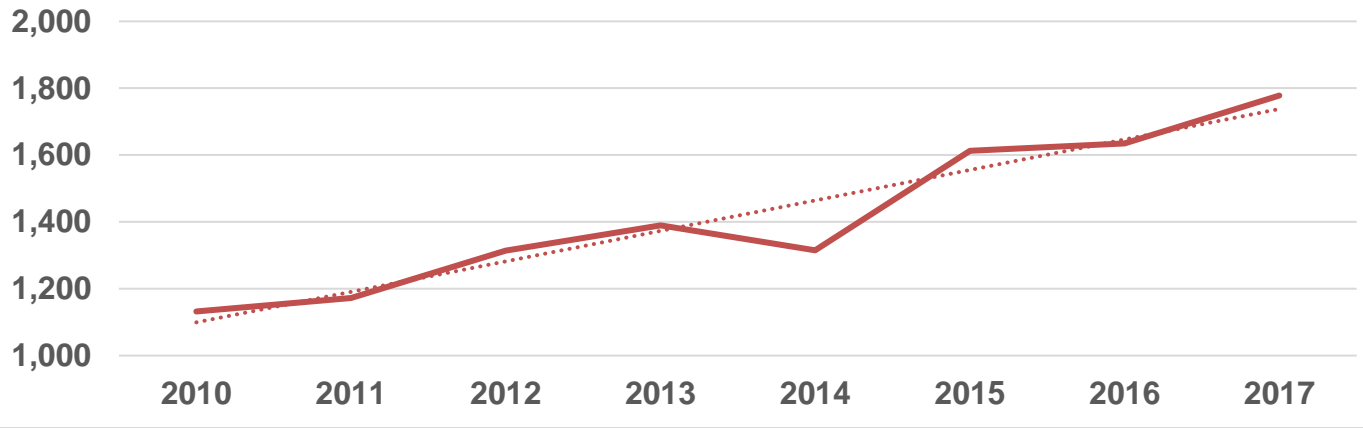
- Scheduling building inspections
- Answering all phone calls/emails/and walk-in questions regarding building codes and code enforcement
- Collecting plans and coordinating plan reviews
- Issuing building permits and taking payments
- Scanning and record keeping for licenses and permits
- Processing all contractor licenses
- Processing all exterior grant applications
- Processing invoices for the department
- Tracking all data and monthly reporting
- Ordering office supplies
- Providing additional administrative support for the Assistant City Administrator and Building Official

Prior to 2010, the department had two Codes Support Specialist positions. However, due to the economic recession and decreased development activity, the position was eliminated in 2010. Since that time, development activity has increased significantly, which has created a large increase in the workload for our current Codes Support Specialist. Since 2010, the following has occurred:

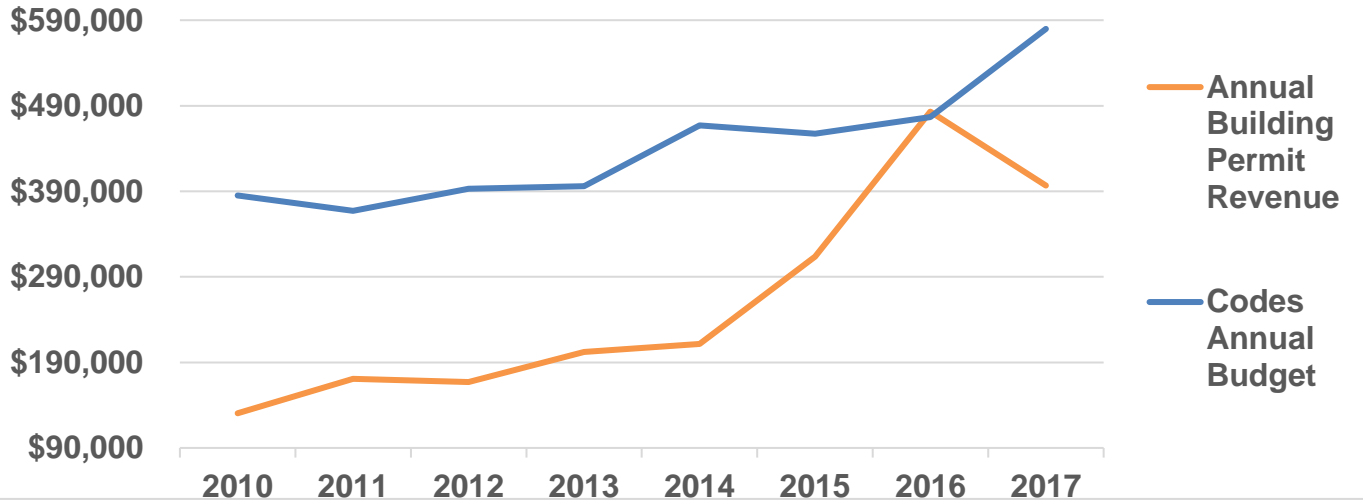
- The number of building permits issued annually increased 57%, going from 1,132 to 1,778
- The number of new homes built annually increased 450%, going from 6 to 33
- The number of plan reviews completed annually increased 160%, going from 260 to 675
- Annual building permit revenue increased 204%, while the Codes Department budget increased 50% (mostly attributed to the addition of a second code enforcement officer and a second building inspector)
- The number of inspections completed annually increased 68%, going from 2,371 to 3,981
- The number of contractor licenses processed annually increased 41%, going from 700 to 984

Even with the significant increase in activity we have seen since 2010, the Codes Department has managed to decrease its plan review turnaround time by 63% (going from about 5 days in 2010 to 1.84 days in 2017) and decrease the average wait time for inspections by 25%, from 2 days in 2010 to 1.5 days in 2017. Further data is provided in the graphs below:

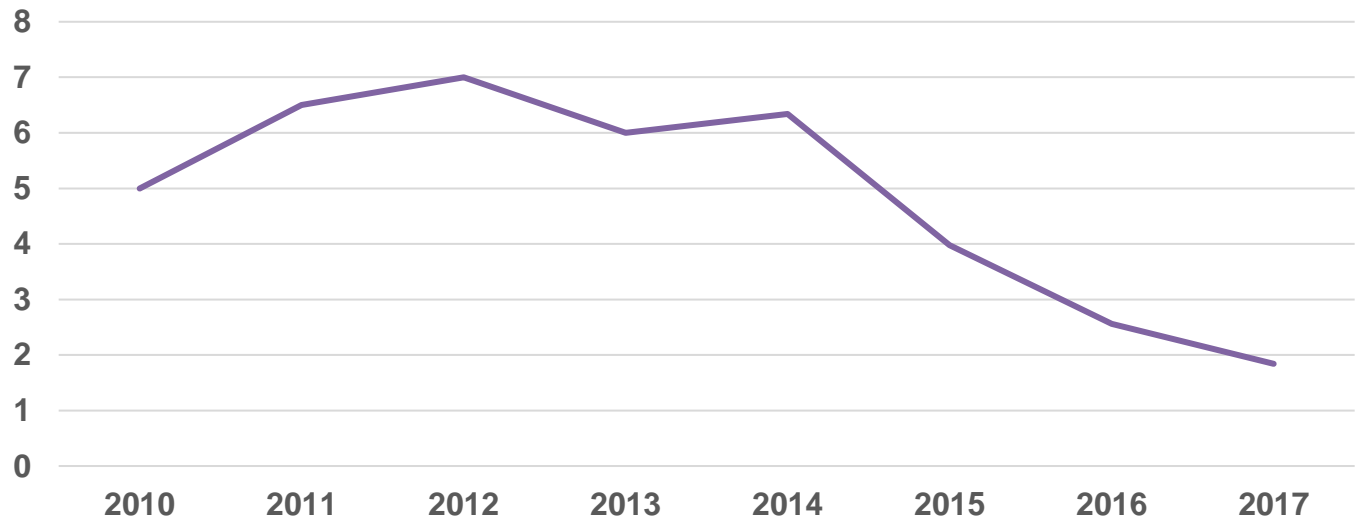
Building Permits Issued



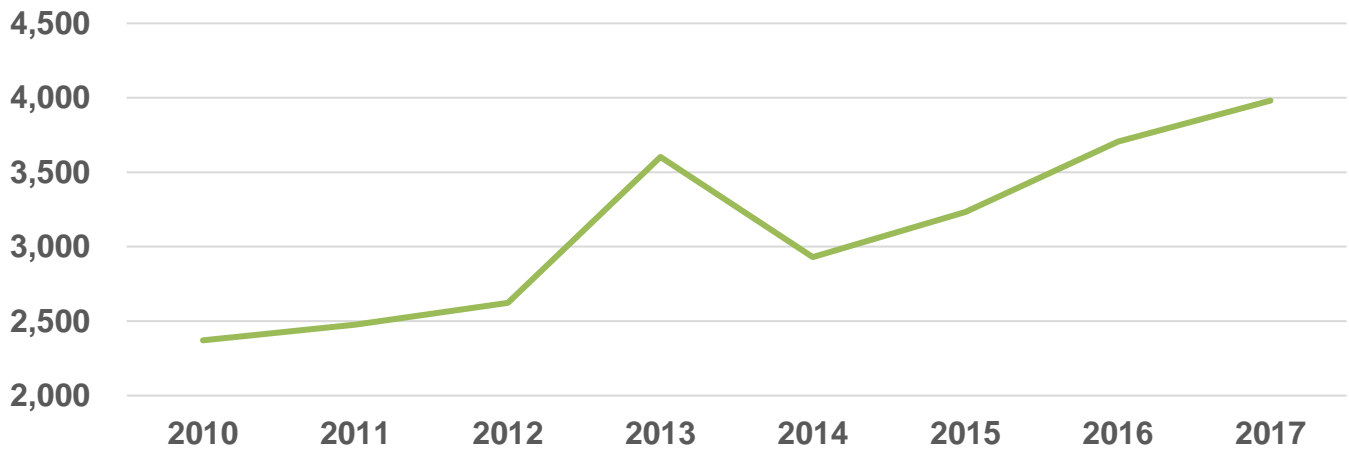
Annual Building Permit Revenue vs Annual Budget 2010 - 2017



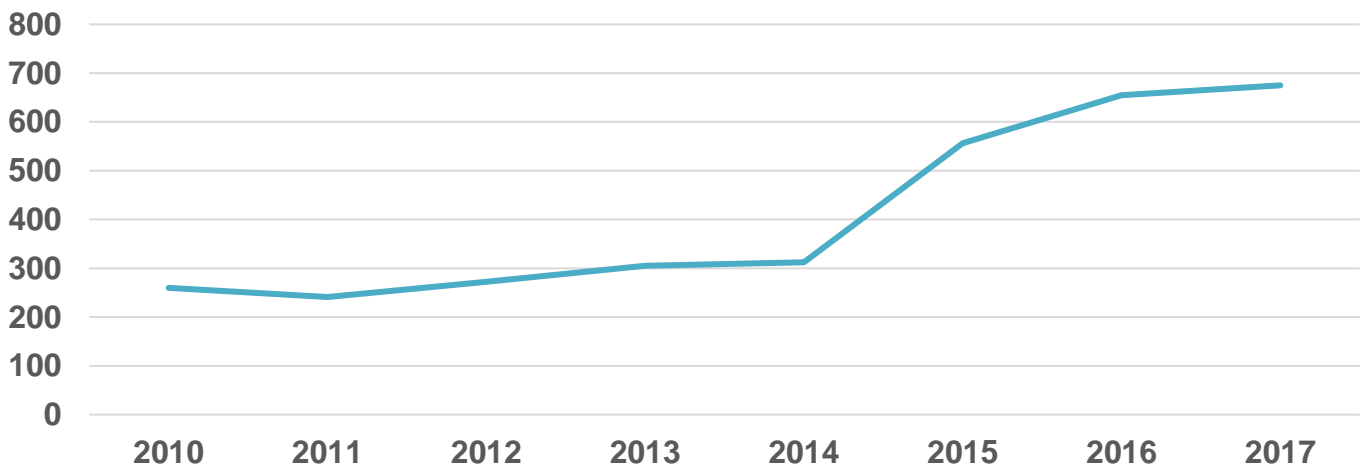
Average Plan Review Turnaround Time (in days)



Number of Inspections Conducted Annually



Plan Reviews



The addition of a second Codes Support Specialist will ensure we continue to maintain our low turnaround time on plan review and the average wait time for inspections. It will also allow us to take on other duties that are performed by other departments, such as the Planning Commission applications and packet, which is currently managed by the City Clerk’s Office.

Adding this position back to the department will also ensure we have adequate coverage of the desk and phone at all times. Currently, with only one employee in this position, we do not have adequate staffing to answer the phones and manage the desk during business hours. When contractors call in for an inspection, they often have to leave a message and we have to get back to them a few hours later when the Codes Specialist has the opportunity to return phone calls. We also have to take other employees away from their duties when the Codes Specialist takes lunch or paid leave. For example, one of the Code Enforcement Officers is taken away from their regular duties to cover the desk and phones when the current Codes Specialist is on lunch or out of the office. This equates to a minimum of 5 hours per week that the Code Enforcement Officer cannot work on their regular duties, and when the Codes Specialist takes vacation or sick leave, the Code Enforcement Officer is responsible for covering the desk and phones the entire time she is away, which could sometimes be for two weeks.

PREPARED BY

Jamie Robichaud
Assistant City Administrator
Date: April 16, 2018



PD Pension Funding

- Pension Board Recommended Strategy to Improve Funding Status of PD Pension over the course of the next 10-15 years
- Recommendation - Increase annual contribution from \$620,000 to \$750,000

	<u>2019</u>	<u>2028</u>
Funded Percentage – MVA	75.3%	81.5% 83.6% 85.7%

*Market Value of Assets – amount the market will pay at a point in time

Blue - \$750,000 Annual Contribution

Green - \$800,000 Annual Contribution

Red - \$850,000 Annual Contribution

PRAIRIE VILLAGE ARTS FUNDING

May 21, 2018

Serena Schermoly

THE POWER OF ARTS TO DRIVE ECONOMIC GROWTH

Advantages and Ideas



Economic Development

Offering Something for Everyone

Diverse Programs

Collaboration with as many Types of Arts

Be Unique

Local Artist to International Artist

Change people's perception of Art and their Arts

Increase Sales, Restaurants and Shopping

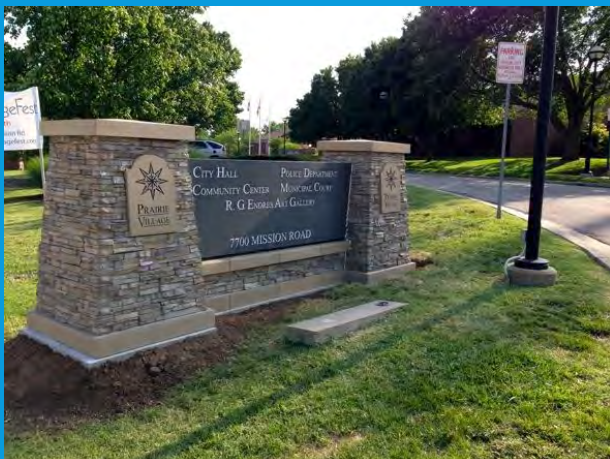


ART



The arts refers to the theory and physical expression of creativity found in human societies and cultures.

Major constituents of the arts include literature – including poetry, prose and drama, performing arts – among them music, dance, and theatre; and visual arts – including drawing, painting, photography, ceramics, sculpting, and architecture – the art of designing and constructing buildings.



THE PRAIRIE VILLAGE February / March 2015

VOICE The Star of Kansas

2 PRAIRIE VILLAGE **TEXTILE RECYCLING**

WEEKLY TEXTILE RECYCLING PICK-UP BEGINS APRIL 1

Beginning April 1, the City of Prairie Village, in cooperation with Team Thrift, will offer weekly home pick-up for clothing and textiles. Acceptable materials include clothing of any type, towels, sheets, blankets, shoes, rags, bedding, curtains, sewing scraps, and more. Items can be in any condition.

Donating in easy forms should be bagged or boxed, marked "PV," and placed by the front door, porch, or garage by 7:00 a.m. on your regular trash and recycling collection day. The donation containers will not be returned. Your donated items are tax deductible. Team Thrift will collect the items and leave a tax receipt on the front door.

Donated items will be delivered to area thrift stores, shipped to developing countries, or repurposed into other products, like animal harnesses or insulation. While physical items may end up in a variety of locations, proceeds from the sale of donated items will remain local.

The Prairie Village Foundation will be the charitable recipient of the funds, which helps Prairie Village residents in need with utility assistance, minor home repairs, food assistance, and other vital needs. The Prairie Village Foundation also provides support to local school children, arts programming, park development, and community events like VillageFest and JazzFest. The more pounds of textiles donated, the more Prairie Village benefits!

While this program offers a convenient way to help the community and the environment, donating through this weekly collection is not the only way. There are many worthwhile charitable organizations that will accept donated items. Please see pages 14 and 15 of the Village Voice for more information.

FEATURES:

3 Earth Day **5** Parks & Recreation Programs **14** Textile Recycling Programs

From Wikipedia



WE ARE NOT A SMALL CITY OUR POPULATION 21,447 – WITH ART - 2.5 MILLION

People want to be where People *are* and ARTS bring People together to build a stronger community “Village”.



PROPOSAL

- Enhancing our Arts Community
- Better coordination of Public Arts
- Preserve our current Statuary
- Looking for New Opportunities
- Grant Funding
- Create Donation Process
- Installation Procedures

Proposal

Mayor, Public Works, City Administrator, Arts Council, Statuary, Jazz Fest representatives make recommendation to the governing body for approval of appropriations.

\$2.00 per resident





ARTS & ECONOMIC PROSPERITY 5

THE ECONOMIC IMPACT OF NONPROFIT ARTS & CULTURAL ORGANIZATIONS & THEIR AUDIENCES



in Johnson County, KS

Arts and Economic Prosperity® 5 was conducted by Americans for the Arts, the nation's nonprofit organization for advancing the arts in America. Established in 1960, we are dedicated to representing and serving local communities and creating opportunities for every American to participate in and appreciate all forms of the arts.

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"Understanding and acknowledging the incredible economic impact of the nonprofit arts and culture, we must always remember their fundamental value. They foster beauty, creativity, originality, and vitality. The arts inspire us, sooth us, provoke us, involve us, and connect us. But they also create jobs and contribute to the economy."

-Robert L. Lynch
President and CEO
Americans for the Arts

The Arts Mean Business

By Robert L. Lynch, President and CEO, Americans for the Arts

In my travels, I meet business and government leaders who speak passionately about the value the arts bring to their communities—fueling creativity, beautifying downtowns, and providing joy. Many also share with me the challenge of balancing arts funding with the demands to support jobs and grow their economy. To these community leaders, **Arts & Economic Prosperity 5** offers a clear and welcome message: the arts are an investment that delivers both community well-being and economic vitality.

Arts & Economic Prosperity 5 (AEP5) is Americans for the Arts' fifth economic impact study of the nation's nonprofit arts and cultural organizations and their audiences. By every measure, the results are impressive. Nationally, the nonprofit arts industry generated \$166.3 billion of economic activity in 2015—\$63.8 billion in spending by arts and cultural organizations and an additional \$102.5 billion in event-related expenditures by their audiences. This activity supported 4.6 million jobs and generated \$27.5 billion in revenue to local, state, and federal governments (a yield well beyond their collective \$5 billion in arts allocations). AEP5 is the most comprehensive study of its kind ever conducted. It provides detailed economic impact findings on 341 study regions representing all 50 states and the District of Columbia. Data was gathered from 14,439 organizations and 212,691 arts event attendees, and our project economists customized input-output models for each and every study region to ensure reliable and actionable localized results.

When Americans for the Arts published its first economic impact study in 1994, it worked with 33 local communities. As evidence of the value of these studies, AEP5 has grown this local participation ten-fold. We also have witnessed a corresponding growth in the understanding of the economic value of the arts. The U.S. Bureau of Economic Analysis, for example, now publishes an annual *Arts & Cultural Production Satellite Account*, which extends beyond the nonprofit sector to include the full breadth of commercial and for-profit arts, education, and individual artists, and lists the sector as a \$730 billion industry (4.2 percent of the nation's GDP—a larger share of the economy than

transportation, tourism, agriculture, and construction). As another example, many state and local governments have established agencies to track and grow their creative economy.

What continues to set AEP5 apart from other studies is exactly why it is so useful: it uses localized research that not only focuses on arts organizations—but also incorporates the event-related spending by their audiences. When patrons attend an arts event, they may pay for parking, eat dinner at a restaurant, enjoy dessert after the show, and return home to pay the babysitter. The study found that the typical attendee spends \$31.47 per person, per event beyond the cost of admission. AEP5 also shows that one-third of attendees (34 percent) traveled from outside the county in which the arts event took place. Their event-related spending was more than twice that of their local counterparts (\$47.57 vs. \$23.44). What brought those visitors to town? Two-thirds (69 percent) indicated that the primary purpose for their visit was to attend that arts event. The message is clear: a vibrant arts community not only keeps residents and their discretionary spending close to home, it also attracts visitors who spend money and help local businesses thrive.

AEP5 demonstrates that the arts provide both cultural and economic benefits. No longer do community leaders need to feel that a choice must be made between arts funding and economic development. **Arts & Economic Prosperity 5** proves that they can choose both. Nationally as well as locally, the arts mean business.

“It is in the best interest of every business – no matter its size – to support the arts. Beyond their intrinsic value, the arts add to the economic vitality and quality of life of our communities and unleash new ideas, both in and out of the workplace, foster dialogues and increase understanding among people. An active and supportive relationship between business and the arts is vitally important for an innovative and prosperous community.”

-Henry Bloch
Philanthropist, Arts Visionary and
Co-Founder and Chairman Emeritus of
H&R Block

The Economic Impact of the Nonprofit Arts and Culture Industry in Johnson County

Arts & Economic Prosperity 5 provides evidence that the nonprofit arts and culture sector is a significant industry in Johnson County—one that generates \$22.8 million in total economic activity. This spending—\$12.3 million by nonprofit arts and cultural organizations and an additional \$10.4 million in event-related spending by their audiences—supports 875 full-time equivalent jobs, generates \$14.8 million in household income to local residents, and delivers \$2 million in local and state government revenue. This economic impact study sends a strong signal that when we support the arts, we not only enhance our quality of life, but we also invest in Johnson County’s economic well-being.

This Arts & Economic Prosperity 5 study documents the economic impact of the nonprofit arts and culture sector in 341 study regions—113 cities, 115 counties, 81 multicounty or multicounty regions, 20 states, and 12 arts districts—representing all 50 U.S. states and the District of Columbia. The diverse study regions range in population (1,500 to four million) and type (rural to large urban). Economists customized input-output models to calculate specific and reliable findings for each study region. This study focuses solely on the economic impact of nonprofit arts and cultural organizations and event-related spending by their audiences. Spending by individual artists and the for-profit arts and culture sector (e.g., Broadway or the motion picture industry) are excluded from this study.

The geographic area analyzed in this unique report is defined as **Johnson County, Kansas**.

Defining Economic Impact

This proprietary study methodology uses four economic measures to define economic impact: full-time equivalent jobs, resident household income, and local and state government revenues.

Full-Time Equivalent (FTE) Jobs describes the total amount of labor employed. An FTE job can be one full-time employee, two half-time employees, etc. Economists measure FTE jobs, not the total number of employees, because it is a more accurate measure that accounts for part-time employment.

Resident Household Income (often called Personal Income) includes salaries, wages, and entrepreneurial income paid to residents. It is the money residents earn and use to pay for food, shelter, utilities, and other living expenses.

Revenue to Local and State Government includes revenue from local and state taxes (e.g., income, sales, lodging, real estate, personal property, and other local option taxes) as well as funds from license fees, utility fees, filing fees, and other similar sources. Local government revenue includes funds to governmental units such as city, county, township, and school districts, and other special districts.

Economic Impact of Spending by the Nonprofit Arts and Culture Industry (Combined Spending by Both Organizations and Their Audiences) in Johnson County

In communities coast-to-coast, from our smallest towns to our largest cities, America’s 100,000 nonprofit arts and cultural organizations make their communities more desirable places to live and work every day of the year.

The arts and culture provide inspiration and joy to residents, beautify public spaces, and strengthen the social fabric of our communities. Nonprofit arts and cultural organizations are also businesses. They employ people locally, purchase goods and services from other local businesses, and attract tourists. Event-related spending by arts audiences generates valuable revenue for local merchants such as restaurants, retail stores, parking garages, and hotels.

During fiscal year 2015, spending by both Johnson County’s nonprofit arts and cultural organizations and their audiences totaled \$22.8 million. The table below demonstrates the total economic impact of these expenditures.

TABLE 1: Total Economic Impact of the Nonprofit Arts and Culture Industry in Johnson County (Combined Spending by Nonprofit Arts and Cultural Organizations and Their Audiences)			
	Johnson County	Median of Similar Study Regions <i>Pop. = 500,000 to 999,999</i>	National Median
Total Industry Expenditures	\$22,774,826	\$235,239,618	\$35,750,645
Full-Time Equivalent Jobs	875	6,789	1,131
Resident Household Income	\$14,761,000	\$155,244,000	\$23,154,000
Local Government Revenue	\$874,000	\$9,943,000	\$1,407,000
State Government Revenue	\$1,161,000	\$11,820,000	\$1,961,000

The Arts Improve the Economy ... and the Quality of our Personal Lives

- ✓ **82 percent** of Americans believe the arts & culture are important to local businesses and the economy
- ✓ **87 percent** of Americans believe the arts & culture are important to quality of life

Source: Americans for the Arts’ 2016 survey of 3,020 adults by Ipsos Public Affairs

“Johnson County is a prime example of a region where culture and art beget success in producing a robust economic landscape. Our private, public and non-profit sector commitment to creating and endowing a community culture where the arts are celebrated is clearly evident. It is most visible in the work of the Arts Council of Johnson County, the creation of the Nerman Museum of Contemporary Art, the “Percent for Art” Programs which have been adopted by many communities, and the investment in both the InterUrban ArtHouse in downtown Overland Park and the Johnson County Arts and Heritage Center.”

-Ed Eilert Chairman, Johnson County
Board of County Commissioners

Economic Impact: Total, Direct, Indirect, and Induced

How can a dollar be *respent*? Consider the example of a theater company that purchases a five-gallon bucket of paint from its local hardware store for \$100—a very simple transaction at the outset, but one that initiates a complex sequence of income and spending by both individuals and other businesses.

Following the paint purchase, the hardware store may use a portion of the \$100 to pay the sales clerk who sold the bucket of paint. The sales clerk then respends some of the money for groceries; the grocery store uses some of the money to pay its cashier; the cashier then spends some of the money for rent; and so on.

The hardware store also uses some of the \$100 to purchase goods and services from other businesses, such as the local utility company, and then to buy a new bucket of paint from the paint factory to restock its shelf. Those businesses, in turn, respend the money they earned from the hardware store to buy goods and services from still other local businesses, and so on.

Eventually, the last of the \$100 is spent outside of the community and no longer has a local economic impact. It is considered to have leaked out of the community.

The **total** economic impact describes this full economic effect, starting with the theater’s initial paint purchase and ending when the last of the \$100 leaks out of the community. It is composed of the **direct** economic impact (the effect of the initial expenditure by the theater), as well as the **indirect** and **induced** economic impacts, which are the effects of the subsequent rounds of spending by businesses and individuals, respectively.

Interestingly, a dollar ripples very differently through each community, which is why an input-output model was customized for the unique economy of Johnson County.

Economic Impact of Spending by Nonprofit Arts and Cultural ORGANIZATIONS in Johnson County

Nonprofit arts and culture organizations are active contributors to their business community. They are employers, producers, and consumers. They are members of the Chamber of Commerce as well as key partners in the marketing and promotion of their cities, regions, and states. **Spending by nonprofit arts and cultural organizations totaled \$12.3 million in Johnson County during fiscal year 2015.** This spending is far-reaching: organizations pay employees, purchase supplies, contract for services, and acquire assets within their community. These actions, in turn, support jobs, generate household income, and generate revenue to local and state governments.

Johnson County’s nonprofit arts and cultural organizations provide rewarding employment for more than just administrators, artists, curators, choreographers, and musicians. They also employ financial staff, facility managers, and salespeople. In addition, the spending by these organizations directly supports a wide array of other occupations spanning many industries that provide their goods and services (e.g., accounting, construction, event planning, legal, logistics, printing, and technology).

Data were collected from 27 eligible nonprofit arts and cultural organizations that are located in Johnson County. Each provided detailed budget information for fiscal year 2015 (e.g., labor, payments to local and nonlocal artists, operations, administration, programming, facilities, and capital expenditures/asset acquisition). The following table demonstrates the total economic impact of their aggregate spending.

TABLE 2: Total Economic Impact of Spending by Nonprofit Arts and Cultural ORGANIZATIONS in Johnson County			
	Johnson County	Median of Similar Study Regions <i>Pop. = 500,000 to 999,999</i>	National Median
Total Organizational Expenditures	\$12,335,839	\$118,196,607	\$15,727,535
Full-Time Equivalent Jobs	622	3,889	608
Resident Household Income	\$9,538,000	\$102,452,000	\$11,441,500
Local Government Revenue	\$549,000	\$5,455,000	\$592,000
State Government Revenue	\$591,000	\$7,227,000	\$840,500

Economic Impact Beyond Dollars: Volunteerism

While arts volunteers may not have an economic impact as defined in this study, they clearly have an enormous impact by helping nonprofit arts and cultural organizations function as a viable industry. Arts & Economic Prosperity 5 reveals a significant contribution to nonprofit arts and cultural organizations as a result of volunteerism. **During 2015, a total of 2,261 volunteers donated a total of 94,987 hours to Johnson County's participating nonprofit arts and cultural organizations. This represents a donation of time with an estimated aggregate value of \$2,237,894** (Independent Sector estimates the dollar value of the average 2015 volunteer hour to be \$23.56). Volunteers can include unpaid professional staff (e.g., executive and program staff, board/commission members), artistic volunteers (e.g., artists, choreographers, designers), clerical volunteers, and service volunteers (e.g., ticket takers, docents, ushers, gift shop volunteers).

The 27 participating organizations reported an average of 83.7 volunteers who volunteered an average of 42.0 hours during 2015, for a total of 3,518.0 hours per organization.

The Value of In-Kind Contributions to Arts Organizations

The organizations were asked about the sources and value of their in-kind support. In-kind contributions are non-cash donations such as materials (e.g., office supplies from a local retailer), facilities (e.g., office or performance space), and services (e.g., printing from a local printer). **The 27 participating nonprofit arts and cultural organizations in Johnson County reported that they received in-kind contributions with an aggregate value of \$1,090,815 during fiscal year 2015.** These contributions can be received from a variety of sources including corporations, individuals, local and state arts agencies, and government agencies.

"The arts serve not to simply entertain us but to provoke and challenge us. They break down barriers within our community, unite us as a people and give us cause to celebrate together. But, the arts must not only be seen through this monocular lens. When we look at the arts through binoculars we also see the economic and social impact to our community. The arts draw people and companies to our region, provide good jobs and stirs the creativity within each of us that in turn makes us a prosperous and healthy community."

-Pat McCown
Chief Executive Officer
McCownGordon Construction

Economic Impact of Spending by Nonprofit Arts and Cultural AUDIENCES in Johnson County

The nonprofit arts and culture industry, unlike most industries, leverages a significant amount of event-related spending by its audiences. For example, when patrons attend a cultural event, they may pay to park their car, purchase dinner at a restaurant, shop in nearby stores, eat dessert after the show, and pay a babysitter upon their return home. Attendees from out of town often spend the night in a hotel. This spending generates related commerce for local businesses such as restaurants, parking garages, retail stores, and hotels. Local businesses that cater to arts and culture audiences reap the rewards of this economic activity.

To measure the impact of spending by cultural audiences in Johnson County, data were collected from 395 event attendees during 2016. Researchers used an audience-intercept methodology, a standard technique in which patrons are asked to complete a short survey about their event-related spending (while they are attending the event). In Johnson County, cultural attendees spent an average of \$21.13 per person, per event as a direct result of their attendance at the event.

The 27 participating nonprofit arts and cultural organizations reported that the aggregate attendance to their events was 494,405 during 2015. **Event-related spending by these attendees totaled \$10.4 million in Johnson County during fiscal year 2015**, excluding the cost of event admission. The following table demonstrates the total economic impact of this spending.

TABLE 3: Total Economic Impact of Spending by Nonprofit Arts and Cultural AUDIENCES in Johnson County (excluding the cost of event admission¹)			
	Johnson County	Median of Similar Study Regions <i>Pop. 500,000 to 999,999</i>	National Median
Total Audience Expenditures	\$10,438,987	\$104,161,585	\$18,871,511
Full-Time Equivalent Jobs	253	3,322	430
Resident Household Income	\$5,223,000	\$58,425,000	\$8,402,500
Local Government Revenue	\$325,000	\$5,420,000	\$898,000
State Government Revenue	\$570,000	\$6,123,000	\$1,007,500

¹ Why exclude the cost of admission? The admissions paid by attendees are excluded from the audience analysis because those dollars are captured in the operating budgets of the participating nonprofit arts and cultural organizations and, in turn, are spent by the organizations. This methodology avoids “double-counting” those dollars in the study analysis.

Cultural Tourists Spend More

The 395 audience survey respondents were asked to provide the ZIP code of their primary residence, enabling researchers to determine which attendees were local residents (live within Johnson County) and which were nonresidents (live outside Johnson County). In Johnson County, researchers estimate that 72.4 percent of the 494,405 nonprofit arts attendees were residents; 27.6 percent were nonresidents.

Nonresident attendees spent an average of 29 percent more per person than local attendees (\$25.27 vs. \$19.53) as a result of their attendance to cultural events. As would be expected from a traveler, higher spending was typically found in the categories of lodging, meals, and transportation. When a community attracts cultural tourists, it harnesses significant economic rewards.

TABLE 4: Event-Related Spending by Arts and Culture Event Attendees Totaled \$10.4 million in Johnson County (excluding the cost of event admission)			
	Residents	Nonresidents	All Johnson County Event Attendees
Total Attendance	357,949	136,456	494,405
Percent of Attendees	72.4%	27.6%	100%
Average Dollars Spent Per Attendee	\$19.53	\$25.27	\$21.13
Total Event-Related Expenditures	\$6,990,744	\$3,448,243	\$10,438,987

TABLE 5: Nonprofit Arts and Culture Event Attendees Spend an Average of \$21.13 Per Person in Johnson County (excluding the cost of event admission)			
	Residents	Nonresidents	All Johnson County Event Attendees
Refreshments/Snacks During Event	\$3.35	\$2.96	\$3.24
Meals Before/After Event	\$9.78	\$13.89	\$10.92
Souvenirs and Gifts	\$3.83	\$2.92	\$3.58
Clothing and Accessories	\$0.71	\$0.25	\$0.58
Ground Transportation	\$1.33	\$2.94	\$1.78
Event-Related Child Care	\$0.26	\$0.37	\$0.29
Overnight Lodging (<i>one night only</i>)	\$0.17	\$1.94	\$0.66
Other	\$0.10	\$0.00	\$0.08
Total Per Person Spending	\$19.53	\$25.27	\$21.13

The Arts Drive Tourism

Each of the nonresident survey respondents (i.e., those who live outside Johnson County) were asked about the purpose of their trip: **63.3 percent indicated that the primary purpose of their visit to Johnson County was “specifically to attend this arts/cultural event.”** This finding demonstrates the power of the arts to attract visitors to the community.

The audience-intercept survey also asked nonresident attendees if they would have traveled somewhere else (instead of to Johnson County) if the event where they were surveyed had not occurred: **56.2 percent of nonresident attendees would have “traveled to a different community to attend a similar cultural event.”**

Of the 27.6 percent of arts attendees who are nonresidents, 1.8 percent reported an overnight lodging expense. Not surprisingly, nonresident attendees with overnight expenses spent considerably more money per person during their visit to Johnson County than did nonresident attendees without overnight lodging expenses (\$158.25 and \$22.79, respectively). For this analysis, only one night of lodging expenses is counted toward the audience expenditure, regardless of how many nights these cultural tourists actually stayed in the community. This conservative approach ensures that the audience-spending figures are not inflated by non-arts-related spending.

The Arts Retain Local Dollars

The survey also asked local resident attendees about what they would have done if the arts event that they were attending was not taking place: **39.3 percent of resident attendees said they would have “traveled to a different community to attend a similar cultural event.”**

The cultural tourism findings on this page demonstrate the economic impact of the nonprofit arts and culture industry in its truest sense. If a community fails to provide a variety of artistic and cultural experiences, not only will it fail to attract new dollars from cultural tourists, it will also lose the discretionary spending of its own residents who will travel elsewhere for a similar experience.

“The success of my family’s business depends on finding and cultivating a creative and innovative workforce. I have witnessed firsthand the power of the arts in building these business skills. When we participate personally in the arts, we strengthen our ‘creativity muscles,’ which makes us not just a better ceramicist or chorus member, but a more creative worker—better able to identify challenges and innovative business solutions.”

-Christopher Forbes Vice Chairman
Forbes, Inc.

Travel Party and Demographic Characteristics of Arts Attendees

The tables below list the audience-intercept survey findings related to travel party size as well as the age, educational attainment, and household income reported by the survey respondents.

TABLE 6: Travel Party and Demographic Characteristics of Arts Audiences in Johnson County

	Residents	Nonresidents
Travel Party Size		
Average number of adults (18 years or older)	2.2	2.3
Average number of children (younger than 18)	0.2	0.2
Average travel party size	2.4	2.5
Trip Characteristics		
Average number of nights spent away from home as a result of arts event	0.1	0.3
Percentage with any nights spent away from home as a result of arts event	2.1%	13.8%
Percentage attending the arts event or facility (where they were surveyed) for the first time	16.7%	27.7%
Age of Cultural Attendees		
18-34	8.6%	12.1%
35-44	8.3%	7.5%
45-54	18.3%	12.1%
55-64	26.6%	28.0%
65 or Older	38.1%	40.2%
Educational Attainment of Cultural Attendees		
Less than high school	0.0%	0.0%
High school	5.8%	6.7%
2-year college/technical/associates degree	13.7%	13.5%
4-year college/bachelors degree	38.3%	41.3%
Masters degree	33.2%	31.7%
Doctoral degree	9.0%	6.7%
Annual Household Income of Cultural Attendees		
Less than \$40,000	10.9%	12.9%
\$40,000 to \$59,999	14.9%	20.4%
\$60,000 to \$79,999	16.5%	16.1%
\$80,000 to \$99,999	13.3%	19.4%
\$100,000 to \$119,999	15.7%	12.9%
\$120,000 or More	28.6%	18.3%
Civic Engagement of Cultural Attendees		
Percentage that voted in 2016 U.S. presidential election	95.8%	97.2%

“Mayors understand the connection between the arts industry and city revenues. Arts activity creates thousands of direct and indirect jobs and generates billions in government and business revenues. The arts also make our cities destinations for tourists, help attract and retain businesses, and play an important role in the economic revitalization of cities and the vibrancy of our neighborhoods.”

-Oklahoma City Mayor Mick Cornett
President, The United States Conference
of Mayors

Conclusion

The nonprofit arts and culture sector is a \$22.8 million industry in Johnson County—one that supports 875 full-time equivalent jobs and generates \$2 million in local and state government revenue.

Nonprofit arts and cultural organizations are businesses in their own right. They spent \$12.3 million during fiscal year 2015 to employ people locally, purchase goods and services from local establishments, and attract tourists. They also leveraged a remarkable \$10.4 million in additional spending by cultural audiences—spending that pumps vital revenue into restaurants, hotels, retail stores, parking garages, and other local businesses.

This study puts to rest a misconception that communities support arts and culture at the expense of local economic development. In fact, communities that support the arts and culture are investing in an industry that supports jobs, generates government revenue, and is the cornerstone of tourism. This Arts & Economic Prosperity 5 study shows conclusively that **the arts mean business in Johnson County!**

“A vital component to generating economic growth in our communities can be attributed to supporting and funding the arts. It is apparent that decreased support of the arts has negatively impacted some areas of our country. To compete and thrive in today’s workforce environment it is apparent that supporting the arts helps foster a more creative and innovative workforce that strengthens our economy.”

-Nevada Assemblywoman Maggie Carlton
Co-Chair, National Conference of State
Legislatures Labor & Economic Development
Committee

The Arts & Economic Prosperity 5 Calculator

To make it easier to compare the economic impacts of different organizations within Johnson County (or to calculate updated estimates in the immediate years ahead), the project researchers calculated the economic impact per \$100,000 of direct spending by nonprofit arts and cultural organizations and their audiences.

Economic Impact Per \$100,000 of Direct Spending by ORGANIZATIONS

For every \$100,000 in direct spending by a nonprofit arts and cultural organization in Johnson County, there was the following total economic impact.

TABLE 7: Ratios of Economic Impact Per \$100,000 of Direct Spending by Nonprofit Arts and Cultural Organizations in Johnson County			
	Johnson County	Median of Similar Study Regions <i>Pop. = 500,000 to 999,999</i>	National Median
Full-Time Equivalent Jobs	5.04	3.83	3.52
Resident Household Income	\$77,319	\$82,153	\$74,554
Local Government Revenue	\$4,450	\$4,450	\$3,563
State Government Revenue	\$4,791	\$5,525	\$4,891

An Example of How to Use the Organizational Spending Calculator Table (above):

An administrator from a nonprofit arts and cultural organization that has total expenditures of \$250,000 wants to determine the organization’s total economic impact on full-time equivalent (FTE) employment in Johnson County. The administrator would:

1. Determine the amount spent by the nonprofit arts and cultural organization;
2. Divide the total expenditure by 100,000; and
3. Multiply that figure by the FTE employment ratio per \$100,000 for Johnson County.

Thus, \$250,000 divided by 100,000 equals 2.5; 2.5 times 5.04 (from the top row of data on Table 1 above) equals a total of 12.6 full-time equivalent jobs supported (both directly and indirectly) within Johnson County by that nonprofit arts and cultural organization. Using the same procedure, the estimate can be calculated for resident household income as well as for local and state government revenue.

Economic Impact Per \$100,000 of Direct Spending by AUDIENCES

The economic impact of event-related spending by arts audiences can also be derived for an individual organization or groups of organizations in Johnson County.

The first step is to determine the total estimated event-related spending by attendees who are residents of Johnson County. To derive this figure, first multiply the total attendance by the percentage of attendees that are residents. Then, multiply the result by the average per person event-related expenditure by resident attendees. The result is the total estimated event-related spending by resident attendees.

The second step is to do the same for nonresidents of Johnson County. To derive this figure, first multiply the total attendance by the percentage of attendees that are nonresidents. Then, multiply the result by the average per person event-related expenditure by nonresident attendees. The result is the total estimated event-related spending by nonresident attendees.

Then, add the results from the first two steps together to calculate the total estimated event-related audience spending. Finally, the ratios of economic impact per \$100,000 in direct spending can then be used to determine the total economic impact of the total estimated audience spending.

TABLE 8: Audience Spending Ratios for the Arts & Economic Prosperity 5 Calculator in Johnson County (excluding the cost of event admission)		
	Residents	Nonresidents
Percent of Attendees	72.4%	27.6%
Average Per Person Event-Related Expenditures	\$19.53	\$25.27

TABLE 9: Ratios of Economic Impact Per \$100,000 of Direct Spending by Nonprofit Arts and Culture Audiences in Johnson County			
	Johnson County	Median of Similar Study Regions Pop. = 500,000 to 999,999	National Median
Full-Time Equivalent Jobs	2.42	2.71	2.46
Resident Household Income	\$50,034	\$56,022	\$52,101
Local Government Revenue	\$3,113	\$4,939	\$4,449
State Government Revenue	\$5,460	\$6,562	\$5,692

An Example of How to Use the Audience Spending Calculator Tables (on the preceding page):

An administrator wants to determine the total economic impact of the 25,000 total attendees to his/her organization's nonprofit arts and cultural events on full-time equivalent (FTE) employment in Johnson County. The administrator would:

1. Multiply the total attendance by the percentage of attendees that are residents;
2. Multiply the result of step 1 by the average per person event-related expenditure for residents;
3. Multiply the total attendance by the percentage of attendees that are nonresidents;
4. Multiply the result of step 3 by the average per person event-related expenditure for nonresidents;
5. Sum the results of steps 2 and 4 to calculate the total estimated event-related audience spending;
6. Divide the resulting total estimated audience spending by 100,000; and
7. Multiply that figure by the FTE employment ratio per \$100,000 for Johnson County.

Thus, 25,000 times 72.4% (from Table 8 on the preceding page) equals 18,100; 18,100 times \$19.53 (from Table 8) equals \$353,493; 25,000 times 27.6% (from Table 8) equals 6,900; 6,900 times \$25.27 equals \$174,363; \$353,493 plus \$174,363 equals \$527,856, \$527,856 divided by 100,000 equals 5.28; 5.28 times 2.42 (from the top row of data on Table 9 on the preceding page) equals a total of 12.8 full-time equivalent jobs supported (both directly and indirectly) within Johnson County by that nonprofit arts and cultural organization. Using the same procedure, the estimate can be calculated for resident household income as well as for local and state government revenue.

Making Comparisons with Similar Study Regions

For the purpose of this analysis and unique report, **the geographic region being studied is defined as Johnson County, Kansas**. According to the most recent data available from the U.S. Census Bureau, the population of Johnson County was estimated to be 574,272 during 2015. For comparison purposes, 458 pages of detailed data tables containing the study results for all 341 participating study regions are located in Appendix B of the National Statistical Report. The data tables are stratified by population, making it easy to compare the findings for Johnson County to the findings for similarly populated study regions (as well as any other participating study regions that are considered valid comparison cohorts).

The National Summary Report and National Brochure are available both by download (free) and hardcopy (for purchase). The National Statistical Report (more than 500 pages in length) is available by download only. All documents and resources can be found at www.AmericansForTheArts.org/EconomicImpact.

“In Rhode Island, we know cultural excellence is crucial to economic development and the success of businesses large and small. Arts-related industries create jobs, attract investments, and enhance tourism—the economic impact of arts organizations is significant. The arts also play a role in promoting the health and welfare of our military members which makes our communities and our state stronger.”

-Rhode Island Lieutenant Governor Dan McKee
Chair, National Lt. Governors Association

About This Study

This Arts & Economic Prosperity 5 study was conducted by Americans for the Arts to document the economic impact of the nonprofit arts and culture industry in 341 communities and regions (113 cities, 115 counties, 81 multi-city or multi-county regions, 20 states, and 12 individual arts districts)—representing all 50 U.S. states and the District of Columbia.

The diverse local communities range in population (1,500 to four million) and type (rural to urban). The study focuses solely on nonprofit arts and cultural organizations and their audiences. The study excludes spending by individual artists and the for-profit arts and entertainment sector (e.g., Broadway or the motion picture industry). Detailed expenditure data were collected from 14,439 arts and culture organizations and 212,691 of their attendees. The project economists, from the Georgia Institute of Technology, customized input-output economic models for each participating study region to provide specific and reliable economic impact data about their nonprofit arts and culture industry: full-time equivalent jobs, household income, and local and state government revenue.

The 250 Local, Regional, and Statewide Study Partners

Americans for the Arts published a Call for Participants in 2015 seeking communities interested in participating in the Arts & Economic Prosperity 5 study. Of the more than 300 potential partners that expressed interest, 250 local, regional, and statewide organizations agreed to participate and complete four participation criteria: identify and code the universe of nonprofit arts and cultural organizations in their study region; assist researchers with the collection of detailed financial and attendance data from those organizations; conduct audience-intercept surveys at cultural events; and pay a modest cost-sharing fee (no community was refused participation for an

inability to pay). Thirty of the 250 partners included multiple study regions as part of their AEP5 participation (e.g., a county as well as a specific city located within the county). As a result, the 250 local, regional, and statewide organizations represent a total of 341 participating study regions.

The Arts Council of Johnson County responded to the 2015 Call for Participants, and agreed to complete the required participation criteria.

Surveys of Nonprofit Arts and Cultural ORGANIZATIONS

Each of the 250 study partners identified the universe of nonprofit arts and cultural organizations that are located in their region(s) using the Urban Institute’s National Taxonomy of Exempt Entity (NTEE) coding system as a guideline. The NTEE system—developed by the National Center for Charitable Statistics at the Urban Institute—is a definitive classification system for nonprofit organizations recognized as tax exempt by the Internal Revenue Code. This system divides the entire universe of nonprofit organizations into 10 Major categories, including “Arts, Culture, and Humanities.” The Urban Institute reports that approximately 100,000 nonprofit arts and cultural organizations were registered with the IRS in 2015.

The following NTEE “Arts, Culture, and Humanities” subcategories were included in this study:

- A01 – Alliances and Advocacy
- A02 – Management and Technical Assistance
- A03 – Professional Societies and Associations
- A05 – Research Institutes and Public Policy Analysis
- A11 – Single Organization Support
- A12 – Fund Raising and Fund Distribution
- A19 – Support (not elsewhere classified)
- A20 – Arts and Culture (general)
- A23 – Cultural and Ethnic Awareness
- A24 – Folk Arts
- A25 – Arts Education
- A26 – Arts and Humanities Councils and Agencies
- A27 – Community Celebrations
- A30 – Media and Communications (general)
- A31 – Film and Video
- A32 – Television
- A33 – Printing and Publishing
- A34 – Radio
- A40 – Visual Arts (general)
- A50 – Museums (general)
- A51 – Art Museums
- A52 – Children’s Museums
- A53 – Folk Arts Museums
- A54 – History Museums
- A56 – Natural History and Natural Science Museums
- A57 – Science and Technology Museums
- A60 – Performing Arts (general)
- A61 – Performing Arts Centers
- A62 – Dance
- A63 – Ballet
- A65 – Theatre
- A68 – Music
- A69 – Symphony Orchestras
- A6A – Opera
- A6B – Singing and Choral Groups
- A6C – Bands and Ensembles
- A6E – Performing Arts Schools
- A70 – Humanities (general)
- A80 – Historical Organizations (general)
- A82 – Historical Societies and Historic Preservation
- A84 – Commemorative Events
- A90 – Arts Services (general)
- A99 – Arts, Culture, and Humanities (miscellaneous)

In addition to the organization types listed above, the study partners were encouraged to include other types of eligible organizations if they play a

substantial role in the cultural life of the community or if their primary purpose is to promote participation in, appreciation for, and understanding of the visual, performing, folk, literary arts, and/or media arts. These include government-owned and government-operated cultural facilities and institutions, municipal arts agencies and councils, private community arts organizations, unincorporated arts groups, living collections (such as zoos, aquariums, and botanical gardens), university presenters and cultural facilities, and arts programs that are embedded under the umbrella of a nonarts organization or facility (such as a community center or church). In short, if it displays the characteristics of a nonprofit arts and cultural organization, it is included. With rare exception, *for-profit businesses and individual artists are excluded from this study.*

To collect the required financial and attendance information from eligible organizations, researchers implemented a multipronged data collection process. Americans for the Arts partnered with DataArts to collect detailed budget and attendance information about each organization’s fiscal year that ended in 2015. DataArts’ Cultural Data Profile (CDP) is a unique system that enables arts and cultural organizations to enter financial, programmatic, and operational data into a standardized online form. To reduce the survey response burden on participating organizations, and because the CDP collects the detailed information required for this economic impact analysis, researchers used confidential CDP data as the primary organizational data collection mechanism for the Arts & Economic Prosperity 5 study. This primary data collection effort was supplemented with an abbreviated one-page paper version of the survey that was administered to organizations that did not respond to the CDP survey.

Nationally, information was collected from 14,439 eligible organizations about their fiscal year 2015 expenditures, event attendance, in-kind contributions, and volunteerism. Responding organizations had

budgets ranging from \$0 to \$785 million (Smithsonian Institution). Response rates for the 341 communities ranged from 9.5 percent to 100 percent and averaged 54.0 percent. It is important to note that each study region's results are based solely on the actual survey data collected. No estimates have been made to account for nonparticipating eligible organizations. Therefore, the less-than-100 percent response rates suggest an understatement of the economic impact findings in most of the individual study regions.

In Johnson County, 27 of the 75 eligible nonprofit arts and cultural organizations identified by the Arts Council of Johnson County participated in this study—a participation rate of 36.0 percent

Surveys of Nonprofit Arts and Cultural AUDIENCES

Audience-intercept surveying, a common and accepted research method, was conducted in all 341 of the study regions to measure event-related spending by nonprofit arts and culture audiences. Patrons were asked to complete a short survey while attending an event. Nationally, a total of 212,691 attendees completed a valid survey. The randomly selected respondents provided itemized expenditure data on attendance-related activities such as meals, retail shopping (e.g., gifts and souvenirs), local transportation, and lodging. Data were collected throughout 2016 (to account for seasonality) as well as at a broad range of both paid and free events (a night at the opera will typically yield more audience spending than a weekend children's theater production or a free community music festival, for example). The survey respondents provided information about the entire party with whom they were attending the event. With an overall average travel party size of 2.56 people, these data actually represent the spending patterns of more than 544,489 cultural attendees.

In Johnson County, a total of 395 valid audience-intercept surveys were collected from attendees to arts and cultural performances, events, and exhibits during 2016.

Economic Analysis

A common theory of community growth is that an area must export goods and services if it is to prosper economically. This theory is called economic-base theory, and it depends on dividing the economy into two sectors: the export sector and the local sector. Exporters, such as automobile manufacturers, hotels, and department stores, obtain income from customers outside of the community. This "export income" then enters the local economy in the form of salaries, purchases of materials, dividends, and so forth, and becomes income to residents. Much of it is respent locally; some, however, is spent for goods imported from outside of the community. The dollars respent locally have an economic impact as they continue to circulate through the local economy. This theory applies to arts organizations as well as to other producers.

Studying Economic Impact Using Input-Output Analysis

To derive the most reliable economic impact data, input-output analysis is used to measure the impact of expenditures by nonprofit arts and cultural organizations and their audiences. This is a highly-regarded type of economic analysis that has been the basis for two Nobel Prizes. The models are systems of mathematical equations that combine statistical methods and economic theory in an area of study called econometrics. They trace how many times a dollar is respent within the local economy before it leaks out, and it quantifies the economic impact of each round of spending. This form of economic analysis is well suited for this study because it can be customized specifically to each study region.

To complete the analysis for Johnson County, project economists customized an input-output

model based on the local dollar flow among 533 finely detailed industries within the unique economy of Johnson County. This was accomplished by using detailed data on employment, incomes, and government revenues provided by the U.S. Department of Commerce (County Business Patterns, the Regional Economic Information System, and the Survey of State and Local Finance), local tax data (sales taxes, property taxes, and miscellaneous local option taxes), as well as the survey data from the responding nonprofit arts and cultural organizations and their audiences.

The Input-Output Process

The input-output model is based on a table of 533 finely detailed industries showing local sales and purchases. The local and state economy of each community is researched so the table can be customized for each community. The basic purchase patterns for local industries are derived from a similar table for the U.S. economy for 2012 (the latest detailed data available from the U.S. Department of Commerce). The table is first reduced to reflect the unique size and industry mix of the local economy, based on data from County Business Patterns and the Regional Economic Information System of the U.S. Department of Commerce. It is then adjusted so that only transactions with local businesses are recorded in the inter-industry part of the table. This technique compares supply and demand and estimates the additional imports or exports required to make total supply equal total demand. The resulting table shows the detailed sales and purchase patterns of the local industries. The 533-industry table is then aggregated to reflect the general activities of 32 industries plus local households, creating a total of 33 industries. To trace changes in the economy, each column is converted to show the direct requirements per dollar of gross output for each sector. This direct-requirements table represents the “recipe” for producing the output of each industry.

The economic impact figures for Arts & Economic Prosperity 5 were computed using what is called an “iterative” procedure. This process uses the sum of a power series to approximate the solution to the economic model. This is what the process looks like in matrix algebra:

$$T = IX + AX + A^2X + A^3X + \dots + A^nX.$$

T is the solution, a column vector of changes in each industry’s outputs caused by the changes represented in the column vector X. A is the 33 by 33 direct-requirements matrix. This equation is used to trace the direct expenditures attributable to nonprofit arts organizations and their audiences. A multiplier effect table is produced that displays the results of this equation. The total column is T. The initial expenditure to be traced is IX (I is the identity matrix, which is operationally equivalent to the number 1 in ordinary algebra). Round 1 is AX, the result of multiplying the matrix A by the vector X (the outputs required of each supplier to produce the goods and services purchased in the initial change under study). Round 2 is A²X, which is the result of multiplying the matrix A by Round 1 (it answers the same question applied to Round 1: “What are the outputs required of each supplier to produce the goods and services purchased in Round 1 of this chain of events?”). Each of columns 1 through 12 in the multiplier effects table represents one of the elements in the continuing but diminishing chain of expenditures on the right side of the equation. Their sum, T, represents the total production required in the local economy in response to arts activities.

Calculation of the total impact of the nonprofit arts on the outputs of other industries (T) can now be converted to impacts on the final incomes to residents by multiplying the outputs produced by the ratios of household income to output and employment to output. Thus, the employment impact of changes in outputs due to arts expenditures is calculated by multiplying elements in the column of total outputs

by the ratio of employment to output for the 32 industries in the region. Changes in household incomes, local government revenues, and state government revenues due to nonprofit arts expenditures are similarly transformed. The same process is also used to show the direct impact on incomes and revenues associated with the column of direct local expenditures.

A comprehensive description of the methodology used to complete the national study is available at www.AmericansForTheArts.org/EconomicImpact.

"Americans for the Arts' Arts and Economic Prosperity 5 study is an invaluable tool for Guilford County and counties across the nation. The data it has collected and analyzed provide an unparalleled understanding of the influence of the arts on the economy, locally and nationally. It is vital that we continue to measure the impact of the arts on our economy to show our constituents and the nation its value. We are grateful for the work Americans for the Arts does to help us show what an important asset the arts are in the areas of education and health, both physical and mental, and as an economic driver."

-Kay Cashion, Commissioner, Guilford County, N.C.
Chair, National Association of Counties Arts & Culture
Commission

Frequently Used Terms

Cultural Tourism

Travel directed toward experiencing the arts, heritage, and special character of a place.

Direct Economic Impact

A measure of the economic effect of the initial expenditure within a community. For example, when the symphony pays its players, each musician's salary, the associated government taxes, and full-time equivalent employment status represent the direct economic impact.

Direct Expenditures

The first round of expenditures in the economic cycle. A paycheck from the symphony to the violin player and a ballet company's purchase of dance shoes are examples of direct expenditures.

Econometrics

The process of using statistical methods and economic theory to develop a system of mathematical equations that measures the flow of dollars between local industries. The input-output model developed for this study is an example of an econometric model.

Econometrician

An economist who designs, builds, and maintains econometric models.

Full-Time Equivalent (FTE) Jobs

A term that describes the total amount of labor employed. Economists measure FTE jobs—not the total number of employees—because it is a more accurate measure of total employment. It is a manager's discretion to hire one full-time employee, two half-time employees, four quarter-time employees, etc. Almost always, more people are affected than are reflected in the number of FTE jobs reported due to the abundance of part-time employment, especially in the nonprofit arts and culture industry.

Indirect and Induced Economic Impact

This study measures the economic impact of the arts using a methodology that enables economists to track how many times a dollar is respent within the local economy, and thus to measure the economic impact generated by each round of spending. When a theater company purchases paint from the local hardware store, there is a measurable economic effect of that initial expenditure within a community. However, the economic benefits typically do not end there, because the hardware store uses some of its income to pay the clerk that sold the paint, as well as to pay its electric bill and to re-stock the shelves. The indirect and induced economic impacts are the effects of the subsequent rounds of spending by businesses and individuals, respectively. (See the example on Page 5 of this report.)

Input-Output Analysis

A system of mathematical equations that combines statistical methods and economic theory in an area of economic study called econometrics. Economists use this model (occasionally called an inter-industry model) to measure how many times a dollar is respent in, or “ripples” through, a community before it “leaks out” of the local economy by being spent non-locally (see Leakage below). The model is based on a matrix that tracks the dollar flow among 533 finely detailed industries in each community. It allows researchers to determine the economic impact of local spending by nonprofit arts and cultural organizations on jobs, household income, and government revenue.

Leakage

The money that community members spend outside of the local economy. This non-local spending has no economic impact within the community. A ballet company purchasing shoes from a non-local manufacturer is an example of leakage. If the shoe company were local, the expenditure would remain within the community and create another round of spending by the shoe company.

Multiplier (often called Economic Activity Multiplier)

An estimate of the number of times that a dollar changes hands within the community before it leaks out of the community (for example, the theater pays the actor, the actor spends money at the grocery store, the grocery store pays its cashier, and so on). This estimate is quantified as one number by which all expenditures are multiplied. For example, if the arts are a \$10 million industry and a multiplier of three is used, then it is estimated that these arts organizations have a total economic impact of \$30 million. The convenience of a multiplier is that it is one simple number; its shortcoming, however, is its reliability. Users rarely note that the multiplier is developed by making gross estimates of the industries within the local economy with no allowance for differences in the characteristics of those industries, usually resulting in an overestimation of the economic impact. In contrast, the input-output model employed in Arts & Economic Prosperity 5 is a type of economic analysis tailored specifically to each community and, as such, provides more reliable and specific economic impact results.

Resident Household Income (often called Personal Income)

The salaries, wages, and entrepreneurial income residents earn and use to pay for food, mortgages, and other living expenses. It is important to note that resident household income is not just salary. When a business receives money, for example, the owner usually takes a percentage of the profit, resulting in income for the owner.

Revenue to Local and State Government

Local and state government revenue is not derived exclusively from income, property, sales, and other taxes. It also includes license fees, utility fees, user fees, and filing fees. Local government revenue includes funds to city and county government, schools, and special districts.

Frequently Asked Questions

How were the 341 participating communities and regions selected?

In 2015, Americans for the Arts published a Call for Participants for communities interested in participating in the Arts & Economic Prosperity 5 study. Of the more than 300 participants that expressed interest, 250 agreed to participate and complete four participation criteria: (1) identify and code the universe of nonprofit arts and cultural organizations in their study region; (2) assist researchers with the collection of detailed financial and attendance data from those organizations; (3) conduct audience-intercept surveys at cultural events; and (4) pay a modest cost-sharing fee (no community was refused participation for an inability to pay). Thirty of the 250 partners included multiple regions as part of their participation (e.g., a county as well as a city located within the county); as a result, the 250 local, regional, and statewide partners represent a total of 341 participating study regions.

How were the eligible nonprofit arts organizations in each community selected?

Local partners attempted to identify their universe of nonprofit arts and cultural organizations using the Urban Institute's National Taxonomy of Exempt Entity (NTEE) codes as a guideline. Eligible organizations included those whose primary purpose is to promote appreciation for and understanding of the visual, performing, folk, and media arts. Government-owned and government-operated cultural facilities and institutions, municipal arts agencies and councils, private community arts organizations, unincorporated arts groups, living collections (such as zoos, aquariums, and botanical gardens), university presenters and cultural facilities, and arts programs that are embedded under the umbrella of a non-arts organization or facility (such as a hospital or church) also were included if they play a substantial role in the cultural life of the community. For-profit businesses and individual artists are excluded from this study.

What type of economic analysis was done to determine the study results?

An input-output economic analysis was customized for each of the participating study regions to determine the economic impact its nonprofit arts and cultural organizations and arts audiences. Americans for the Arts, which conducted the research, worked with highly regarded economists to design the input-output models.

What other information was collected in addition to the arts surveys?

In addition to detailed expenditure data provided by the surveyed organizations and cultural attendees, researchers and economists collected extensive wage, labor, tax, and commerce data provided by the U.S. Department of Commerce (County Business Patterns, the Regional Economic Information System, and the Survey of State and Local Finance), as well as local and state tax data for use in the input-output analyses.

Why doesn't this study use a multiplier?

When many people hear about an economic impact study, they expect the result to be quantified in what is often called a multiplier or an economic activity multiplier. The economic activity multiplier is an estimate of the number of times a dollar changes hands within the community (e.g., a theater pays its actor, the actor spends money at the grocery store, the grocery store pays the cashier, and so on). It is quantified as one number by which expenditures are multiplied. The convenience of the multiplier is that it is one simple number. Users rarely note, however, that the multiplier is developed by making gross estimates of the industries within the local economy

and does not allow for differences in the characteristics of those industries. Using an economic activity multiplier usually results in an overestimation of the economic impact and therefore lacks reliability.

Why are the admissions expenses excluded from the analysis of audience spending?

Researchers assume that any admissions dollars paid by event attendees are typically collected as revenue for the organization that is presenting the event. The organization then spends those dollars. The admissions paid by audiences are excluded because those dollars are captured in the operating budgets of the participating nonprofit arts and cultural organizations. This methodology avoids “double-counting” those dollars in the analysis.

How is the economic impact of arts and culture organizations different from other industries?

Any time money changes hands there is a measurable economic impact. Social service organizations, libraries, and all entities that spend money have an economic impact. What makes the economic impact of arts and culture organizations unique is that, unlike most other industries, they induce large amounts of related spending by their audiences. For example, when patrons attend a performing arts event, they may purchase dinner at a restaurant, eat dessert after the show, and return home and pay the baby-sitter. These expenditures have a positive and measurable impact on the economy.

Will my local legislators believe these results?

Yes, this study makes a strong argument to legislators, but you may need to provide them with some extra help. It will be up to the user of this report to educate the public about economic impact studies in general and the results of this study in particular. The user may need to explain (1) the study methodology used; (2) that economists created an input-output model for each community and region in the study; and (3) the difference between input-output analysis and a multiplier. The good news is that as the number of economic impact studies completed by arts organizations and other special interest areas increases, so does the sophistication of community leaders whose influence these studies are meant to affect. Today, most decision makers want to know what methodology is being used and how and where the data were gathered.

You can be confident that the input-output analysis used in this study is a highly-regarded model in the field of economics (the basis of two Nobel Prizes in economics). However, as in any professional field, there is disagreement about procedures, jargon, and the best way to determine results. Ask 12 artists to define art and you may get 12 answers; expect the same of economists. You may meet an economist who believes that these studies should be done differently (for example, a cost-benefit analysis of the arts).

How can a community not participating in the Arts and Economic Prosperity 5 study apply these results?

Because of the variety of communities studied and the rigor with which the Arts & Economic Prosperity 5 study was conducted, nonprofit arts and cultural organizations located in communities that were not part of the study can estimate their local economic impact. Estimates can be derived by using the Arts & Economic Prosperity 5 Calculator (found at www.AmericansForTheArts.org/EconomicImpact). Additionally, users will find sample PowerPoint presentations, press releases, Op-Ed, and other strategies for proper application of their estimated economic impact data.

Acknowledgments

Americans for the Arts expresses its gratitude to the many people and organizations who made *Arts & Economic Prosperity 5: The Economic Impact of Nonprofit Arts and Cultural Organizations and Their Audiences in Johnson County* possible and assisted in its development, coordination, and production. A study of this size cannot be completed without the collaboration of many partnering organizations.

Generous funding for this project was provided by the Arts Council of Johnson County, which also served as the local project partner and as such was responsible for the local implementation and data collection requirements of this customized analysis for Johnson County.

Special thanks to the John D. and Catherine T. MacArthur Foundation, the Barr Foundation, and The Ruth Lilly Fund of Americans for the Arts for their financial support of the national implementation of Arts & Economic Prosperity 5.

Finally, each of our 250 local, regional, and statewide research partners contributed time and/or financial support toward the completion of this national study. We thank each and every one of them for committing the time and resources necessary to achieve success. A study of this magnitude is a total organizational effort; appreciation is extended to the entire board and staff of Americans for the Arts. The research department responsible for producing this study includes Randy Cohen, Ben Davidson, Isaac Fitzsimons, and Graciela Kahn.

Johnson County's Participating Nonprofit Arts and Cultural Organizations

This study could not have been completed without the cooperation of the 27 nonprofit arts and cultural organizations in Johnson County, listed below, that provided detailed financial and event attendance information about their organization.

Allegro Children's Choir of Kansas City; Arts & Recreation Foundation Of Overland Park; Arts Council Of Johnson County; Arts in Prison; Barn Players; Chestnut Fine Arts Center; Culture House; Epsten Gallery Foundation; Ernie Miller Nature Center; Festival Choral Society; Gurukul Dance Company; Heartland Chamber Music; Images Art Gallery ; InterUrban ArtHouse; Johnson County Museum; Kansas City Wind Symphony; Kansas School Of Classical Ballet; Leawood Arts Council; Lenexa Arts Council; Music Theatre Kansas City; Nerman Museum of Contemporary Art; Olathe Civic Theatre Association; Overland Park Historical Society; Performing Arts Series at JCCC; Theater in the Park (Johnson County Parks and Recreation Department); Tim Murphy Art Gallery (Irene B. French Community Center); and Wonderscope Children's Museum of Kansas City.

Johnson County's Participating Cultural Event Attendees

Additionally, this study could not have been completed without the cooperation of the 395 arts and cultural audience members who generously took the time to complete the audience-intercept survey while attending a performance, event, or exhibit within Johnson County during calendar year 2016.



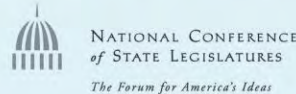
AMERICANS FOR THE ARTS IS THE NATION'S LEADING NONPROFIT ORGANIZATION FOR ADVANCING THE ARTS IN AMERICA. ESTABLISHED IN 1960, WE ARE DEDICATED TO REPRESENTING AND SERVING LOCAL COMMUNITIES AND CREATING OPPORTUNITIES FOR EVERY AMERICAN TO PARTICIPATE IN AND APPRECIATE ALL FORMS OF THE ARTS.



The following national organizations partner with Americans for the Arts to help public- and private-sector leaders understand the economic and social benefits that the arts bring to their communities, states, and the nation.

Cover: Andrew Shurtleff Photography

(Clockwise from Top) Concert for Miami, Knight Concert Hall, Miami-Dade, FL.; Photos from the Broward 100 'InsideOut' campaign "Creatives Making a Difference in Hollywood". Presented by the Community Redevelopment Agency of Hollywood and supported by the Downtown Hollywood Mural Project and the Art and Cultural Center of Hollywood, FL. Photo by Jill Weisberg.; The Pool, El Paso Museums & Cultural Affairs Department, TX. Photo by Jen Lewin.; Dancer at outdoor performance. Fulton County Arts Council, GA. Photo by CGC Studios.



FUNDING SOURCES

The Capital Art Funds shall come from one of two sources for all LAC projects and programs, as recommended to the Governing Body by the Director of Parks and Recreation based on recommendation of the LAC.

A. The City Public Capital Art Fund

1. A fund for Capital Art shall be included in the City's annual budget. Monies in this fund shall be allocated for the incorporation of art into municipal construction and/or other public spaces, and shall be used for the acquisition, site development, installation, and/or conservation of public art. The fund is based on city population and budgeted at \$5.00 per resident per year based on the most current census report as interpreted by the Director of Community Development.. Money from this computation shall be divided, at the discretion of the Director of Parks and Recreation, (based on program needs requested through the annual budget process) as approved by the City Administrator.
2. Monies will be allocated accordingly into a) the Cultural Arts operating budget (11110.44440), b. the Leawood Stage Company operating budget (11110.44420), c) the City Public Capital Art Fund with the intent of approximately one-thirds going to each of the three budgets. Operating budgets will be coordinated with the Capital Art CIP.
3. Any money left in any of these three art-related funds at the end of the fiscal year will be transferred to the City Public Capital Art Fund (Public Art Fund) balance (reserves) to be carried over to the next calendar year.
4. In addition, the fund shall provide for maintenance of all art in the collection. Money for this fund is accumulated by an amount equal to 10% of the purchase price of each piece, identified at the time of the purchase.
5. All additional costs related to Public Art Projects (design, development, engineering, site preparation, construction, lighting, etc. will be paid from the City Public Capital Art Fund or Public Art Impact Fee Fund in an amount no more than 20% of the purchase price of each piece, identified at the time of purchase.
6. Costs incurred by other City functions attributable to Public Art Projects (artist visits, marketing, receptions, etc.) will be documented and financed through the Cultural Arts Operating Budget (1111.44440).

B. Public Art Impact Fee (Ord 2233C)

The Impact Fee for Public Art (Private Percent for Art) is assessed on non-residential private development, “renovation” or “redevelopment” projects at the rate of \$.15 per square foot of such projects. The monies will be used for public art acquisition, site development, engineering fees, installation, and/or maintenance. The Public Art Impact Fee, required from private development may be satisfied through an art project, initiated by the developer. The cost of the project, which is privately funded, must be equal to or greater than the dollar value of the impact fee. The selection and installation of the project must be in accordance with the APPI Policy and follow the process for the acquisition of public art, must comply with the City’s Planning codes and restrictions and subsequently deeded over to the City.

A. Private Funding

1. Grants from Arts Agencies

Application for public arts funding may be made to private agencies such as the Greater Kansas City Community Foundation’s Community Arts Fund and other private foundations which fund the arts. All Grants must be accepted by the Governing Body.

2. Private Donations

Private monetary donations will be sought through various fundraising activities and channels. Such private, non-taxpayer monies will be accumulated and held by the Leawood Foundation and designated for the relevant program of the LAC.

3. Private Donations of Art

All private donations of art are subject to approval by the Selection Panel process. Donated art must be accompanied by a maintenance fee equal to 10% of the project cost or value (determined by appraisal) of the piece at the time of donation. With approval of the Governing Body, APPI may opt to provide this. Any proposed donation of public art must follow the final approval for public art, including review and approval of the Governing Body, accompanied by a Deed of Gift from the owner.

4. Public-Private Funding

Public-Private monies may be raised through partnerships, collaborations or matching grants.

Merriam mayor breaks tie vote on six-figure investment in caterpillar and butterfly public art sculpture

LEAH WANKUM - MAY 15, 2018 11:45 AM



The proposed sculpture design proved divisive among the Merriam city council, requiring Mayor Ken Sissom to break a tie vote.

The Merriam city council was split down the middle about approving a six-figure investment for a new art for Waterfall Park that depicts a large stone caterpillar next to a butterfly perched on a cairn of rocks.

With four members for and four members against the measure, Mayor Ken Sissom broke the tie to hire artist Jason Wiener to create the sculpture, titled, "Hmmm."

The stone caterpillar will be 9 feet tall. The metal butterfly atop the boulders will be 12 feet tall. When viewed from behind the sculpture is the caterpillar mistaking the cairn for another caterpillar and then seeing its own butterfly.

Joshua Wiener's contract of \$95,000 comprises most of the city's allotted \$110,000 for the art project; the rest of the funds will cover other project costs such as site work and consulting fees, said Meredith Hauck, assistant city administrator.

Councilmembers in favor of the sculpture included Nancy Hupp, Brian Knaff, Al Frisby and Chris Evans Hands. Councilmembers against the sculpture were David Neal, Bob Pape, Robert Weems and Scott Diebold.

The caterpillar and butterfly sculpture will be located near Waterfall Park, located along Turkey Creek just west of I-35. Installation of the project is set for spring 2019.

Sissom said the public art program, including this project, is funded by the general sales tax. That means 18 percent, or \$17,100, of the funds for the project will come from



Merriam Mayor Ken Sissom breaks the tie vote.

For every dollar Merriam collects in sales tax, 82 cents comes from visitors to Merriam, Hauck added.

“So although our residents are benefitting from public art, we’re not necessarily carrying the full weight of the expenditure because of how it’s funded,” Hauck said.

Merriam has already completed two public art projects for \$240,000 for the public art program. “Stitching Merriam and Johnson Drives, and [“Planting the Seeds” is in Merriam Marketplace.](#)

The vote came after much deliberation from the council as well as comments from art committee members and from the audience.

Councilmembers in favor of the sculpture said they liked the meaning behind the art as it relates to biology as well as science. Councilman Al Frisby said the concept was right for the location.

“It’s a caterpillar that is looking for what it’s going to be in the future; it’s like Merriam looking for what we will be like in the future,” Frisby said. “I think it fits the area beautifully, and I think there’s going to be a lot of things taken along with that with kids.”

Councilmembers who voted against the expenditure were concerned about comments from their constituents who did not like the art, especially for the price.

Councilmember David Neal said he found negative reactions from park visitors who either didn’t like the concept or didn’t identify with it.

“When you’re dealing with public art, I think it’s something that should be readily identifiable to a substantial number of people,” Neal said, adding that he was also concerned with the choice of location, which he believed was not ideal. “There was not a single person who liked it. One guy said, ‘I’d sure hate to ride by that every day.’”

Several members of the public, including members of the public art committee, sang the praises of the sculpture’s potential positive impact on the community. James Martin, a former public art consultant for Merriam, said the artwork’s “critical education opportunities” for children, such as the biology of insect life, geology and environmental science, were a sign of expanded horizons for Merriam.

Some audience members expressed concern with Jason Wiener’s art concept, particularly because of the location. Matier, a former Merriam city council candidate who disagreed with the art committee’s recommendation, simply didn’t like the artwork, and others felt the same way. Matier sought comments from other residents in his local newsletter.

“I’m in favor of public art and making our community look good; I don’t think this is the one,” Matier said.

Overall, several members of the public, including Martin, said public art is an excellent opportunity for the community to learn how to cordially disagree with each other.

conversations about that,” Martin said. “If we can learn how to disagree about art, respectfully, perhaps disagree about weightier topics: politics, climate change, sexual orientation, gender identity, guns, all perspectives, we’re at a moment in this country where we have forgotten how to disagree. I believe that public art provides an incredible opportunity to do that.”

13 Shares



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SUBSCRIBE FOR ACCESS TO COMMENTS SECTION

MAYOR'S ANNOUNCEMENTS
Monday, June 4, 2018

Committee meetings scheduled for the next two weeks include:

Board of Zoning Appeals	06/05/2018	6:30 p.m.
Planning Commission	06/05/2018	7:00 p.m.
Arts Council	06/06/2018	5:30 p.m.
Tree Board	06/06/2018	6:00 p.m.
City Council	06/18/2018	6:00 p.m.

=====
The Prairie Village Arts Council is pleased to feature a mixed media exhibit of the works of Joe Bussell, Tanya Lueck and Judy Crissey in the R.G. Endres Gallery during the month of June. The artist reception will be held from 6 to 7 p.m. on Friday, June 8, 2018.

Mark your calendar for the 2018 Legislative Wrap-up Breakfast on Thursday, June 7th at 8 a.m. at the Farmer's House in Westwood.

Mark your calendar for the 2018 MARC Regional Assembly on Friday, June 8th from 11:30 to 1:30 p.m. at the InterContinental Kansas City at the Plaza.

INFORMATIONAL ITEMS
June 4, 2018

1. Board of Zoning Appeals Agenda - June 5, 2018
2. Planning Commission Agenda - June 5, 2018
3. Environment/Recycle Committee Minutes - March 28, 2018
4. Monthly Plan of Action
5. Mark Your Calendar

**PLANNING COMMISSION AGENDA
CITY OF PRAIRIE VILLAGE
TUESDAY, JUNE 5, 2018
7700 MISSION ROAD
7:00 P.M.**

I. ROLL CALL

II. APPROVAL OF PLANNING COMMISSION MINUTES - May 1, 2018

III. PUBLIC HEARINGS

IV. NON-PUBLIC HEARINGS

PC2018-109 Final Development Plan Approval
7930 State Line Road
Zoning: CP2
Applicant: Thomas Wells, TW Macon, LLC

PC2018-110 Monument Sign Approval
6642 Mission Road
Zoning: R-1a
Applicant: Star Signs for Prairie Elementary School

PC2018-111 Site Plan Approval
4510 West 89th Street
Zoning: C-2
Applicant: Kisha Nickel for Premier Learning

V. OTHER BUSINESS
Discussion on Commercial Landscaping Requirements

VI. ADJOURNMENT

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

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

**BOARD OF ZONING APPEALS
CITY OF PRAIRIE VILLAGE, KANSAS
AGENDA
June 5, 2018
6:30 P.M.**

I. ROLL CALL

II. APPROVAL OF MINUTES - March 6, 2018

III. PUBLIC HEARINGS

**BZA2018-02 Variance from Section 19.06.030(a) "Side Yard" of the Zoning Ordinances to reduce the west side yard setback from 7 feet to 5 feet
4815 West 63rd Terrace
Zoning: R-1b Single Family Residential District
Applicant: Spencer Thielmann & Alexis Kuklenski**

**BZA2018-03 Variance from Section 19.06.030(a) "Side Yard" of the Zoning Ordinances to reduce the side yard setback from 7 feet and less than 20% lot width to approximately 5' and 8% lot width; Section 19.06.035 reducing the rear yard setback from 25' to 10' and Section 19.06.040 "Lot Coverage" increasing lot coverage from 30% to 31%
8304 Rosewood Drive
Zoning: R-1b Single Family Residential District
Applicant: Russ Ehnen, Architect for David Offerdahl**

IV. OTHER BUSINESS

V. ADJOURNMENT

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

PRAIRIE VILLAGE ENVIRONMENT AND RECYCLING COMMITTEE

28 March 2017 / 5:30 p.m.

ATTENDEES

Sheila Myers
Tucker Poling
Alley Porter
Dave Wise
Linda Marcusen
Magda Born
Sarah Bradley
SueAnn Heim
Richard Dalton
Nathan Kovac
Deborah English
Penny Mahon
Devin Scrogum

AGENDA

- I. Call to Order
- II. Roll Call
- III. Welcome / Introduction of members
- IV. Approval of 2/28/18 Minutes
 - a. The 2/28 minutes were approved.
- V. Council Mission / Committee Policy
 - a. The committee will continue to meet bi-monthly; additional meetings may be scheduled, if necessary.
- VI. Old Business
 - a. Earth Fair – April 22
 - i. Brief updates regarding previously discussed plans for the Earth Fair were made.
 1. Deb confirmed that Prairie Elementary students had completed research regarding plastics and the environment and said they would be prepared to share their findings via a display and perhaps a video at the fair.
 2. Penny confirmed that a representative from True Blue Women would be available to give a presentation on the environmental impacts of bottled water.
 3. Deb noted that she had not heard back from Republic regarding a recycling display or presentation.
 4. Nathan offered to develop a presentation on plastics for the event.

- ii. Concerns were raised that there may not be enough content or information being made available at the Earth Fair. The event also lacked a dedicated project manager and promotions had not been solidified.
 - iii. Ultimately, the committee voted unanimously to cancel the 2018 Earth Fair.
 - iv. Sheila shared the Mayor will not sign on to the Mayor's Commission on Climate Change.
- b. VillageFest – July 4
 - i. Deb provided updates regarding plans for the committee's presence at VillageFest:
 - 1. Booth with handouts
 - 2. Bicycle demonstration
 - 3. Recycling Fishing
 - ii. Devin shared an idea for an additional family friendly recycling game
 - iii. Deb noted that a handful of volunteers from the committee will be needed to help staff the booth. A sign-up sheet will be available at the next committee meeting.
 - iv. Alley offered to reach out to Republic to ask about their availability to give a recycling demonstration and/or provide handouts detailing what can and can't be recycled.
- c. Community Forum – TBD
 - i. Tom provided updates on the structure and high-level timeline for the 2018 Community Forum:
 - 1. A "super committee" will need to be formed
 - a. Dave Wise and Richard Dalton have volunteered to join the forum committee.
 - 2. The theme for the forum should be selected by the end of May
 - 3. Speakers should be selected / confirmed by the end of June

VII. New Business

- a. Community Recycling Event
 - i. Sheila shared information about an upcoming community recycling event being hosted by the city of Merriam, KS and asked the committee for feedback on the idea of organizing something similar for Prairie Village.
 - ii. Devin volunteered to reach out to companies that provide recycling services for items such as shredded paper, latex paints and electronics to see if they have availability for an event in Fall 2018.
 - iii. SueAnn volunteered to explore if Shawnee Mission East would be able to provide space for the event.
- b. Communications Calendar
 - i. Sheila proposed that the committee develop a communications calendar for the year ahead.
 - ii. Tucker and Devin volunteered to develop video assets to be shared via social media.

- iii. Magda volunteered to provide data and statistics.
 - iv. Sarah volunteered to draft the communications calendar.
 - v. All members of the committee should bring content and communication ideas to the next committee meeting.
 - vi. The committee may explore developing a content survey that would be used to solicit input from Prairie Village residents regarding the environmental issues that they are most interested in learning more about / getting engaged in. The information gathered from the survey could be used to help inform the content being communicated out from the committee throughout the year ahead.
- c. Alley reported that Prairie Village had been awarded a grant to be used to develop unified communication and outreach for recycling.

VIII. Announcements

- a. Earth Hour: March 24
 - i. Several members of the committee reported being able to take part.
- b. Next Meeting: May 30



THE CITY OF PRAIRIE VILLAGE
STAR OF KANSAS

DATE: June 1, 2018

TO: Mayor Wassmer
City Council

FROM: Wes Jordan 

SUBJECT: JUNE PLAN OF ACTION

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

- Citizen Survey Follow-up w/Council - Alley (06/18)
- Traffic Signal Lease Agreement w/CFD #2 - Keith (06/18)
- 2019 Budget Process - Staff (06/18)
 - Decision Packages
 - Permission to Publish
- Comprehensive Plan Scope of Services - Jamie (06/18)
- Building Design Guidelines II 2nd Council Presentation - Jamie/Chris (06/18)
- CEDAW 3rd Council Presentation - Alley (06/18)
- JazzFest Headliner Agreement - Joyce/Meghan (06/18)
- PD Civil Service Appointment - Chief (06/18)
- Council "Initiative" List Update - Wes

In Progress

- Easement from First Washington for Statue - Keith/Alley (05/18)
- Long Distance Renewal - Staff (05/18)
- City Attorney Appointment - Mayor/Wes (05/18)
- Civil Service Board Appointment - Chief (05/18)
- Planning Consultant Contract Renewal - Jamie (05/18)
- Victim's Rights Policy Requirements Review - Jamie/Deanna (05/18)
- Statuary Maintenance Update - Alley (05/18)
- Bank Account Signature Card Updates - Jamie/Court (04/18)
- JOCO Unified Recycling Education & Outreach Campaign - Alley (04/18)
- Park Reservations - For Profit Organizations - Alley/Park & Rec (04/18)
- Volunteer Release Forms - Alley/Jamie (04/18)

In Progress cont'd

- Service Line Warranty Program Renewal - Jamie (03/18)
- Building Design Update to Planning Commission/City Council - Jamie (03/18)
- Comprehensive Traffic Study - Keith/Melissa (03/18)
- 6800 Blk. of Mission Road Flooding Study - Keith/Melissa (02/18)
- Village Voice Format Update - Meghan (02/18)
- 2017 Annual Report - Meghan/Staff (02/18)
- Meadowbrook Project Schedule - Katie/Jeff White/Lisa (01/18)
- Organization of City Records/Contracts - Joyce/Staff (01/18)
- Phase II Building Design Initiative - Chris/Jamie/Wes (11/17)
- Village Vision/Comp Plan Update - Chris/Jamie/Wes (11/17)
- 67th Street Traffic Calming/Community Input - Keith (11/17)
- Council Policy Website Update - Meghan/Joyce (11/17)
- Active Shooter Training - Capt. Roberson (10/17)
- Meadowbrook Expenditure Review - Lisa/Keith/Wes (10/17)
- Drone Ordinance - David Waters (10/17)
- Update and amend Job Description(s) - Amy/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)

Completed

- Code Enforcement Quarterly Reviews - Jamie (04/18)
- MARC/LKM Salary Input Updates - Amy (04/18) Mock Council Meeting With Students - Jamie (05/18)
- Citizen Survey Project - Alley/Jamie/Wes (09/17)
- 69th Street One-Way Signage/Community Input - Keith (11/17)
- Council Photos - Meghan (02/18)
- "Sonia" Council Recognition - Meghan (02/18)
- Homestead Special Use Permit Application - Jamie/Keith/Wes (02/18)
- Pool Opening Preparation - Alley (03/18)
- E-Ticketing Equipment Presentation - Chief (04/18)
- 2019 Budget Process - Staff (05/18)
 - Draft 2 Presentation to Finance Committee
 - Budget Presentation to Council
 - CIP Presentation to Council
 - Establish Solid Waste Fees
- Bid Process Amendment - Keith/Melissa (05/18)
- Comprehensive Plan Presentation - Chris/Jamie (05/18)
- City Survey Presentation - Alley (05/18)
- Teen Council Graduation - Alley/Meghan (05/18)
- Congress for New Urbanism Presentation - Wes (05/18)
- Finance Audit Report Completion/Council Presentation - Lisa (05/18)

Tabled

- Website Update by Ward - Meghan (10/17)
- 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

- JOCO Park Programming Partnership - Alley/Wes (11/17)
- Grant Feasibility Review - Meghan/Wes (04/18)

Removed

- Meadowbrook Transit Stop - Keith/Wes (07/17)
- Skate Park Usage Project - Alley (07/17)

**Council Members
Mark Your Calendars
June 4, 2018**

June, 2018	Mixed Media Exhibit in the R.G. Endres Gallery featuring Joe Bussell, Tanya Lueck and Judy Crissey
June 7	2018 Legislative Update Breakfast, The Farmer's House in Westwood at 8 a.m.
June 8	MARC Regional Assembly; InterContinental Kansas City on the Plaza; 11:30 to 1:30
June 8	Moonlight Swim - Pool Complex remains open until 10 p.m.
June 14	Swim Meet - Pool Complex closes at 5 p.m.
June 18	City Council Meeting
June 22	Second Moonlight Swim - Pool Complex remains open until 10 p.m.
July, 2018	Mixed Media Exhibit in the R.G. Endres Gallery featuring the Seniors Group
July 2	City Council Meeting
July 4	VillageFest
July 6	Moonlight Swim - Pool Complex remains open until 10 p.m.
July 11	All City Swim Meet - Pool Complex closed until 5 p.m.
July 16	City Council Meeting
July 20	Moonlight Swim - Pool Complex remains open until 10 p.m.
August, 2018	Mixed Media Exhibit in the R.G. Endres Gallery featuring Polly McCann, Jennifer Janesko and Cheryl moran
August 6	City Council Meeting
August 6	Reduced Pool Hours begin
August 20	City Council Meeting
September, 2018	Mixed Media Exhibit in the R.G. Endres Gallery featuring Scott Randol, David Alston and Anthony High
September 3	Pool closes for the season at 6 p.m.
September 4	Puppy Pool-ooza (Dog Swim) 5 - 7 p.m.
September 4	City Council Meeting
September 8	JazzFest - 3:00 p.m. to 10:30 p.m.
September 17	City Council Meeting