

The public may attend the meeting in person or view it online at
<https://www.facebook.com/CityofPrairieVillage>.

**COUNCIL MEETING AGENDA
CITY OF PRAIRIE VILLAGE
Tuesday, June 21, 2022
6:00 PM**

I. CALL TO ORDER

II. ROLL CALL

III. PLEDGE OF ALLEGIANCE

IV. APPROVAL OF THE AGENDA

V. INTRODUCTION OF STUDENTS AND SCOUTS

VI. PRESENTATIONS

Youth Police Academy graduation

Presentation of 2021 audit - Emily Sheldon, BT&Co

VII. PUBLIC PARTICIPATION

Participants may speak for up to three minutes. To submit written comment to the Council, please email cityclerk@pvkansas.com prior to 3 p.m. on June 6. Comments will be shared with Councilmembers prior to the meeting.

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. Approval of regular City Council meeting minutes - June 6, 2022
2. Consider appointment to the Tree Board
3. Consider approval of Ordinance 2474, an ordinance deleting Article 8 (Sign Regulations) of Chapter 16 (Zoning and Planning) from the municipal code
4. Consider traffic calming on 69th Street from Nall Avenue to Fonticello Street
5. Consider purchase of replacement Bobcat skid-steer loader and disposal of asset #5044

IX. COMMITTEE REPORTS

Consider recommendations from the Ad Hoc Housing Committee to help with preserving access to attainable housing in Prairie Village
Ian Graves / Jon Birkel

X. **MAYOR'S REPORT**

XI. **STAFF REPORTS**

XII. **OLD BUSINESS**

XIII. **NEW BUSINESS**

COU2022-49 Consider appointment of Deputy City Administrator
Mayor Mikkelson

COU2022-50 Consider approval of a contract with Superior Bowen for the 2022 concrete
repair program
Melissa Prenger

COU2022-51 Consider approval of a contact with Harbour Construction for the 2022
street repair program
Melissa Prenger

COU2022-52 Consider construction contract for the 2022 residential street rehabilitation
program
Melissa Prenger

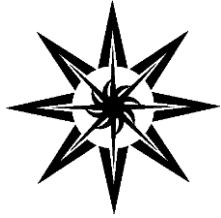
COU2022-53 Consider approval of a contract with McConnell and Associates for the
Taliaferro Park tennis court resurfacing
Melissa Prenger

XIV. **COUNCIL COMMITTEE OF THE WHOLE** (Council President presiding)

Preliminary 2023 budget presentation
Nickie Lee

XV. **ANNOUNCEMENTS**

XVI. **ADJOURNMENT**



ADMINISTRATION DEPARTMENT

Council Meeting Date: June 21, 2022

Presentation of 2021 Audit - BT & Co., P.A.

Attached please find the Draft Statement on Auditing Standards (SAS) letter to the Mayor and City Council. The full 2021 Annual Comprehensive Financial Report will be distributed to the Governing Body and posted to the website in the days following the presentation.

ATTACHMENTS:

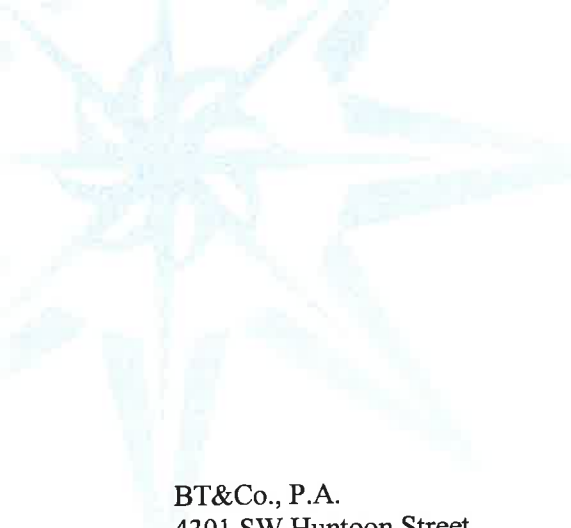
- Prairie Village Draft SAS Letter
-

Prepared by:

Nickie Lee

Finance Director

Date: June 9, 2022



THE CITY OF PRAIRIE VILLAGE

STAR OF KANSAS

BT&Co., P.A.
4301 SW Huntoon Street
Topeka, Kansas 66604-1659

This representation letter is provided in connection with your audit of the basic financial statements of the City of Prairie Village, Kansas (the City) as of and for the ended December 31, 2021 for the purpose of expressing an opinion on whether the financial statements are presented fairly, in all material respects in accordance with accounting principles generally accepted in the United States of America (U.S. GAAP).

We confirm, to the best of our knowledge and belief, as of the date of the auditors' report, the following representations made to you during your audit.

Financial Statements

1. We have fulfilled our responsibilities, as set out in the terms of the audit arrangement letter dated November 17, 2021, for the preparation and fair presentation of the financial statements referred to above in accordance with U.S. GAAP.
2. We have identified for you all organizations that are a part of this reporting entity or with which we have a relationship, as these organizations are defined in Section 2100 of the Governmental Accounting Standards Board's Codification of Governmental Accounting and Financial Reporting Standards, that are component units.
3. We have identified for you all of our funds and governmental functions.
4. We have properly classified all funds and activities.
5. We have properly determined and reported the major governmental funds based on the required quantitative criteria. We have determined the Stormwater Fund and the Bond and Interest Fund to be major for public interest reasons. We believe that all judgmentally determined major funds are particularly important to the financial statement users.
6. We are responsible for compliance with laws and regulations applicable to the City including adopting, approving, and amending budgets.
7. We have identified and disclosed to you all laws and regulations that have a direct and material effect on the determination of financial statement amounts including legal and contractual provisions for reporting specific activities in separate funds.
8. We acknowledge our responsibility for the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.
9. We acknowledge our responsibility for the design, implementation, and maintenance of internal control to prevent and detect fraud.

10. Significant assumptions used by us in making accounting estimates, including those measured at fair value, are reasonable and reflect our judgment based on our knowledge and experience about past and current events, and our assumptions about conditions we expect to exist and courses of action we expect to take.
11. Related-party transactions, including those with component units for which the City is accountable, and interfund transactions, including interfund accounts and advances receivable and payable, sale and purchase transactions, interfund transfers, long-term loans, leasing arrangements, and guarantees, have been recorded in accordance with the economic substance of the transaction and appropriately accounted for and disclosed in accordance with the requirements of U.S. GAAP.
12. All events subsequent to the date of the financial statements and for which U.S. GAAP requires adjustment or disclosure have been adjusted or disclosed.
13. The effects of all known actual or possible litigation and claims have been accounted for and disclosed in accordance with U.S. GAAP.
14. The following have been properly recorded and/or disclosed in the financial statements:
 - a. Net positions and fund balance classifications.
 - b. Arrangements with financial institutions involving compensating balances or other arrangements involving restrictions on cash balances.
 - c. All other liens or encumbrances on assets or revenues or any assets or revenues which were pledged as collateral for any liability or which were subordinated in any way.
 - d. The fair value of investments.
 - e. Amounts of contractual obligations for construction and purchase of real property or equipment not included in the liabilities or encumbrances recorded on the books.
 - f. Debt issue provisions.
 - g. All significant estimates and material concentrations known to management which are required to be disclosed.
 - h. Risk financing activities.
 - i. Deposits and investment securities categories of risk.
 - j. The effect on the financial statements of standards which have been issued, but which we have not yet adopted.
15. We have no plans or intentions that may materially affect the carrying value or classification of assets or liabilities. In that regard:
 - a. The City has no significant amounts of idle property and equipment.
 - b. The City has no plans or intentions to discontinue the operations of any activities or programs or to discontinue any significant operations.
16. We are responsible for making the accounting estimates included in the financial statements. Those estimates reflect our judgment based on our knowledge and experience about past and current events and our assumptions about conditions we expect to exist and courses of action we expect to take. In that regard, adequate provisions have been made:
 - a. To reduce receivables to their estimated net collectable amounts.
 - b. For pension obligations, post-retirement benefits other than pensions, and deferred compensation agreements attributable to employee services rendered through December 31, 2021.
17. There are no:
 - a. Material transactions that have not been properly recorded in the accounting records underlying the financial statements.
 - b. Violations or possible violations of laws or regulations whose effects should be considered for disclosure in the financial statements or as a basis for recording a loss contingency. In that regard, we specifically represent that we have not been designated as, or alleged to be, a

- "potentially responsible party" by the Environmental Protection Agency in connection with any environmental contamination.
- c. Other material liabilities or gain or loss contingencies that are required to be accrued or disclosed.
 - d. Guarantees, whether written or oral, under which the City is contingently liable.
 - e. Lines of credit or similar arrangements.
 - f. Agreements to repurchase assets previously sold.
 - g. Security agreements in effect under the Uniform Commercial Code.
 - h. Liabilities which are subordinated in any way to any other actual or possible liabilities.
 - i. Debt issue repurchase options or agreements, or sinking fund debt repurchase ordinance requirements.
 - j. Leases and material amounts of rental obligations under long-term leases.
 - k. Authorized but unissued bonds and/or notes.
 - l. Derivative financial instruments.
 - m. Special and extraordinary items.
 - n. Arbitrage rebate liabilities.
 - o. Impairments of capital assets.
18. We have no direct or indirect, legal or moral obligation for any debt of any organization, public or private, or to special assessment bond holders that is not disclosed in the financial statements.
19. The City has satisfactory title to all owned assets.
20. We have complied with all aspects of contractual agreements that would have a material effect on the financial statements in the event of noncompliance. In connection therewith, we specifically represent that we are responsible for determining that we are not subject to the requirements of the Single Audit Act and Uniform Guidance, because we have not received, expended or otherwise been the beneficiary of the required amount of federal awards during the period of this audit.
21. Net positions (net investment in capital assets; restricted; and unrestricted) and fund balances are properly classified and, when applicable, approved.
22. Expenses or expenditures have been appropriately classified in or allocated to functions and programs in the statement of activities and allocations have been made on a reasonable basis.
23. Revenues have been appropriately classified in the statement of activities within program revenues and general revenues.
24. Capital assets, including infrastructure assets, are properly capitalized, reported and depreciated.
25. We agree with the restatement of the previously issued financial statements, as described in Note 1, in order to comply with the implementation of Governmental Accounting Standards Board Statement No. 91, *Conduit Debt Obligations*.
26. We agree with the findings of specialists in evaluating the fair value of investments, other postemployment benefit liabilities, and the net pension liabilities and have adequately considered the qualifications of the specialists in determining the amounts and disclosures used in the financial statements and underlying accounting records. We did not give or cause any instructions to be given to specialists with respect to the values or amounts derived in an attempt to bias their work, and we are not otherwise aware of any matters that have had an impact on the independence or objectivity of the specialists.
27. We have no knowledge of any uncorrected misstatements in the financial statements.

Information Provided

28. We have provided you with:
 - a. Access to all information, of which we are aware that is relevant to the preparation and fair presentation of the financial statements such as records, documentation, and other matters;
 - b. Additional information that you have requested from us for the purpose of the audit;
 - c. Unrestricted access to persons within the City from whom you determined it necessary to obtain audit evidence; and
 - d. Minutes of the meetings of governing board and committees of board members, or summaries of actions of recent meetings for which minutes have not yet been prepared.
29. All transactions have been recorded in the accounting records and are reflected in the financial statements.
30. We have disclosed to you the results of our assessment of risk that the financial statements may be materially misstated as a result of fraud.
31. We have no knowledge of allegations of fraud or suspected fraud, affecting the City's financial statements involving:
 - a. Management.
 - b. Employees who have significant roles in the internal control.
 - c. Others where the fraud could have a material effect on the financial statements.
32. We have no knowledge of any allegations of fraud or suspected fraud affecting the City's financial statements received in communications from employees, former employees, analysts, regulators, or others.
33. We have no knowledge of noncompliance or suspected noncompliance with laws and regulations.
34. We are not aware of any pending or threatened litigation and claims whose effects should be considered when preparing the financial statements.
35. We have disclosed to you the identity of the City's related parties and all the related-party relationships and transactions of which we are aware.
36. We are aware of no significant deficiencies, including material weaknesses, in the design or operation of internal controls that could adversely affect the City's ability to record, process, summarize, and report financial data.
37. We are aware of no communications from regulatory agencies concerning noncompliance with, or deficiencies in, financial reporting practices.
38. With respect to supplementary information presented in relation to the financial statements as a whole:
 - a. We acknowledge our responsibility for the presentation of such information.
 - b. We believe such information, including its form and content, is fairly presented in accordance with U.S. GAAP.
 - c. The methods of measurement or presentation have changed from those used in the prior period due to the implementation of Governmental Accounting Standards Board Statement (GASB) No. 91, *Conduit Debt Obligations*.
39. With respect to the required supplementary information presented as required by GASB to supplement the basic financial statements:
 - a. We acknowledge our responsibility for the presentation of such required supplementary information.

- b. We believe such required supplementary information is measured and presented in accordance with guidelines prescribed by U.S. GAAP.
 - c. The methods of measurement or presentation have not changed from those used in the prior period.
40. During the course of your audit, you may have accumulated records containing data which should be reflected in our books and records. All such data have been so reflected. Accordingly, copies of such records in your possession are no longer needed by us.
41. With respect to financial statement preparation services performed in the course of the audit:
- a. We have made all management decisions and performed all management functions;
 - b. We assigned an appropriate individual to oversee the services;
 - c. We evaluated the adequacy and results of the services performed, and made an informed judgment on the results of the services performed;
 - d. We have accepted responsibility for the results of the services; and
 - e. We have accepted responsibility for all significant judgments and decisions that were made.

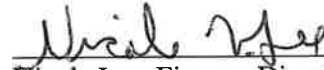
Very truly yours,

CITY OF PRAIRIE VILLAGE, KANSAS



Wes Jordan, City Administrator

Date Signed 6/8/22



Nicole Lee, Finance Director

Date Signed 6/9/2022



Certified Public Accountants

CITY OF PRAIRIE VILLAGE, KANSAS

Report to the Honorable Mayor and City Council
_____, 2022



_____, 2022

To the Honorable Mayor and City Council of the
City of Prairie Village, Kansas

We are pleased to present this report related to our audit of the financial statements of the City of Prairie Village, Kansas (the City) for the year ended December 31, 2021. This report summarizes certain matters required by professional standards to be communicated to you in your oversight responsibility for the City's financial reporting process.

This report is intended solely for the information and use of the Honorable Mayor, City Council and management and is not intended to be and should not be used by anyone other than these specified parties. It will be our pleasure to respond to any questions you have about this report. We appreciate the opportunity to continue to be of service to the City.

[FIRM SIGNATURE]

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RSM US Alliance member firms are separate and independent businesses and legal entities that are responsible for their own acts and omissions, and each are separate and independent from RSM US LLP. RSM US LLP is the U.S. member firm of RSM International, a global network of independent audit, tax, and consulting firms. Members of RSM US Alliance have access to RSM International resources through RSM US LLP but are not member firms of RSM International.

City of Prairie Village, Kansas
Report to the Honorable Mayor and City Council
_____, 2022

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Required Communications

Generally accepted auditing standards (AU-C 260, *The Auditor's Communication with Those Charged with Governance*) require the auditor to promote effective two-way communication between the auditor and those charged with governance. Consistent with this requirement, the following summarizes our responsibilities regarding the financial statement audit as well as observations arising from our audit that are significant and relevant to your responsibility to oversee the financial reporting process.

Area	Comments
Our Responsibilities with Regard to the Financial Statement Audit	Our responsibilities under auditing standards generally accepted in the United States of America and the Kansas Municipal Audit and Accounting Guide (the KMAAG) have been described to you in our arrangement letter dated November 17, 2021. Our audit of the financial statements does not relieve management or those charged with governance of their responsibilities, which are also described in that letter.
Overview of the Planned Scope and Timing of the Financial Statement Audit	We have issued a separate communication dated February 7, 2022 regarding the planned scope and timing of our audit and identified significant risks.
Accounting Policies and Practices	Preferability of Accounting Policies and Practices Under generally accepted accounting principles, in certain circumstances, management may select among alternative accounting practices. In our view, in such circumstances, management has selected the preferable accounting practice. Adoption of, or Change in, Accounting Policies Management has the ultimate responsibility for the appropriateness of the accounting policies used by the City. Following is a description of a significant accounting policy that changed during the year. The City adopted the provisions of Governmental Accounting Standards Board Statement (GASB) No. 91, <i>Conduit Debt Obligations</i>, which resulted in the recognition of a special obligation bond that was previously considered conduit debt. Significant Accounting Policies We did not identify any significant accounting policies in controversial or emerging areas for

Area	Comments
	which there is a lack of authoritative guidance or consensus.
	Significant Unusual Transactions
	We did not identify any significant unusual transactions.
	Management's Judgments and Accounting Estimates
	Summary information about the process used by management in formulating particularly sensitive accounting estimates and about our conclusions regarding the reasonableness of those estimates is in the attached "Summary of Significant Accounting Estimates."
Audit Adjustments	Audit adjustments proposed by us and recorded by the City are summarized in the attached representation letter.
Uncorrected Misstatements	We are not aware of any uncorrected misstatements other than misstatements that are clearly trivial.
Departure From the Auditors' Standard Report	Emphasis-of-Matter Paragraph
	The City's implementation of GASB Statement No. 91, <i>Conduit Debt Obligation</i> resulted in the inclusion of an emphasis-of-matter paragraph. In light of this matter, we will include an emphasis-of-matter paragraph in the auditors' report. Below is the paragraph to be included in the auditor's report:
	Emphasis of Matter As discussed in Note 1 to the financial statements, on January 1, 2021, the City adopted Governmental Accounting Standards Board Statement No. 91, <i>Conduit Debt Obligations</i>. Our opinion is not modified with respect to this matter.
Other Information Included in Annual Reports	Our responsibility for other information included in annual reports is to read the information and consider whether its content or the manner of its presentation is materially inconsistent with the financial information covered by our auditors' report, whether it contains a material misstatement of fact or whether the other information is otherwise misleading. We read the

Area	Comments
Observations About the Audit Process	City's introductory and statistical sections. We did not identify material inconsistencies with the audited financial statements. Disagreements with Management We encountered no disagreements with management over the application of significant accounting principles, the basis for management's judgments on any significant matters, the scope of the audit, or significant disclosures to be included in the financial statements. Consultations with Other Accountants We are not aware of any consultations management had with other accountants about accounting or auditing matters. Significant Issues Discussed with Management No significant issues arising from the audit were discussed with or the subject of correspondence with management. Significant Difficulties Encountered in Performing the Audit We did not encounter any significant difficulties in dealing with management during the audit. Difficult or Contentious Matters That Required Consultation We did not encounter any significant and difficult or contentious matters that required consultation outside the engagement team.
Significant Written Communications Between Management and Our Firm	Copies of certain written communications between our firm and the management of the City, including the representation letter provided to us by management, are attached.

City of Prairie Village, Kansas

Summary of Significant Accounting Estimates

Year Ended December 31, 2021

The following describes the significant accounting estimates reflected in the City's December 31, 2021 financial statements:

Estimate	Accounting Policy	Management's Estimation Process	Basis for Our Conclusion on Reasonableness of Estimate
Total OPEB Liability - Health Insurance and KPERs Disability Benefits and Life Insurance	The total OPEB liabilities are computed by independent actuarial firms. The disclosures are based upon numerous assumptions and estimates, including the expected rate of investment return, the interest rate used to determine the present value, and medical care cost trend rates.	Management obtains and reviews the calculations prepared by the actuarial firms. The rates of return are based on historical and general market data.	Review of management's analysis resulted in our conclusion that the estimate appears reasonable.
Net Pension Liability - Police Department Retirement Plan	The net pension liability is computed by an independent actuarial firm. The disclosure is based upon numerous assumptions and estimates, including the expected rate of investment return and the interest rate used to determine the present value.	Management obtains and reviews the calculations prepared by the actuarial firm. The rate of return is based on historical and general market data.	Review of management's analysis resulted in our conclusion that the estimate appears reasonable.
Net Pension Liability - KPERs	The net pension liability is computed by an independent actuarial firm hired by KPERs.	Management of the City obtained and reviewed the Schedule of Employer and Non-Employer Allocations and Schedule of Pension Amounts by Employer and Non-Employer as of June 30, 2021 that were audited by other auditors. Management compared their employer contributions as shown on these schedules to the City's actual contributions and recalculated its allocated percentage and its share of the collective net pension liability.	Review of management's analysis resulted in our conclusion that the estimate appears reasonable.

BT&Co., P.A.
4301 SW Huntoon Street
Topeka, Kansas 66604-1659

This representation letter is provided in connection with your audit of the basic financial statements of the City of Prairie Village, Kansas (the City) as of and for the ended December 31, 2021 for the purpose of expressing an opinion on whether the financial statements are presented fairly, in all material respects in accordance with accounting principles generally accepted in the United States of America (U.S. GAAP).

We confirm, to the best of our knowledge and belief, as of the date of the auditors' report, the following representations made to you during your audit.

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4. We have properly classified all funds and activities.
5. We have properly determined and reported the major governmental funds based on the required quantitative criteria. We have determined the Stormwater Fund and the Bond and Interest Fund to be major for public interest reasons. We believe that all judgmentally determined major funds are particularly important to the financial statement users.
6. We are responsible for compliance with laws and regulations applicable to the City including adopting, approving, and amending budgets.
7. We have identified and disclosed to you all laws and regulations that have a direct and material effect on the determination of financial statement amounts including legal and contractual provisions for reporting specific activities in separate funds.
8. We acknowledge our responsibility for the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.
9. We acknowledge our responsibility for the design, implementation, and maintenance of internal control to prevent and detect fraud.

10. Significant assumptions used by us in making accounting estimates, including those measured at fair value, are reasonable and reflect our judgment based on our knowledge and experience about past and current events, and our assumptions about conditions we expect to exist and courses of action we expect to take.
11. Related-party transactions, including those with component units for which the City is accountable, and interfund transactions, including interfund accounts and advances receivable and payable, sale and purchase transactions, interfund transfers, long-term loans, leasing arrangements, and guarantees, have been recorded in accordance with the economic substance of the transaction and appropriately accounted for and disclosed in accordance with the requirements of U.S. GAAP.
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that regard, we specifically represent that we have not been designated as, or alleged to be, a "potentially responsible party" by the Environmental Protection Agency in connection with any environmental contamination.

- c. Other material liabilities or gain or loss contingencies that are required to be accrued or disclosed.
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22. Expenses or expenditures have been appropriately classified in or allocated to functions and programs in the statement of activities and allocations have been made on a reasonable basis.
23. Revenues have been appropriately classified in the statement of activities within program revenues and general revenues.
24. Capital assets, including infrastructure assets, are properly capitalized, reported and depreciated.
25. We agree with the restatement of the previously issued financial statements, as described in Note 1, in order to comply with the implementation of Governmental Accounting Standards Board Statement No. 91, *Conduit Debt Obligations*.
26. We agree with the findings of specialists in evaluating the fair value of investments, other postemployment benefit liabilities, and the net pension liabilities and have adequately considered the qualifications of the specialists in determining the amounts and disclosures used in the financial statements and underlying accounting records. We did not give or cause any instructions to be given to specialists with respect to the values or amounts derived in an attempt to bias their work, and we are not otherwise aware of any matters that have had an impact on the independence or objectivity of the specialists.
27. We have no knowledge of any uncorrected misstatements in the financial statements.

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 - b. We believe such information, including its form and content, is fairly presented in accordance with U.S. GAAP.
 - c. The methods of measurement or presentation have changed from those used in the prior period due to the implementation of Governmental Accounting Standards Board Statement (GASB) No. 91, *Conduit Debt Obligations*.
39. With respect to the required supplementary information presented as required by GASB to supplement the basic financial statements:
 - a. We acknowledge our responsibility for the presentation of such required supplementary information.

- b. We believe such required supplementary information is measured and presented in accordance with guidelines prescribed by U.S. GAAP.
 - c. The methods of measurement or presentation have not changed from those used in the prior period.
40. During the course of your audit, you may have accumulated records containing data which should be reflected in our books and records. All such data have been so reflected. Accordingly, copies of such records in your possession are no longer needed by us.
41. With respect to financial statement preparation services performed in the course of the audit:
- a. We have made all management decisions and performed all management functions;
 - b. We assigned an appropriate individual to oversee the services;
 - c. We evaluated the adequacy and results of the services performed, and made an informed judgment on the results of the services performed;
 - d. We have accepted responsibility for the results of the services; and
 - e. We have accepted responsibility for all significant judgments and decisions that were made.

Very truly yours,

CITY OF PRAIRIE VILLAGE, KANSAS

Wes Jordan, City Administrator

Date Signed _____

Nicole Lee, Finance Director

Date Signed _____

City of Prairie Village, Kansas
Year End: December 31, 2021
Adjusting Journal Entries

Number	Date	Account Name	Account Number	Debit	Credit
1	12/31/2021	Unearned Revenue - Grants	15-00-00-2703-000		(1,701,210.52)
		Federal Grants	15-00-00-4055-000	1,701,210.52	
		To reclassify ARPA funds into deferred revenue			
2	12/31/2021	Health Insurance Payable	01-00-00-2101-000		(113,532.44)
		Prepaid Insurance	01-00-00-1800-000	113,532.44	
		To reclassify prepaid expense out of health insurance payable account			
3	12/31/2021	Suspense	01-00-00-2111-000	253,769.00	
		Unreserved Fund Balance	01-00-00-3000-000		(253,777.00)
		Miscellaneous	01-00-00-4104-000	8.00	
		To true up fund balance to actual			
4	12/31/2021	COVID-19 Related Costs	BTC 01-5999	212,616.00	
		Transfer to Equipment Reserve	01-00-00-9922-000	41,153.00	
		Suspense	01-00-00-2111-000		(253,769.00)
		Report-only entry to record suspense account CARES Act program activity			
5	12/31/2021	OFU - Payment to Refunded Bond Escrow Agent	06-00-00-9500-000	198,861.33	
		Contract Services	06-01-01-6009-000		(198,861.33)
		OFU - Payment to Refunded Bond Escrow Agent	12-00-00-9500-000	116,304.70	
		Transient Guest Tax Fees	12-01-01-6009-000		(116,304.70)
		To reclassify expenses as other financing uses (payments to refunded bond escrow agent)			
6	12/31/2021	Fund balance	25-00-00-3000-000		(42.49)
		Interest Income	25-00-00-4103-000		(20.32)
		TIF Prop Tax - Meadowbrook	25-00-00-4120-000		(850,206.61)
		Debt Service (Principal)	25-00-00-9000-000	275,000.00	
		Debt Service (Interest and Other)	25-00-00-9100-000	280,250.00	
		OFU - Payment to Refunded Bond Escrow Agent	25-00-00-9500-000	295,019.42	
		To record 2016-A fund close-out			
7	12/31/2021	Restricted cash and investments	26-00-00-1001-000	1,554,239.17	
		Restricted cash and investments	26-00-00-1001-000		(249,053.81)
		Change in market value	26-00-00-4804-000	334.67	
		OFS - Bond Proceeds	26-00-00-4900-000		(18,040,000.00)
		Transfers In	26-00-00-4925-000		(469,940.10)
		Cost of issuance	26-00-00-9150-000	566,420.42	
		OFU - Payment to refunded bond escrow agent	26-00-00-9500-000	16,637,975.93	
		Fees	26-01-01-6039-000	23.72	
		To record Series 2021 issuance on fund financial statements			
8	12/31/2021	Cash, including investments	25-00-00-1001-000	1,313,209.64	
		Cash, including investments	25-00-00-1001-000	1,775,830.05	

Cash, including investments	25-00-00-1001-000	(3,089,039.69)
Fund balance	25-00-00-3000-000	(1,313,209.64)
Interest Income	25-00-00-4103-000	(430.46)
TIF Prop Tax - Meadowbrook	25-00-00-4120-000	(925,192.98)
Debt Service (Principal)	25-00-00-9000-000	275,000.00
Debt Service (Interest and Other)	25-00-00-9100-000	213,100.00
OFU - Payment to Refunded Bond Escrow Agent	25-00-00-9500-000	1,278,858.74
Transfer Out	25-00-00-9900-000	469,940.10
Fees	25-01-01-6039-000	1,934.24

To record prior period adjustment for Series 2016A and Series 2016B
trustee accounts previously excluded from fund financial statements
as well as current year trustee account activity current year
trustee account activity

9	12/31/2021	Equipment	6,100,392.00	
		Infrastructure	58,447,499.00	
		Land	14,961,866.00	
		Improvements	1,445,899.00	
		Buildings	6,815,565.00	
		Construction in process	42,307,145.00	
		Accumulated depreciation		(10,655,188.00)
		Net position		(110,356,863.00)
		Other financing sources - Proceeds from sale	102,375.00	
		UM Expense	195,701.00	
		PS expense	227,173.00	
		PW expense	2,340,537.00	
		PR expense	687.00	
		GG expense	13,591.00	
		CD expense	163.00	
		Gain on sale of capital assets		(102,375.00)
		Capital outlay		(11,844,167.00)
		Entity-wide entry to record capital asset activity		

10	12/31/2021	Accrued compensated absences		(597,341.00)
		Accrued compensated absences - LT		(84,213.00)
		Net position	668,476.00	
		UM Expense	13,078.00	
		Entity-wide entry to record accrued compensated absences		

11	12/31/2021	GO bonds payable		(10,830,000.00)
		SO bonds payable		(18,040,000.00)
		Interest payable		(416,767.00)
		Deferred bond premium		(933,784.00)
		Deferred inflows - deferred refunding difference		(147,980.00)
		Net position	32,635,045.00	
		Other financing sources - Bond proceeds	18,040,000.00	
		Principal expense		(1,815,000.00)
		Interest expense	180,232.00	
		Amortization expense		(144,726.00)
		Other financing uses - Payment to refunded escrow		(18,527,020.00)
		Entity-wide entry to record debt activity		

12	12/31/2021	Deferred outflows-OPEB	76,382.00	
		Total OPEB liability		(537,783.00)
		Deferred inflows - OPEB		(45,769.00)
		Net position	431,912.00	
		GG expense	75,258.00	
		Entry-wide entry to record OPEB activity		

13	12/31/2021	Deferred outflows-pension	1,038,565.00	
		Net pension liability		(2,620,584.00)
		Deferred inflows - pension		(954,290.00)
		Net position	2,596,213.00	
		GG expense		(59,904.00)
		Entity-wide entry to record KPERS pension plan activity		
14	12/31/2021	Deferred outflows-pension	771,347.00	
		Net pension liability		(3,920,319.00)
		Deferred inflows - pension		(1,627,220.00)
		Net position	5,015,251.00	
		PS expense		(239,059.00)
		Entity-wide entry to record Police Department Retirement Plan activity		



**CITY COUNCIL
CITY OF PRAIRIE VILLAGE
JUNE 6, 2022**

The City Council of Prairie Village, Kansas, met in regular session on Monday, June 6, at 6:00 p.m. Courtney McFadden called the meeting to order.

ROLL CALL

Roll was called by the City Clerk with the following Councilmembers in attendance: Cole Robinson, Inga Selders, Ron Nelson, Lauren Wolf, Bonnie Limbird, Dave Robinson, Piper Reimer, Greg Shelton, Courtney McFadden, Ian Graves, and Terrence Gallagher. Staff present: Byron Roberson, Chief of Police; Keith Bredehoeft, Director of Public Works; City Attorney David Waters, attorney with Lathrop & Gage (via Zoom); Wes Jordan, City Administrator; Jamie Robichaud, Deputy City Administrator; Meghan Buom, Assistant City Administrator; Tim Schwartzkopf, Assistant City Administrator; Chris Brewster, Gould Evans; Adam Geffert, City Clerk.

PLEDGE OF ALLEGIANCE

MOTION FOR FORMER COUNCIL PRESIDENT TO PRESIDE OVER MEETING

Mr. Gallagher made the following motion: "In the absence of the Mayor and the President of the Council for tonight's meeting, pursuant to City Code Section 1-206, I hereby move that Courtney McFadden be elected, for purposes of tonight's meeting only, as acting President of the Council so as to preside over tonight's meeting of the City Council and the Council Committee of the Whole."

Mr. Dave Robinson seconded the motion, which passed 11-0.

APPROVAL OF AGENDA

Mr. Nelson made a motion to approve the agenda for June 6, 2022. Ms. Wolf seconded the motion, which passed 11-0.

PRESENTATIONS

- Mrs. McFadden read a proclamation declaring June 2022 as Pride Month in Prairie Village.

PUBLIC PARTICIPATION

- Resident Brent Nohl, 5307 W. 69th Street, shared his support of a traffic calming plan for 69th Street between Nall Avenue and Fonticello Street.



CONSENT AGENDA

Mrs. McFadden asked if there were any items to remove from the consent agenda for discussion:

1. Approval of regular City Council meeting minutes - May 16, 2022
2. Consider agreement with Transystems for traffic study on Nall Avenue from 67th Street to 75th Street

Mr. Nelson made a motion to approve the consent agenda as presented. A roll call vote was taken with the following votes cast: "aye": C. Robinson, Selders, Limbird, Nelson, Wolf, Limbird, D. Robinson, Shelton, McFadden, Graves, Gallagher. The motion passed 11-0.

COMMITTEE REPORTS

- PC2022-105 Consider Ordinance 2473 to approve a renewal of a special use permit for the service station at 9440 Mission Road

Chris Brewster stated that the applicant was requesting the renewal of a special use permit for a service station. The original building was constructed in 1963; in 1992, the City approved a special use permit for the service station for 30 years. The permit was most recently updated in 2014 for the reconstruction of the car wash. Mr. Brewster noted that the current application was only a renewal and did not involve any physical or operational changes to the property or use. The City did not have records of any complaints or other reports of non-compliance with ordinances or the conditions of the special use permit.

Mr. Brewster added that the Planning Commission had recommended approval of the renewal of the special use permit to City Council at its May 3, 2022 meeting, subject to the following conditions:

1. The use continues to comply with all conditions of the original special use permit and renewals, and all other applicable standards of the zoning ordinance.
2. Staff recommends approval with no expiration date, but the permit is still subject to revocation for non-compliance with any ordinance standards, other regulations, or special use permit conditions; or if unforeseen problems or significant changes in conditions in the area make the use and operation no longer consistent with the findings of the Commission.
3. The application be subject to all conditions of the original special use permit, except for those changes approved through the applicable to site plan



process according to the standards in place at the time of a proposed change. The original conditions listed in Special Use Permit 91-13 are summarized as:

1. Compliance with all City standards and regulations.
2. The use is conducted according to the approved plans filed with the permit (unless above exception applies).
3. Environmental audits / compliance shall be provided prior to any construction.
4. Uses are limited to those permitted by the zoning code.
5. 30-year period (except recommending no expiration with this renewal).
6. Ability for revocation continues.

Chris Burger of Stevens and Brand LLP, 900 Massachusetts, Suite 500, Lawrence, KS, was present on behalf of the applicant.

Mr. Graves made a motion to approve Ordinance 2473. Mr. Nelson seconded the motion. A roll call vote was taken with the following votes cast: "aye": C. Robinson, Selders, Limbird, Nelson, Wolf, Limbird, D. Robinson, Shelton, McFadden, Graves, Gallagher. The motion passed 11-0.

- Mr. Graves stated that the Ad Hoc Civic Center Committee had met and developed two recommendations to come before the Council in July:
 - Direct staff to consider a memorandum of understanding with the YMCA and other potential partners.
 - Conduct another survey of residents to determine interest in a civic center.
- Mr. Nelson said that the Finance Committee had met on May 25 to review budget proposals from staff and Council. All proposals were recommended for approval and would come before Council at the June 21 meeting.
- Ms. Limbird noted that the Arts Council's State of the Arts call for entry had opened and would be accepting entries for several weeks. She added that the State of the Arts event would be held in September, and that the Arts Council would have a booth at the upcoming Prairie Village Art Fair at the Village Shops.
- Ms. Selders stated that the Juneteenth celebration would be held on June 18 at Harmon Park.
- Ms. Reimer said that the Environmental Committee held a meeting on May 25, at which a presentation was given on the Johnson County green business program.



PRAIRIE VILLAGE KANSAS

Additionally, the committee voted to contribute excess supplies from the native plant sale to a Northeast Johnson County sustainability event in September.

Ms. Reimer also shared that United Community Services' Drug and Alcoholism Council met on May 19 to discuss its annual grant review cycle.

- Mr. Shelton noted that the Tree Board met on June 1 and recognized the one-year anniversary of the passage of the City's tree ordinance. He added that planning for a fall seminar was also underway, with a focus on maintaining the City's tree canopy.

STAFF REPORTS

- Chief Roberson reported the following:
 - Eight students participating in the Police Department's youth academy met for the first time earlier in the day.
 - Two summer interns and a new dispatcher had recently begun working at the department.
 - Nine officer candidates had been interviewed, and eight had continued to the next step of the hiring process.
 - A Coffee with a Cop event would be held on June 22 at Hy-Vee.

The Chief added that the department regularly participated in active shooter training events, which were often held at schools located in the City.

- Mr. Jordan stated that the draft 2023 budget would be presented at the June 21 Council meeting. He added that staff would be researching methods to provide clarity to residents about potentially exceeding the revenue neutral rate in the 2023 budget.

OLD BUSINESS

There was no old business to come before the Council.

NEW BUSINESS

Presentation from McGrath Consulting on compensation study and discussion on compensation philosophy

Victoria McGrath said that the City had entered into an agreement earlier in the year with McGrath Consulting to complete a compensation and benefits study. She stated that the initial review of the compensation plan had been completed and gave a presentation on the preliminary findings, which showed that most City minimum salaries were competitive with the external market, though some needed to be adjusted. She asked the Council to



provide direction on the City's "compensation philosophy" and at what range relative to the market the Council would like employee compensation and benefits to be.

Mr. Cole Robinson asked how public agencies could retain employees that might consider moving to the private sector for higher salaries. Ms. McGrath stated that public entities needed to ensure candidates were aware of some of the benefits of public sector jobs, such as the availability of pensions, high-quality insurance and others that were generally not offered in the private sector.

Mr. Nelson noted that homes in Prairie Village tended to be more expensive than those in surrounding communities and suggested that offering higher salaries would make it easier for employees to live in the City.

Mr. Gallagher asked if exempt versus non-exempt positions had been analyzed, and whether there was a consistent difference in where they fell in comparison to other entities. Ms. McGrath said that a higher percentage of exempt positions in the City were below the market average than non-exempt positions.

Mr. Graves made a motion to direct McGrath Consulting to model the financial and salary impacts of a 60th percentile midpoint in the local market. Mr. Cole Robinson seconded the motion.

After further discussion, the motion passed 11-0.

Mr. Nelson made a motion for the City Council to move to the Council Committee of the Whole portion of the meeting. The motion was seconded by Mr. Cole Robinson and passed 11-0.

COUNCIL COMMITTEE OF THE WHOLE

COU2022-47 Consider approval of Ordinance 2474, an ordinance deleting Article 8 (Sign Regulations) of Chapter 16 (Zoning and Planning) from the municipal code

Ms. Robichaud stated that there were currently two different sets of sign regulations in the municipal code, located in both Chapter 16, "Zoning and Planning", and Chapter 19, "Zoning Regulations". She said that staff used the regulations in Chapter 19.48, which were previously updated and approved by Council, for enforcement purposes. The proposed ordinance would delete Chapter 16, Article 8 from the municipal code to clean up the discrepancy. Ms. Robichaud added that City Attorney David Waters had drafted the ordinance to address the issue.



**PRAIRIE VILLAGE
KANSAS**

Ms. Limbird made a motion to recommend approval of Ordinance 2474, deleting Article 8 (Sign Regulations) of Chapter 16 (Zoning and Planning) from the municipal code. The motion was seconded by Mr. Dave Robinson and passed 11-0.

COU2022-48 Consider traffic calming on 69th Street from the Nall Avenue to Fonticello Street

Mr. Bredehoeft said that residents along 69th Street had expressed interest in traffic calming measures, and that the proposed section of roadway had met the requirements of the traffic calming program. The measures would include two speed tables installed between Nall Avenue and Fonticello Street. Mr. Bredehoeft noted that it was anticipated that the improvements would be built in the summer of 2022 at an estimated cost of \$10,000, with funding coming from the traffic calming CIP project.

Mr. Nelson made a motion to recommend approval of the installation of traffic calming measures on 69th Street between Nall Avenue and Fonticello Street. Ms. Limbird seconded the motion, which passed 11-0.

Mr. Nelson moved that the City Council end the Council Committee of the Whole portion of the meeting. The motion was seconded by Ms. Limbird and passed 11-0.

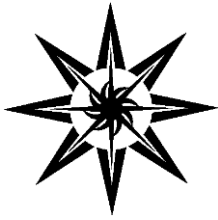
ANNOUNCEMENTS

Announcements were included in the Council meeting packet.

ADJOURNMENT

Acting Council President Courtney McFadden declared the meeting adjourned at 7:24 p.m.

Adam Geffert
City Clerk



MAYOR

**Council Meeting Date: June 21, 2022
CONSENT AGENDA**

Consider Appointment to the Tree Board

RECOMMENDATION

Mayor Mikkelson requests Council ratification of the appointment of Pam Gagel to the Tree Board.

BACKGROUND

Pam is an attorney who moved back to Prairie Village from Colorado in 2018. She grew up in the City and is a graduate of Shawnee Mission East High School. Pam currently serves as a “resident at-large” for the Prairie Village Foundation but will step down from that role if appointed to the Tree Board.

ATTACHMENTS

Volunteer application

PREPARED BY

Adam Geffert
City Clerk

Date: June 15, 2022

* Full Name
Pam Gagel

* Full Address
4851 Meadowbrook Parkway
Prairie Village KS 66207

* **Email**
pgagel909@comcast.net

* Phone
(720) 201-1797

* Select your City Ward
Ward 5

* **Please select your FIRST committee choice**
Parks & Recreation

* **Please select your SECOND committee choice**
Tree Board

* **Please select your THIRD committee choice**
Environmental Committee

* **Please tell us about yourself, listing any special skills or experiences you have.**

I applied for committees last year. I live in the apartments at Meadowbrook Park since September 2018. I am attorney with an inactive license in Colorado where I moved from. I grew up in PV on Delmar in Ward 5. I graduated from SME.

This application is available November 1 through December 31 or when there are specific mid-year vacancies. Appointments are typically made by the end of February.

Thank you for your interest in serving our community.



ADMINISTRATION

Council Committee of the Whole Meeting Date: June 6, 2022
City Council Meeting: June 21, 2022

COU2022-47: Consider approval of Ordinance 2474, an ordinance deleting Article 8 (Sign Regulations) of Chapter 16 (Zoning and Planning) from the municipal code

ACTION NEEDED

Make a motion to approve COU2022-47.

BACKGROUND

This proposed ordinance is intended to clean up an issue in our municipal code. There are currently two different sets of sign regulations in the municipal code (Chapter 16 - Zoning and Planning and Chapter 19 - Zoning Regulations). The sign regulations that staff uses for enforcement is Chapter 19.48 in the zoning regulations. This is the sign ordinance that was updated and approved by council in the past few years and the appropriate spot for the sign regulations to live. As such, staff is proposing to delete Chapter 16, Article 8 from the municipal code to clean up this discrepancy.

City attorney David Waters drafted the attached ordinance to address this issue.

ATTACHMENTS

Ordinance 2474

PREPARED BY

Jamie Robichaud
Deputy City Administrator
Date: June 2, 2022

ORDINANCE NO. 2474

AN ORDINANCE DELETING ARTICLE 8 (SIGN REGULATIONS) OF CHAPTER XVI (ZONING AND PLANNING) FROM THE CODE OF THE CITY OF PRAIRIE VILLAGE.

WHEREAS, Article 8 (Sign Regulations) of Chapter XVI (Zoning and Planning) of the Code of the City of Prairie Village, Kansas, contains certain regulations pertaining to signs and signage within the City; and

WHEREAS, such sign and signage regulations are deemed to be unnecessary, as signs and signage are most currently regulated under Chapter 19.48 (Sign Standards) of Chapter XIX (Zoning Regulations) of the Code of the City.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PRAIRIE VILLAGE, KANSAS:

Section 1. That Article 8 (Sign Regulations) of Chapter XVI (Zoning and Planning), and Sections 16-801 through 16-808, inclusive, in existence as of and prior to the adoption of this ordinance, is and are hereby repealed and hereby deleted in their entirety.

Section 2. This ordinance shall take effect and be enforced from and after its passage, approval, and publication as provided by law.

PASSED by the City Council of the City of Prairie Village, Kansas, on June 21, 2022.

APPROVED by the Mayor on June 21, 2022.

CITY OF PRAIRIE VILLAGE, KANSAS

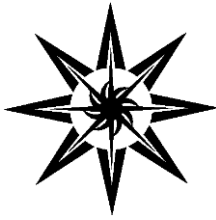
Eric Mikkelsen, Mayor

ATTEST:

Adam Geffert, City Clerk

APPROVED AS TO FORM:

David E. Waters, City Attorney



PUBLIC WORKS DEPARTMENT

Council Committee Meeting: June 6, 2022

Council Meeting: June 21, 2022

COU2022-48

CONSIDER TRAFFIC CALMING ON 69th STREET FROM NALL AVENUE TO FONTICELLO STREET

RECOMMENDATION

Staff recommends City Council approve the installation of traffic calming measures on 69th Street from Nall Avenue to Fonticello Street.

BACKGROUND

Residents along 69th Street desire traffic calming measures and have met the requirements of the traffic calming program. The final petition exceeded 60% approval of the residents to install these measures. These measures will include two speed tables installed between Nall Avenue and Fonticello Street. Speed Tables have been successful in Prairie Village in the past and will help calm traffic on this section of 69th Street. It is anticipated that these improvements will be built in the summer of 2022. The approximate cost of the two speed tables will be about \$10,000 with funds coming from the traffic calming CIP project.

Residents within the traffic calming project limits were notified that the project would be discussed at this council meeting.

FUNDING SOURCE

Funding is available under project TRAFRESV, Traffic Calming.

ATTACHMENTS

1. TranSystems Study

PREPARED BY

Keith Bredehoeft, Director of Public Works

June 1, 2022

**69th Street Traffic Calming Eligibility Study
Nall Avenue to Fonticello Street**

**Prepared for
CITY OF PRAIRIE VILLAGE**

By



November 2021

Introduction

In accordance with your request, TranSystems Corporation has prepared the following traffic calming eligibility study for the roughly one-quarter mile segment of 69th Street between Nall Avenue and Fonticello Street in Prairie Village, Kansas. The criteria used to determine eligibility for traffic calming measures are defined in the Prairie Village Traffic Calming Program. This section of 69th Street is classified as a Local Street Traffic Calming Project with respect to the application of eligibility criteria. The street was evaluated using average daily traffic volumes, the 85th percentile speed of vehicles, and the percentage of cut-through traffic. A local street segment must receive a minimum score of 40 points in order to be eligible for a Local Street Traffic Calming Project.

Data Collection

Road Segment Inventory

As part of the data collection, we reviewed the study segments and documented various existing features which may affect vehicle speed. These included characteristics such as road width, horizontal and vertical alignment, parking practices, and roadside development. A summary of our findings is listed below:

- ▶ This segment of 69th Street is a two-lane street with curbs and gutters along both sides of the street. The street is generally 26 feet wide, measured between the backs of curb for the entire length. A sidewalk runs along the south side of the street, and it is offset roughly three feet from the curb.
- ▶ The posted speed limit is 25 m.p.h.
- ▶ There is no horizontal curvature in the alignment of 69th Street. The study segment is straight.
- ▶ The vertical alignment of the roadway is generally level with a slight sag vertical curve to the east of Nall Avenue.
- ▶ The study segment of 69th Street is located in a residential area. Single-family homes are set back roughly 50 feet from the street along the south side of 69th Street, and more than 100 feet along the north side. Most of these homes have one driveway onto 69th Street.
- ▶ On-street parallel parking is allowed along both sides of 69th Street. Some parked vehicles were observed along the street during our site visits.
- ▶ There are no intersecting streets along the study segment between Nall Avenue and Fonticello Street. Northbound and southbound movements on Fonticello Street are stop sign controlled while 69th Street is allowed uninterrupted flow. Eastbound and westbound movements on 69th Street are stop controlled at the intersection with Nall Avenue.
- ▶ This segment of 69th Street is designated as a shared street in the Citywide Bike/Pedestrian Plan.

Average Daily Traffic Volumes

TranSystems placed machine traffic volume counters at two locations along the study segment. The counters were in place from Tuesday, November 2, 2021 through Thursday, November 4, 2021. The results of the counts are shown on the following page in Table 1. See the Appendix (Figure A-1) for the average daily traffic volume at each location. The average daily traffic volume was based on the three weekdays included in the count period. Detailed tabulations of the counts are included in the Appendix (Pages A-2 to A-3). The average daily traffic volume falls in the “751-1,000 vehicles per day” range, per the Traffic Calming Program. This corresponds to a score of 20 points.

Table 1
Vehicle Volume Data

Location	Total Daily Traffic Volume (vehicles)
69th Street, east of Nall Avenue	787
69th Street, west of Fonticello Street	784

Vehicle Speeds

Spot speed studies were conducted using the vehicle speed-measuring feature of the traffic counters. The results of the studies are shown below in Table 2. Relative frequency distributions for the data have also been prepared and are included in the Appendix (Pages A-4 to A-5).

Table 2
Vehicle Speed Data

Location	85th Percentile Speed (m.p.h.)	Average Speed (m.p.h.)
69th Street, east of Nall Avenue	32.6	28.1
69th Street, west of Fonticello Street	34.7	29.1

Table 2 shows that the measured 85th percentile speeds for the study segment is approximately 34 m.p.h. These speeds are higher than the posted speed limit of 25 m.p.h. These 85th percentile speeds fall in the “6-10 m.p.h. over the posted speed limit” range, per the Traffic Calming Program, corresponding to a score of 15 points.

Cut-Through Traffic

Origin and destination surveys were conducted on Monday, October 12, 2020 between 5:00 p.m. and 6:00 p.m. to determine the percentage of cut-through traffic. From comparing the recorded license plates at both the Fonticello Street and Nall Avenue intersections, it was found that 84% of vehicles were determined to be cut-through vehicles. This percentage corresponds to a score of 15 points, per the Traffic Calming Program.

Total Eligibility

The study segment of 69th Street between Nall Avenue and Fonticello Street meets the eligibility requirements as outlined in the Traffic Calming Program. According to the criteria, a street must receive a minimum score of 40 points in order to be eligible for traffic calming measures. Table 3 indicates that the study segment is assessed with **50** points.

Table 3
Total Eligibility
69th Street between Nall Avenue and Fonticello Street

Eligibility Criteria	Measurement	Point Assessment
Average Daily Traffic Volumes	786 Vehicles	20
85th Percentile Speeds	9 mph above limit	15
Cut-through Traffic	84%	15
Total Points:		50

We trust that the enclosed information proves beneficial to the City of Prairie Village. We appreciate the opportunity to be of service to you and will be available to review this study at your convenience.

Sincerely,
TranSystems

By: Emma Martin
Emma Martin, EIT

By: Jeffrey J. Wilke
Jeffrey J. Wilke, PE, PTOE

Appendix

Daily Traffic Volume and Travel Speed Summary	Figure A-1
Daily Traffic Volume Counts	A-2 to A-3
Spot Speed Studies	A-4 to A-5



ADT: 784 Vehicles
85th Percentile: 34.7 MPH
Posted Speed: 25 MPH

Origin-Destination Survey
Total Vehicles : 53
Number Local : 7 (13%)
Number Thru : 46 (87%)

ADT: 787 Vehicles
85th Percentile: 32.6 MPH
Posted Speed: 25 MPH

Origin-Destination Survey
Total Vehicles : 57
Number Local : 11 (19%)
Number Thru : 46 (81%)

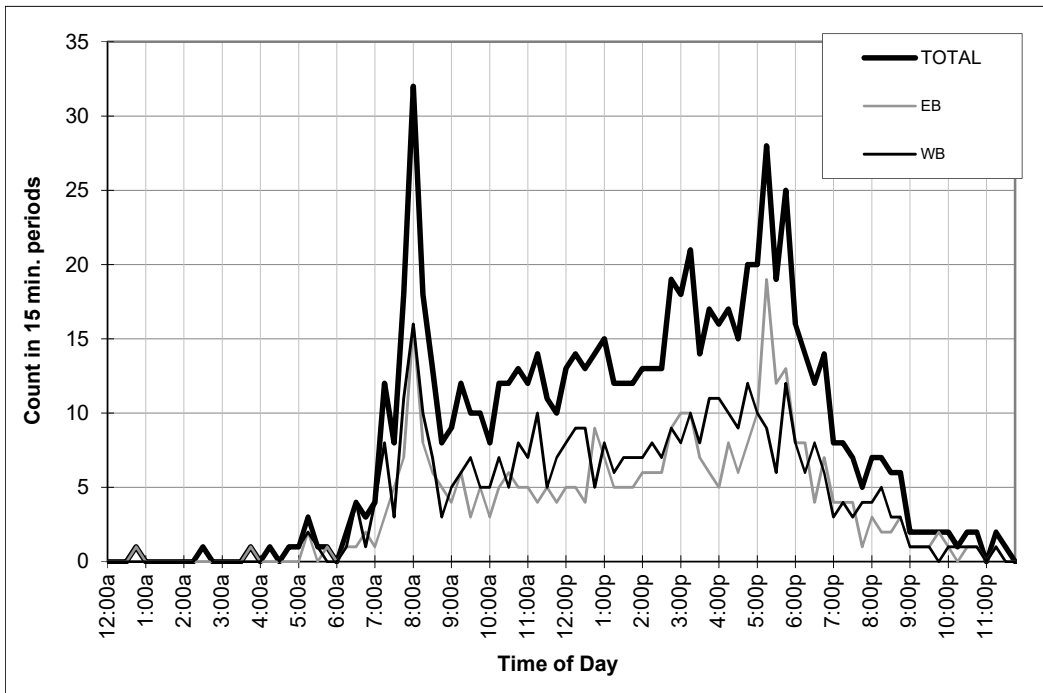
Daily Traffic Count

Prairie Village Traffic Calming Study

Prairie Village

Location: **69th Street East of Nall Avenue**

Period Start	EB	WB	TOTAL	Period Start	EB	WB	TOTAL	Period Start	EB	WB	TOTAL	Period Start	EB	WB	TOTAL
12:00a	0	0	0	6:00a	0	0	0	12:00p	5	8	13	6:00p	8	8	16
12:15a	0	0	0	6:15a	1	1	2	12:15p	5	9	14	6:15p	8	6	14
12:30a	0	0	0	6:30a	1	4	4	12:30p	4	9	13	6:30p	4	8	12
12:45a	1	0	1	6:45a	2	1	3	12:45p	9	5	14	6:45p	7	6	14
1:00a	0	0	0	7:00a	1	4	4	1:00p	7	8	15	7:00p	4	3	8
1:15a	0	0	0	7:15a	3	8	12	1:15p	5	6	12	7:15p	4	4	8
1:30a	0	0	0	7:30a	5	3	8	1:30p	5	7	12	7:30p	4	3	7
1:45a	0	0	0	7:45a	7	11	18	1:45p	5	7	12	7:45p	1	4	5
2:00a	0	0	0	8:00a	16	16	32	2:00p	6	7	13	8:00p	3	4	7
2:15a	0	0	0	8:15a	8	10	18	2:15p	6	8	13	8:15p	2	5	7
2:30a	0	1	1	8:30a	6	7	13	2:30p	6	7	13	8:30p	2	3	6
2:45a	0	0	0	8:45a	5	3	8	2:45p	9	9	19	8:45p	3	3	6
3:00a	0	0	0	9:00a	4	5	9	3:00p	10	8	18	9:00p	1	1	2
3:15a	0	0	0	9:15a	6	6	12	3:15p	10	10	21	9:15p	1	1	2
3:30a	0	0	0	9:30a	3	7	10	3:30p	7	8	14	9:30p	1	1	2
3:45a	1	0	1	9:45a	5	5	10	3:45p	6	11	17	9:45p	2	0	2
4:00a	0	0	0	10:00a	3	5	8	4:00p	5	11	16	10:00p	1	1	2
4:15a	0	1	1	10:15a	5	7	12	4:15p	8	10	17	10:15p	0	1	1
4:30a	0	0	0	10:30a	6	5	12	4:30p	6	9	15	10:30p	1	1	2
4:45a	0	1	1	10:45a	5	8	13	4:45p	8	12	20	10:45p	1	1	2
5:00a	0	1	1	11:00a	5	7	12	5:00p	10	10	20	11:00p	0	0	0
5:15a	2	2	3	11:15a	4	10	14	5:15p	19	9	28	11:15p	1	1	2
5:30a	0	1	1	11:30a	5	5	11	5:30p	12	6	19	11:30p	0	0	1
5:45a	1	0	1	11:45a	4	7	10	5:45p	13	12	25	11:45p	0	0	0



HOURLY TOTALS

Period Start	EB	WB	TOTAL
12:00a	1	0	1
1:00a	0	0	0
2:00a	0	1	1
3:00a	1	0	1
4:00a	0	2	2
5:00a	3	4	6
6:00a	4	6	9
7:00a	16	26	42
8:00a	35	36	71
9:00a	18	23	41
10:00a	19	25	45
11:00a	18	29	47
12:00p	23	31	54
1:00p	22	28	51
2:00p	27	31	58
3:00p	33	37	70
4:00p	27	42	68
5:00p	54	37	92
6:00p	27	28	56
7:00p	13	14	28
8:00p	10	15	26
9:00p	5	3	8
10:00p	3	4	7
11:00p	1	1	3

Approach	3-Day Average	AM Peak 7:45a - 8:45a	Noon Peak 12:15a - 1:15p	PM Peak 5:00p - 6:00p	Totals
Eastbound		37	25	54	360
Westbound		44	31	37	423
TOTAL		81	56	92	787

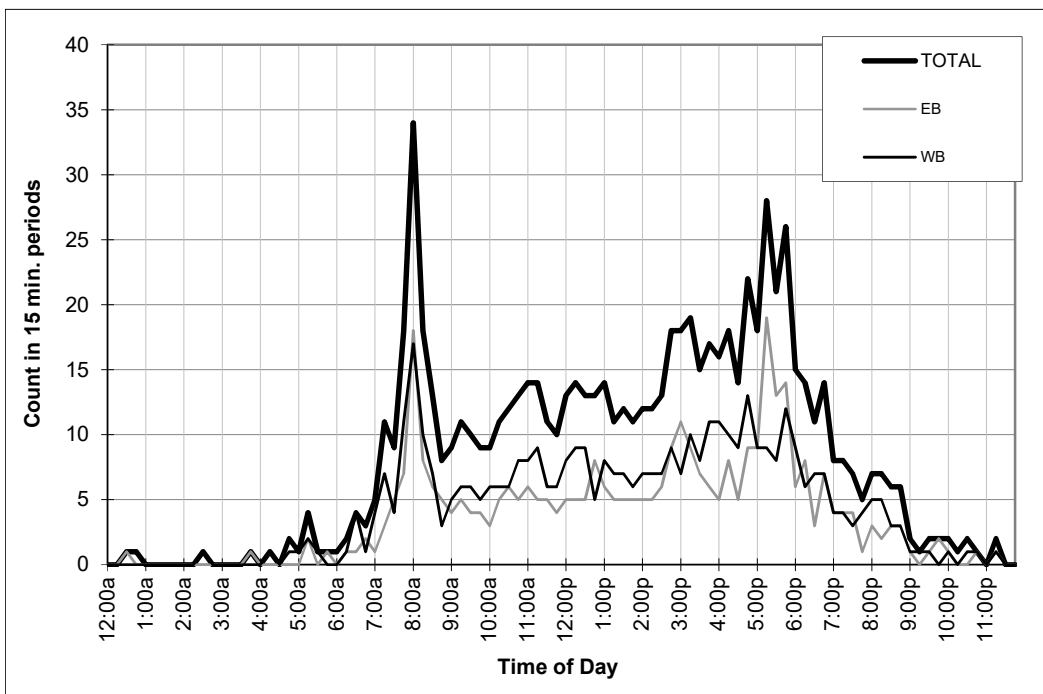
Daily Traffic Count

Prairie Village Traffic Calming Study

Prairie Village

Location: **69th Street West of Fonticello Street**

Period Start	EB	WB	TOTAL	Period Start	EB	WB	TOTAL	Period Start	EB	WB	TOTAL	Period Start	EB	WB	TOTAL
12:00a	0	0	0	6:00a	0	0	1	12:00p	5	8	13	6:00p	6	9	15
12:15a	0	0	0	6:15a	1	1	2	12:15p	5	9	14	6:15p	8	6	14
12:30a	1	0	1	6:30a	1	4	4	12:30p	5	9	13	6:30p	3	7	11
12:45a	0	0	1	6:45a	2	1	3	12:45p	8	5	13	6:45p	7	7	14
1:00a	0	0	0	7:00a	1	4	5	1:00p	6	8	14	7:00p	4	4	8
1:15a	0	0	0	7:15a	3	7	11	1:15p	5	7	11	7:15p	4	4	8
1:30a	0	0	0	7:30a	5	4	9	1:30p	5	7	12	7:30p	4	3	7
1:45a	0	0	0	7:45a	7	11	18	1:45p	5	6	11	7:45p	1	4	5
2:00a	0	0	0	8:00a	18	17	34	2:00p	5	7	12	8:00p	3	5	7
2:15a	0	0	0	8:15a	8	10	18	2:15p	5	7	12	8:15p	2	5	7
2:30a	0	1	1	8:30a	6	7	13	2:30p	6	7	13	8:30p	3	3	6
2:45a	0	0	0	8:45a	5	3	8	2:45p	9	9	18	8:45p	3	3	6
3:00a	0	0	0	9:00a	4	5	9	3:00p	11	7	18	9:00p	1	1	2
3:15a	0	0	0	9:15a	5	6	11	3:15p	9	10	19	9:15p	0	1	1
3:30a	0	0	0	9:30a	4	6	10	3:30p	7	8	15	9:30p	1	1	2
3:45a	1	0	1	9:45a	4	5	9	3:45p	6	11	17	9:45p	2	0	2
4:00a	0	0	0	10:00a	3	6	9	4:00p	5	11	16	10:00p	1	1	2
4:15a	0	1	1	10:15a	5	6	11	4:15p	8	10	18	10:15p	0	0	1
4:30a	0	0	0	10:30a	6	6	12	4:30p	5	9	14	10:30p	0	1	2
4:45a	0	1	2	10:45a	5	8	13	4:45p	9	13	22	10:45p	1	1	1
5:00a	0	1	1	11:00a	6	8	14	5:00p	9	9	18	11:00p	0	0	0
5:15a	2	2	4	11:15a	5	9	14	5:15p	19	9	28	11:15p	1	1	2
5:30a	0	1	1	11:30a	5	6	11	5:30p	13	8	21	11:30p	0	0	0
5:45a	1	0	1	11:45a	4	6	10	5:45p	14	12	26	11:45p	0	0	0



HOURLY TOTALS

Period Start	EB	WB	TOTAL
12:00a	1	0	2
1:00a	0	0	0
2:00a	0	1	1
3:00a	1	0	1
4:00a	0	2	3
5:00a	3	4	7
6:00a	4	6	10
7:00a	16	26	43
8:00a	37	37	73
9:00a	17	22	39
10:00a	19	26	45
11:00a	20	29	49
12:00p	23	31	53
1:00p	21	28	48
2:00p	25	30	55
3:00p	33	36	69
4:00p	27	43	70
5:00p	55	38	93
6:00p	24	29	54
7:00p	13	15	28
8:00p	11	16	26
9:00p	4	3	7
10:00p	2	3	6
11:00p	1	1	2

Approach	3-Day Average	AM Peak 7:45a - 8:45a	Noon Peak 12:15a - 1:15p	PM Peak 5:00p - 6:00p	Totals
Eastbound		39	24	55	357
Westbound		45	31	38	426
TOTAL		83	54	93	784



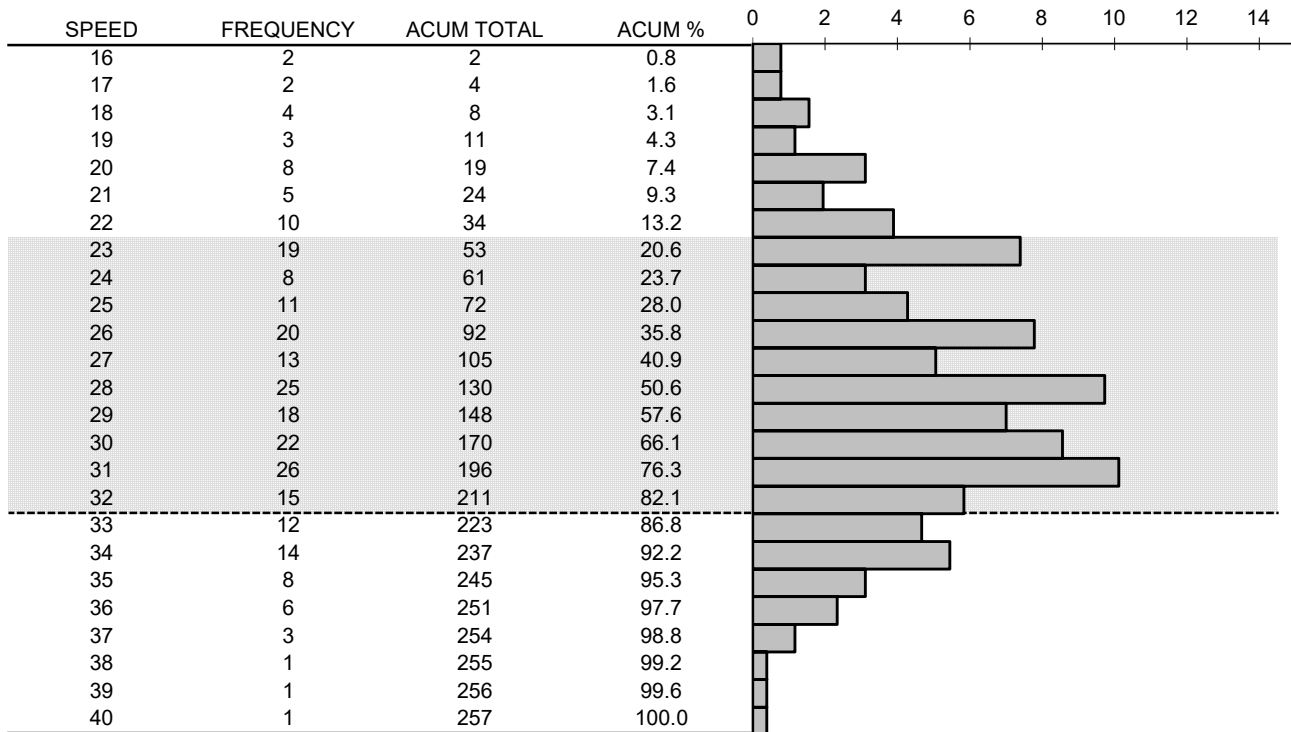
SPOT SPEED STUDY RESULTS **RELATIVE FREQUENCY DISTRIBUTION**

CITY: Prairie Village
 OBSERVER: EHM
 DATE: 11/4/2021

COUNTY: Johnson
 SPEED LIMIT: 25 mph
 DIRECTION: EB+WB

LOCATION: 69th Street east of Nall
 TIME START: 9:00 AM
 TIME END: 3:00 PM

PERCENTAGE BREAKDOWN



AVERAGE SPEED = 28.1
 50th PERCENTILE = 27.9
 85th PERCENTILE = 32.6
 90th PERCENTILE = 33.6
 95th PERCENTILE = 34.9

PACE = 23 - 32
 VEHICLES IN PACE = 177
 % IN PACE = 68.9
 % BELOW PACE = 13.2
 % ABOVE PACE = 17.9

SAMPLE VARIANCE = 22.8552408
 STANDARD DEVIATION = 4.7807155
 RANGE 1*S = 68.8716
 RANGE 2*S = 95.71984
 RANGE 3*S = 100.

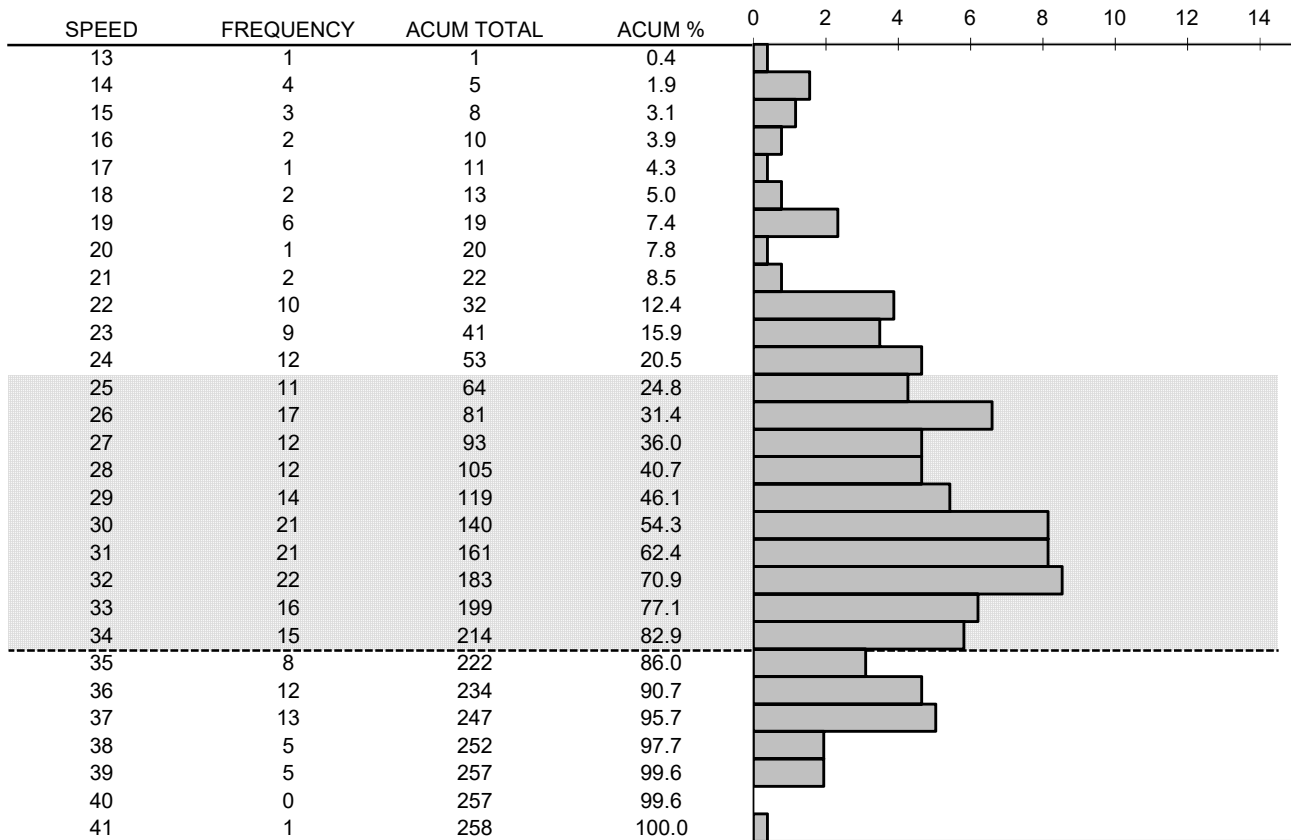
SPOT SPEED STUDY RESULTS **RELATIVE FREQUENCY DISTRIBUTION**

CITY: Prairie Village
 OBSERVER: EHM
 DATE: 11-4-2021

COUNTY: Johnson
 SPEED LIMIT: 25 mph
 DIRECTION: EB+WB

LOCATION: 69th Street west of Fonticello Street
 TIME START: 9:00 AM
 TIME END: 3:00 PM

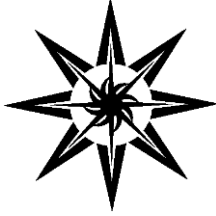
PERCENTAGE BREAKDOWN



AVERAGE SPEED = 29.1
 50th PERCENTILE = 29.5
 85th PERCENTILE = 34.7
 90th PERCENTILE = 35.9
 95th PERCENTILE = 36.9

PACE = 25 - 34
 VEHICLES IN PACE = 161
 % IN PACE = 62.4
 % BELOW PACE = 20.5
 % ABOVE PACE = 17.1

SAMPLE VARIANCE = 32.9446656
 STANDARD DEVIATION = 5.7397444
 RANGE 1*S = 70.54263
 RANGE 2*S = 95.34883
 RANGE 3*S = 100.



PUBLIC WORKS DEPARTMENT

Council Meeting Date: June 21, 2022
Consent Agenda

CONSIDER PURCHASE OF REPLACEMENT BOBCAT SKID-STEER LOADER AND DISPOSAL OF ASSET #5044.

RECOMMENDATION

Staff recommends the City Council approve the purchase of a replacement Bobcat Skid-Steer Loader and the disposal of Asset #5044 by trade in.

BACKGROUND

This item was approved by City Council on May 16, 2022 but the dollar amounts were incorrect as the trade in value was incorrectly applied. The below reflects the correct dollar amounts. There is adequate funding in the Equipment Reserve Fund for this item.

The equipment reserve fund provides for the replacement of Asset #5044, a 2007 Bobcat Skid-Steer Loader. This piece of equipment is fifteen years old and due for replacement. Staff proposes to purchase the replacement Bobcat using the NASPO Construction Contract # SW192. Equipment included with the purchase will be a heavy duty bucket, a hydraulic breaker, a heavy duty snow blade, a snow blower, and an extra set of wheels and tires. KC Bobcat is the Bobcat dealer for the mid-west region. The trade in value of \$22,000 is reasonable. The auction site we normally use, Purple Wave, has sold or has listed several comparable Bobcats and all of which were under our trade in amount. Below is a summary of the overall cost.

Bobcat price with equipment-	\$79,294.43(Corrected Amount)
Trade In for the 2007 Bobcat- Sweeper-	<u>\$22,000.00</u>
Total	\$67,600.43(Corrected Amount)

Public Works Director will sign proposals from KC Bobcat related to this purchase.

FUNDING SOURCE

The City's Equipment Reserve Fund has a line item of \$70,000 for this purchase.

ATTACHMENTS - Bobcat product description sheet

PREPARED BY

Keith Bredehoeft, Public Works Director

Date: June 15, 2022

THE ORIGINAL AND STILL THE BEST

BOBCAT COMPANY INVENTED THE WORLD'S FIRST COMPACT LOADER IN 1958 AND THE FIRST SKID-STEER LOADER IN 1960. TODAY, IT'S STILL THE WORLD'S BESTSELLING SKID-STEER LOADER BRAND.



HIGHLY MANEUVERABLE

A skid-steer loader is compact and can pivot 360 degrees, allowing you to easily maneuver in close quarters.



EXCLUSIVE

MAINTENANCE-FREE CHAINCASE

Bobcat-exclusive design and tight-tolerance chain placement eliminate the need for adjustments.

EFFECTIVE WEIGHT BALANCE

Bobcat skid-steer loaders offer effective turning and skidding, reduced fuel consumption and power requirements, increased drive train and tire life, and reduced wear and tear.

BOBCAT TIRES

EXCLUSIVE

Multiple options are available to match your tires to your work conditions:



STANDARD-DUTY



HEAVY-DUTY



SEVERE-DUTY



TURF AND SAND



SUPER-FLOAT



SMOOTH

Bobcat provides a variety of tire patterns: solid, non-marking and pneumatic designs.



AD HOC HOUSING COMMITTEE

Council Meeting Date: June 21, 2022

Consider recommendations from the Ad Hoc Housing Committee to help with preserving access to attainable housing in Prairie Village

ACTION NEEDED

Make a motion to accept the Ad Hoc Housing Committee's recommendations and direct staff to begin working on implementation of the recommended strategies.

BACKGROUND

Mayor Mikkelson formed the Ad Hoc Housing Committee in the Fall of 2021 to form recommendations to the Governing Body on strategies to move the needle on preserving access to attainable housing in Prairie Village. The Committee used [Village Vision 2.0](#), the [Johnson County Housing Study](#), and the [UCS Housing For All Toolkit](#) to inform and shape their recommendations specific to Prairie Village.

The Committee met several times from September to April to work on their recommendations, and the final set of recommendations is attached for the Council's review. Committee co-chairs Ian Graves and Jon Birkel will present the committee's recommendations at the meeting. The committee's recommended strategies can be summarized to the following three categories:

- 1) Amend the City's zoning regulations to allow quality, attainable housing, especially missing middle housing by-right in more zoning districts.
- 2) Support the rehabilitation of the existing housing stock to preserve existing attainable housing.
- 3) Ensure the City continues to participate in regional initiatives regarding housing attainability and transit connectivity.

The Committee recommends that specific changes to the Zoning Regulations be worked on by staff and the Planning Commission along with several opportunities for public input before any changes to the zoning regulations are made.

ATTACHMENTS

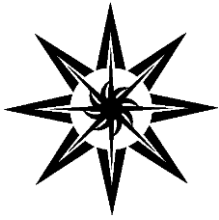
Final Recommendations from the Ad Hoc Housing Committee

PREPARED BY

Jamie Robichaud
Deputy City Administrator
Date: June 15, 2022

City of Prairie Village
Ad Hoc Housing Committee Recommendations
2022

- 1. Amend the City's zoning regulations to allow quality, attainable housing, especially missing middle housing by-right in more zoning districts in the following ways:**
 - Promote and remove impediments to Accessory Dwelling Units in R-1A and R-1B districts
 - Consider other "neighborhood-scale" housing options in R-1A and R-1B, such as:
 - Small-lot detached houses
 - Courtyard patterns
 - Multi-unit houses
 - Improve the R-2 district for wider range of small-scale, multi-unit types, such as:
 - Smaller lot duplexes
 - 3-and 4-plex "multi-unit" houses
 - Row houses (small lot)
 - Refine the R-3 district standard to focus less on "density" and more on building scale/form, to include provisions for small apartments, medium apartments, and large apartments
 - Improve the R-4 district for a wider range of higher-density, multi-unit types, such as:
 - Small lot detached houses (lot scale and courtyard patterns)
 - Row houses – small/large lots
 - Apartments (small/medium)
 - Promote mix of housing options and appropriate building types in C-O and C-1 districts.
 - Improve expectations in the MXD district by establishing missing middle building type standards as the default district standards.
 - Update the City's zoning map to identify the most appropriate locations for missing middle housing
 - Continue to monitor the status of short-term rentals in Prairie Village and research further regulations if trends show an increase within the next few years.
- 2. Support the rehabilitation of the existing housing stock to preserve existing attainable housing in the following ways:**
 - Expand existing grant programs and adopt new grant programs to incentivize the preservation and rehabilitation of the existing housing stock, such as:
 - Raise income threshold for property tax rebate program to capture more people
 - Increase percentage match for exterior grant program
 - Develop grant program to address home preservation for interior home improvements and aging in place
 - Develop an "opportunity to purchase" policy, which requires owners to notify tenants of intent to sell and provide them an opportunity to purchase with the right of first refusal
 - Work with MARC to adopt Communities for All Ages and promote Universal Design Standards
- 3. Ensure the City continues to participate in regional initiatives regarding housing attainability and transit connectivity.**



Mayor

City Council Meeting Date: June 21, 2022

Consider Appointment of Deputy City Administrator

Recommendation:

Mayor Mikkelson requests the City Council ratify the appointment of Nickie Lee to serve as the Deputy City Administrator effective June 22, 2022.

Motion:

Move to approve Mayor Mikkelson's appointment of Nickie Lee as Deputy City Administrator.

BACKGROUND:

Ms. Lee is being recommended by the Mayor for appointment to serve as the Deputy City Administrator. Ms. Lee has served as the Finance Director for approximately 18 months and has proven her value to our organization by how well she has performed her duties. Ms. Lee has a Master's Degree in Public Administration and was the Assistant City Administrator in Smithville before joining our city. In discussing her qualifications with Wes Jordan, City Administrator, he fully supports the appointment and believes she has demonstrated the qualifications, leadership, and skills necessary to excel in this position. Wes has said that the executive management team is very supportive and is pleased that Ms. Lee is being recommended to this position.

Attachments: Ms. Lee's resume

PREPARED BY

Wes Jordan
City Administrator
Date: June 8, 2022

Nicole Lee

10016 W. 123rd St
Overland Park, Kansas 66213

Cell (402) 639 8815
nlee1225@gmail.com

Related Professional Experience:

Finance Director

City of Prairie Village KS

January 2021 – Present

- Oversee all finance operations of the City

Assistant City Administrator

City of Smithville MO

2018 – 2020

- Assisted the Governing Body and City Administrator in pursuit of City's goals
- Oversaw City's economic development program
- Served as Human Resources director

Finance and Administrative Services Director

City of Topeka KS

2017 – 2018

- Advised City Manager and Governing Body on financial matters
- Approved and advised on City Council meeting agenda items
- Oversaw [Finance](#) staff of 25 including divisions of Budget, Performance Management, Accounting, Payroll, Contracts and Procurement, and Grants Administration
- Responsible for overall [debt management](#) of the City
- Participate in economic development negotiations and policy development

Budget & Performance Manager

City of Topeka KS

2014 – 2017

- Managed Budget & Performance Division staff and advise City Manager
- Responsible for assembling, presenting, and overseeing annual [\\$300M budget process](#)
- Responsible for assembling, presenting, and overseeing annual [\\$800M 10 year capital improvement plan](#)
- Implemented [open data](#), strategic planning, and performance management program in partnership with the IT Department and City Manager's Office
- Organized community engagement events regarding annual budget process

Budget Analyst

City of Olathe KS

2011 - 2014

- Assisted with assembling, presenting, and overseeing annual budget process
- Served as budget analyst to multiple departments including Police, Parks and Recreation, Fire, Planning, and Public Works
- Responsible for capital improvement plan in a growing community

Management Intern

City of Independence MO

2009 - 2010

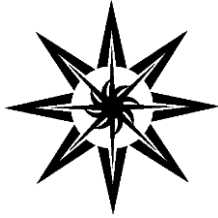
- Interned for the City Manager's Office and Independence Power and Light while completing MPA degree
- Projects included energy efficiency programming, website development for the City's sustainable initiatives, regulatory compliance, and tourism related initiatives

Education:

Master's in Public Administration - University of Kansas	2010
Bachelor of Arts in English and Non Profit Leadership - Rockhurst University	2006

Professional and Volunteer Organizations:

- Current Member of the GFOA Budget Committee
- Treasurer of the Women in Public Finance-Kansas and Missouri Chapter
- University of Kansas Practitioner in Residence
- Alumni in the Bloomberg Harvard City Leadership Initiative
- Previous member of International City/County Management Association (ICMA)
- Previous member of Kansas Association of City and County Managers (KACM)
- Member of Government Finance Officers Association (GFOA), Kansas GFOA, and Eastern Kansas GFOA
- Graduate of Leadership Topeka
- Volunteer for Big Brothers Big Sisters of Douglas County
- Volunteer for Johnson County Christmas Bureau
- Volunteer Coach for Blue Valley Recreation
- Member of Rockhurst University Board of Trustees Alumni



PUBLIC WORKS DEPARTMENT

Council Meeting Date: June 21, 2022

COU2022-50 CONSIDER APPROVAL OF A CONTRACT WITH SUPERIOR BOWEN FOR THE 2022 CONCRETE REPAIR PROGRAM

RECOMMENDATION

Move to authorize the Mayor to sign the Construction Contract with Superior Bowen for Project CONC2022 2022 Concrete Repair Program for \$595,000.

BACKGROUND

On June 8, 2022, the City Clerk opened bids for Project CONC2022, 2022 Concrete Repair Program.

Two bids were received:

Superior Bowen	\$649,039.75
Kansas Heavy Construction	\$754,753.55
Engineers Estimate	\$590,384.00

City staff reviewed the bids for consistency with pricing and believes the bids accurately reflect the market at this time. The budget for this project is \$600,000 and the contract award is set at \$595,000 annually. Locations of repairs will be adjusted (decreased) to utilize the budget. The remaining \$5,000 will be used for testing. This program consists of repairs to deteriorated concrete sidewalk, curb and ADA ramps.

City staff has reviewed the bids for accuracy, found no errors and recommends award to the lowest responsible bidder, Superior Bowen.

FUNDING SOURCE

There is funding in the CIP project CONC2022.

ATTACHMENTS

1. Agreement with Superior Bowen

PREPARED BY

Melissa Prenger, Senior Project Manager

June 14, 2022

CONSTRUCTION AGREEMENT



CONC2022
2022 CONCRETE REPAIR

BETWEEN

CITY OF PRAIRIE VILLAGE, KS

AND

SUPERIOR BOWEN ASPHALT CO.

CONSTRUCTION CONTRACT
FOR
CONC2022 2022 CONCRETE REPAIR

BETWEEN
THE CITY OF PRAIRIE VILLAGE, KANSAS
AND
SUPERIOR BOWEN ASPHALT CO.

THIS AGREEMENT, is made and entered into this ____ day of _____, 20__22, by and between the City of Prairie Village, Kansas, hereinafter termed the "**City**", and Superior Bowen Asphalt Co., hereinafter termed in this agreement, "**Contractor**", for the construction and completion of Project 2022 CONCRETE REPAIR , (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 FIVE HUNDRED, NINETY FIVE THOUSAND AND 00/100 DOLLARS (\$595,000.00) 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 Facie Violation of City Municipal Code 11-202.
- 7.9 No work shall be undertaken on Saturdays, Sundays and Holidays (Christmas, New Years, Martin Luther King's Birthday, President's Day, Memorial Day, Independence Day, Labor Day and Thanksgiving) without the express written approval of the City Project Manager. If it is necessary to perform proper care, maintenance, or protection of work already completed or of equipment used, or in the case of an emergency verbal permission may be obtained through the Project Manager.
- 7.10 Night work may be established by the Contractor, as a regular procedure, with the written permission of the City; such permission, however, may be revoked at any time by the City if the Contractor fails to maintain adequate equipment for the proper prosecution and control of all operations performed as part of the Work.
- 7.11 The Contractor shall provide 24 hours notice prior to commencing any work to the City Project Manager. The Contractor shall communicate immediately any changes in the Work Schedule to the Project Manager for approval by the City.

8. DELAYS AND EXTENSIONS OF TIME

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

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

9. ADVERSE WEATHER:

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

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

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

- 9.7 Upon receipt of the Notice to Proceed, and continuing throughout the Contract, the Contractor shall record on its daily construction report, the occurrence of Adverse Weather and resultant impact to the Work Schedule.

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

10. LIQUIDATED DAMAGES

- 10.1 Contractor agrees that time is of the essence and any term pertaining to Contractor timely performing so as to achieve Total Completion within the Contract Time is a material provision of this Contract. Further, the parties acknowledge that City's damages in the event of delay are difficult to ascertain and consequently agree that, in the event and to the extent that actual date of Total Completion is delayed beyond the Contract Time for the Total Project Work or Project Segments attributable solely or concurrently to (i) an act or omission of Contractor or any of its subcontractors or suppliers, or (ii) in whole or in part, to any other event or condition within the Contractor's reasonable control (and not for reasons solely attributable to City), the Contractor shall be assessed a liquidated damage, and not as a penalty, in the amount set

forth in the Special Conditions for each calendar day beyond the applicable Contract Time. Such amount shall be deducted from any amounts due Contractor under this Agreement.

- 10.2 Further, the Contractor agrees that, in the event Contractor does not carry out such Work at such rates of progress as required by the Work Schedule approved by the City, the City may, at its option and without Contractor receiving any additional compensation therefore, require Contractor to increase the number of qualified supervisory personnel and/or workers and the amount of equipment employed in the performance of the Work to such extent as City may deem necessary or desirable. In addition, City, at its option, may supplement Contractor's manpower by entering into contracts with other contractors to perform the Work. All costs that are incurred by City, in this regard, including reasonable attorney's fees, shall be deducted from any sums due Contractor or City may make demand on Contractor for reimbursement of such costs.

11. PAYMENT PROCEDURE

- 11.1 Based upon Applications for Payment submitted to the Project Manager by the Contractor and Certificates for Payment issued by the Project Manager, the City shall make progress payments on account of the contract sum to the Contractor as provided below and elsewhere in the Contract Documents.
- 11.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month or on a mutually agreed date by City and Contractor.
- 11.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the City no later than the time of payment. The Contractor further warrants that upon submittal on the first day of each month of an Application for Payment, all Work for which payments have been received from the City shall be free and clear of liens, claims, security interest or other encumbrances in favor of the Contractor or any other person or entity whatsoever.
- 11.4 Each application for payment must be submitted with Contractor's waiver for period of construction covered by application. Each Application for Payment will be submitted with executed waivers from the subcontractors or sub-contractors and suppliers for the previous period of construction covered by the previous application. The final payment application must be submitted together with or preceded by final or complete waivers from every entity involved with performance of the Work covered by the payment request.
- 11.5 The Contractor will submit waivers on forms, and executed in a manner, acceptable to City.
- 11.6 The Contractor shall promptly pay each Subcontractor out of the amount paid to the Contractor because of such Subcontractor's Work the amount to which such Subcontractor is entitled. In the event the City becomes informed that the Contractor has not paid a Subcontractor as herein provided, the City shall have the right, but not the duty, to issue future checks in payment to the Contractor of amounts otherwise due hereunder naming the Contractor and such Subcontractor as joint payees. Such joint check procedure, if employed by the City, shall be deemed payment to the Contractor but shall create no rights in favor of any person or entity beyond the right of the named payees to payment of the check and shall not be deemed to commit the City to repeat the procedure in the future.
- 11.7 The Project Manager will, upon receipt of a written Application for Payment from the Contractor, review the amount of Work performed during the preceding period and the value thereof at the unit prices contracted. From the amounts so ascertained, there shall be

deducted ten percent (10%) to be retained until after final completion of the entire Work to the satisfaction of the City. The Project Manager will submit an estimate each month to the City for payment to the Contractor, except that no amount less than \$500.00 will be submitted unless the total amount of the Contract remaining unpaid is less than \$500.00.

- 11.8 Deductions will be made from progress payments if the Contract includes a provision for a lump sum or a percentage deduction. Lump sum deductions will be that portion of the stated lump sum computed as the ratio that the amount earned bears to the Contract Price. Percentage deductions will be computed at the stated percentage of the amount earned.
- 11.9 No progress payment, nor any use or occupancy of the Work by the City, shall be interpreted to constitute an acceptance of any Work not in strict accordance with this Contract.
- 11.10 The City may decline to make payment, may withhold funds, and, if necessary, may demand the return of some or all of the amounts previously paid to the Contractor, to protect the City from loss because of:
- Defective Work not remedied by the Contractor;
 - Claims of third parties against the City or the City's property;
 - Failure by the Contractor to pay Subcontractors or others in a prompt and proper fashion;
 - Evidence that the balance of the Work cannot be completed in accordance with the Contract for the unpaid balance of the Contract Price;
 - Evidence that the Work will not be completed in the time required for substantial or final completion;
 - Persistent failure to carry out the Work in accordance with the Contract;
 - Damage to the City or a third party to whom the City is, or may be, liable;
 - Evidence that the Work is not progressing according to agreed upon schedule by both parties.
- 11.11 In the event that the City makes written demand upon the Contractor for amounts previously paid by the City as contemplated in this subparagraph, the Contractor shall promptly comply with such demand and refund such monies to the City.
- 11.12 Neither the observation by the City or any of the City's officials, employees, or agents, nor any order by the City for payment of money, nor any payment for, or acceptance of, the whole or any part of the Work by the City or Project Manager, nor any extension of time, nor any possession taken by the City or its employees, shall operate as a waiver of any provision of this Contract, or of any power herein reserved to the City, or any right to damages herein provided, nor shall any waiver of any breach in this Contract be held to be a waiver of any other or subsequent breach.
- 12. COMPLETION AND FINAL PAYMENT**
- 12.1 Upon Total Completion, when the Contractor is ready for a final inspection of the Total Project Work, it shall notify the City and the Project Manager thereof in writing. Thereupon, the Project Manager will make final inspection of the Work and, if the Work is complete in

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

- 12.2 The Contractor shall not be entitled to any payment unless and until it submits to the Project Manager its affidavit that all payrolls, invoices for materials and equipment, and other liabilities connected with the Work for which the City, or the City's property might be responsible, have been fully paid or otherwise satisfied; releases and waivers of lien from all Subcontractors and Suppliers of the Contractor and of any and all other parties required by the City; and consent of Surety, if any, to final payment. If any third party fails or refuses to provide a release of claim or waiver of lien as required by the City, the Contractor shall furnish a bond satisfactory to the City to discharge any such lien or indemnify the City from liability.
- 12.3 The City shall make final payment of all sums due the Contractor within thirty days of the Project Manager's execution of a final Certificate for Payment.
- 12.4 Acceptance of final payment shall constitute a waiver of all claims against the City by the Contractor except for those claims previously made in writing against the City by the Contractor, pending at the time of final payment, and identified in writing by the Contractor as unsettled at the time of its request for final inspection.

13. CLAIMS BY THE CONTRACTOR

- 13.1 All Contractor claims shall be initiated by written notice and claim to the Project Manager. Such written notice and claim must be furnished within seven calendar days after occurrence of the event, or the first appearance of the condition, giving rise to the claim.
- 13.2 The Contractor shall diligently proceed with performance of this Contract whether or not there be such a claim pending and the City shall continue to make payments to the Contractor in accordance with this Contract. The resolution of any claim shall be reflected by a Change Order executed by the City, the Project Manager and the Contractor.
- 13.3 Should concealed and unknown conditions which could not, with reasonable diligence, have been discovered in the performance of the Work (a) below the surface of the ground or (b) in an existing structure differ materially with the conditions indicated by this Contract, or should unknown conditions of an unusual nature differing materially from those ordinarily encountered in the area and generally recognized as inherent in Work of the character provided by this Contract, be encountered, the Contract Price shall be equitably adjusted by the Change Order upon the written notice and claim by either party made within seven (7) days after the first observance of the condition. As a condition precedent to the City having any liability to the Contractor for concealed or unknown conditions, the Contractor must give the City written notice of, and an opportunity to observe, the condition prior to disturbing it. The failure by the Contractor to make the written notice and claim as provided in this Subparagraph shall constitute a waiver by the Contractor of any claim arising out of or relating to such concealed or unknown condition.
- 13.4 If the Contractor wishes to make a claim for an increase in the Contract Price, as a condition precedent to any liability of the City therefore, the Contractor shall give the City written notice of such claim within seven (7) days after the occurrence of the event, or the first appearance

of the condition, giving rise to such claim. Such notice shall be given by the Contractor before proceeding to execute any additional or changed Work. The failure by the Contractor to give such notice and to give such notice prior to executing the Work shall constitute a waiver of any claim for additional compensation.

- 13.5 The City reserves the right to increase or decrease quantities, and alter the details of construction including grade and alignment as the Project Manager may consider necessary or desirable, by approved Change Order. Such modifications shall not invalidate the Contract nor release the surety. Unless such alterations and increases or decreases change the total cost of the Work, based on the originally estimated quantities and the unit prices bid, by more than 25 percent, or change the total cost of any major item, based on the originally estimated quantities and the unit price bid, by more than 25 percent, the Contractor shall perform the work altered, increased or decreased, at a negotiated price or prices. (A major item shall mean any bid item, the total cost of which exceeds 12-1/2 percent of the total Contract Price based on the proposed quantity and the contract unit price).
- 13.6 When the alterations cause an increase or decrease in excess of the 25 percent indicated above, either the Contractor or the Project Manager may request an adjustment of the unit price to be paid for the item or items.
- 13.7 If a mutually agreeable adjustment cannot be obtained, the City reserves the right to terminate the Contract as it applies to the items in question and make such arrangements as may be deemed necessary to complete the Work.
- 13.8 In connection with any claim by the Contractor against the City for compensation in excess of the Contract Price, any liability of the City for the Contractor's costs shall be strictly limited to direct costs incurred by the Contractor and shall not include standby costs, indirect costs or consequential damages of the Contractor. The City shall not be liable to the Contractor for claims of third parties.
- 13.9 If the Contractor is delayed in progressing any task which at the time of the delay is then critical or which during the delay becomes critical, as the sole result of any act or neglect to act by the City or someone acting in the City's behalf, or by changes ordered in the Work, unusual delay in transportation, unusually adverse weather conditions not reasonably anticipated, fire or any causes beyond the Contractor's control including delays resulting from the COVID-19 pandemic or any similar event, 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, normal weather conditions, the COVID-19 pandemic or any similar event, or otherwise provided, however, such hindrances and delays could be anticipated by Contractor at the time of execution. 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 Notwithstanding the foregoing or anything in the Contract to the contrary, Contractor acknowledges and agrees that the work, and the performance thereof, may be subject to current and future governmental orders or directives regarding safety protocols related COVID-19 or similar event, and Contractor agrees that all Work shall be performed in accordance with the same, including but not limited to directives regarding social distancing, hygiene and other efforts to slow the spread of COVID-19 or similar event. Failure of Contractor to comply with such order or directive shall be deemed an event of default under this Contract, and City shall not be responsible for any increase in the Contract Sum or the Contract Time related to City's enforcement of such orders or directives, or Contractor's failure to comply with such orders or directives. If Work on the Critical Path is delayed due to COVID-19 or similar event reasons outside the control of the contractor, an equitable adjustment in the Contract Sum and/or the Contract Time shall be made to the Contract as the City may reasonably decide.
- 13.13 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. The Contractor further agrees that it shall abide by the Prairie Village Non Discrimination Code (Section 5-801 et seq) and shall not discriminate against any person in the performance of Work under the present contract because of sexual orientation or gender identity. If the City determines that the Contractor has violated any applicable provision of any local, state or federal law, or has discriminated against any person because of race, religion, color, sex, sexual orientation, gender identity, disability, age, national origin, or ancestry, such violation and/or discrimination shall constitute a breach of contract and the City may cancel, terminate or suspend this agreement in whole or in part. The parties do not intend this provision to subject any party to liability under local, state or federal laws unless it applies.
 - D. 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;

- E. 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
 - F. 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.
 - G. 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

SUPERIOR BOWEN ASPHALT CO. LLC
(typed company name)

By: _____
(signed)

By: _____
(signed)

Eric Mikkelson

(typed name)

Mayor

(typed title)

City of Prairie Village

SUPERIOR BOWEN ASPHALT CO. LLC
(typed company name)

7700 Mission Road

520 PENWAY ST, STE 300
(typed address)

Prairie Village, Kansas 66208

KANSAS CITY, MO 64108
(typed city, state, zip)

913.385.4647

816.918.4445
(typed telephone number)

(date of execution)

(date of execution)

SEAL

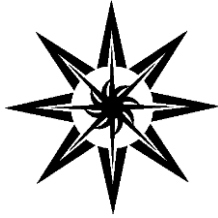
ATTEST:

APPROVED BY:

City Clerk, Adam Geffert

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.)



PUBLIC WORKS DEPARTMENT

Council Meeting Date: June 21, 2022

COU2022-51

CONSIDER APPROVAL OF A CONTRACT WITH HARBOUR CONSTRUCTION FOR THE 2022 STREET REPAIR PROGRAM

RECOMMENDATION

Move to authorize the Mayor to sign the Construction Contract with Harbour Construction for Project P5001 2022 Street Repair Program for \$200,000.

BACKGROUND

On June 8, 2022, the City Clerk opened bids for Project P5001, 2022 Street Repair Program. Four bids were received:

Superior Bowen	\$256,031.50
Harbour Construction	\$213,750.00
Engineers Estimate	\$189,425.00

This program consists of asphalt street repairs at various locations throughout the City. The program allows us to address areas where settlement or deterioration has occurred, and make repairs to those areas.

City staff reviewed the bids for consistency with pricing and believes the bids accurately reflect the market at this time. The budget for this project is \$200,000 and the contract award is set at \$200,000. Locations of repairs will be adjusted (decreased) to utilize the budget.

City staff has reviewed the bids for accuracy, found no errors and recommends award to the lowest responsible bidder, Harbour Construction.

FUNDING SOURCE

Funding is available in the operations budget for project P5001.

ATTACHMENTS

1. Agreement with Harbour Construction.

PREPARED BY

Melissa Prenger, Senior Project Manager

June 14, 2022

CONSTRUCTION AGREEMENT



P5001
2022 STREET REPAIR

BETWEEN

CITY OF PRAIRIE VILLAGE, KS

AND

HARBOUR CONSTRUCTION
LLC

CONSTRUCTION CONTRACT
FOR
P5001 | 2022 STREET REPAIR

BETWEEN
THE CITY OF PRAIRIE VILLAGE, KANSAS
AND
HARBOUR CONSTRUCTION

THIS AGREEMENT, is made and entered into this ____ day of _____, 2022, by and between the City of Prairie Village, Kansas, hereinafter termed the “City”, and HARBOUR CONSTRUCTION LLC hereinafter termed in this agreement, “Contractor”, for the construction and completion of Project 2022 STREET REPAIR, (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 HUNDRED THOUSAND AND 00/100 DOLLARS (\$200,000.00) 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 Facie Violation of City Municipal Code 11-202.
- 7.9 No work shall be undertaken on Saturdays, Sundays and Holidays (Christmas, New Years, Martin Luther King's Birthday, President's Day, Memorial Day, Independence Day, Labor Day and Thanksgiving) without the express written approval of the City Project Manager. If it is necessary to perform proper care, maintenance, or protection of work already completed or of equipment used, or in the case of an emergency verbal permission may be obtained through the Project Manager.
- 7.10 Night work may be established by the Contractor, as a regular procedure, with the written permission of the City; such permission, however, may be revoked at any time by the City if the Contractor fails to maintain adequate equipment for the proper prosecution and control of all operations performed as part of the Work.
- 7.11 The Contractor shall provide 24 hours notice prior to commencing any work to the City Project Manager. The Contractor shall communicate immediately any changes in the Work Schedule to the Project Manager for approval by the City.

8. DELAYS AND EXTENSIONS OF TIME

- 8.1 In executing the Contract, the Contractor expressly covenants and agrees that, in undertaking the completion of the Work within the Contract Time, it has taken into consideration and made allowances for all of the ordinary delays and hindrances incident to such Work, whether growing out of delays in securing materials, workers, weather conditions or otherwise. No charge shall be made by the Contractor for hindrances or delays from any cause during the progress of the Work, or any portion thereof, included in this Contract.
- 8.2 Should the Contractor, however, be delayed in the prosecution and completion of the Work by reason of delayed shipment orders, or by any changes, additions, or omissions therein ordered in writing by the City, or by strikes or the abandonment of the Work by the persons engaged thereon through no fault of the Contractor, or by any act taken by the U.S. Government such as the commandeering of labor or materials, embargoes, etc., which would

affect the fabrication or delivery of materials and/or equipment to the Work; or by neglect, delay or default of any other contractor of the City, or delays caused by court proceedings; the Contractor shall have no claims for damages or additional compensation or costs for any such cause or delay; but it shall in such cases be entitled to such extension of the time specified for the completion of the Work as the City and the Project Manager shall award in writing on account of such delays, provided, however, that claim for such extension of time is made by the Contractor to the City and the Project Manager in writing within one (1) week from the time when any such alleged cause for delay shall occur.

9. ADVERSE WEATHER:

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

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

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

- 9.7 Upon receipt of the Notice to Proceed, and continuing throughout the Contract, the Contractor shall record on its daily construction report, the occurrence of Adverse Weather and resultant impact to the Work Schedule.
- 9.8 The number of actual Adverse Weather delay days shall include days affected by actual Adverse Weather (even if Adverse Weather occurred in the previous month), and shall be

calculated chronologically from the first to the last day of each month, and be recorded as full workdays.

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

10. LIQUIDATED DAMAGES

- 10.1 Contractor agrees that time is of the essence and any term pertaining to Contractor timely performing so as to achieve Total Completion within the Contract Time is a material provision of this Contract. Further, the parties acknowledge that City's damages in the event of delay are difficult to ascertain and consequently agree that, in the event and to the extent that actual date of Total Completion is delayed beyond the Contract Time for the Total Project Work or Project Segments attributable solely or concurrently to (i) an act or omission of Contractor or any of its subcontractors or suppliers, or (ii) in whole or in part, to any other event or condition within the Contractor's reasonable control (and not for reasons solely attributable to City), the Contractor shall be assessed a liquidated damage, and not as a penalty, in the amount set forth in the Special Conditions for each calendar day beyond the applicable Contract Time. Such amount shall be deducted from any amounts due Contractor under this Agreement.

- 10.2 Further, the Contractor agrees that, in the event Contractor does not carry out such Work at such rates of progress as required by the Work Schedule approved by the City, the City may, at its option and without Contractor receiving any additional compensation therefore, require Contractor to increase the number of qualified supervisory personnel and/or workers and the amount of equipment employed in the performance of the Work to such extent as City may deem necessary or desirable. In addition, City, at its option, may supplement Contractor's manpower by entering into contracts with other contractors to perform the Work. All costs that are incurred by City, in this regard, including reasonable attorney's fees, shall be deducted from any sums due Contractor or City may make demand on Contractor for reimbursement of such costs.

11. PAYMENT PROCEDURE

- 11.1 Based upon Applications for Payment submitted to the Project Manager by the Contractor and Certificates for Payment issued by the Project Manager, the City shall make progress payments on account of the contract sum to the Contractor as provided below and elsewhere in the Contract Documents.
- 11.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month or on a mutually agreed date by City and Contractor.
- 11.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the City no later than the time of payment. The Contractor further warrants that upon submittal on the first day of each month of an Application for Payment, all Work for which payments have been received from the City shall be free and clear of liens, claims, security interest or other encumbrances in favor of the Contractor or any other person or entity whatsoever.
- 11.4 Each application for payment must be submitted with Contractor's waiver for period of construction covered by application. Each Application for Payment will be submitted with executed waivers from the subcontractors or sub-contractors and suppliers for the previous period of construction covered by the previous application. The final payment application must be submitted together with or preceded by final or complete waivers from every entity involved with performance of the Work covered by the payment request.
- 11.5 The Contractor will submit waivers on forms, and executed in a manner, acceptable to City.
- 11.6 The Contractor shall promptly pay each Subcontractor out of the amount paid to the Contractor because of such Subcontractor's Work the amount to which such Subcontractor is entitled. In the event the City becomes informed that the Contractor has not paid a Subcontractor as herein provided, the City shall have the right, but not the duty, to issue future checks in payment to the Contractor of amounts otherwise due hereunder naming the Contractor and such Subcontractor as joint payees. Such joint check procedure, if employed by the City, shall be deemed payment to the Contractor but shall create no rights in favor of any person or entity beyond the right of the named payees to payment of the check and shall not be deemed to commit the City to repeat the procedure in the future.
- 11.7 The Project Manager will, upon receipt of a written Application for Payment from the Contractor, review the amount of Work performed during the preceding period and the value thereof at the unit prices contracted. From the amounts so ascertained, there shall be deducted ten percent (10%) to be retained until after final completion of the entire Work to the satisfaction of the City. The Project Manager will submit an estimate each month to the

City for payment to the Contractor, except that no amount less than \$500.00 will be submitted unless the total amount of the Contract remaining unpaid is less than \$500.00.

- 11.8 Deductions will be made from progress payments if the Contract includes a provision for a lump sum or a percentage deduction. Lump sum deductions will be that portion of the stated lump sum computed as the ratio that the amount earned bears to the Contract Price. Percentage deductions will be computed at the stated percentage of the amount earned.
- 11.9 No progress payment, nor any use or occupancy of the Work by the City, shall be interpreted to constitute an acceptance of any Work not in strict accordance with this Contract.
- 11.10 The City may decline to make payment, may withhold funds, and, if necessary, may demand the return of some or all of the amounts previously paid to the Contractor, to protect the City from loss because of:
- Defective Work not remedied by the Contractor;
 - Claims of third parties against the City or the City's property;
 - Failure by the Contractor to pay Subcontractors or others in a prompt and proper fashion;
 - Evidence that the balance of the Work cannot be completed in accordance with the Contract for the unpaid balance of the Contract Price;
 - Evidence that the Work will not be completed in the time required for substantial or final completion;
 - Persistent failure to carry out the Work in accordance with the Contract;
 - Damage to the City or a third party to whom the City is, or may be, liable;
 - Evidence that the Work is not progressing according to agreed upon schedule by both parties.
- 11.11 In the event that the City makes written demand upon the Contractor for amounts previously paid by the City as contemplated in this subparagraph, the Contractor shall promptly comply with such demand and refund such monies to the City.
- 11.12 Neither the observation by the City or any of the City's officials, employees, or agents, nor any order by the City for payment of money, nor any payment for, or acceptance of, the whole or any part of the Work by the City or Project Manager, nor any extension of time, nor any possession taken by the City or its employees, shall operate as a waiver of any provision of this Contract, or of any power herein reserved to the City, or any right to damages herein provided, nor shall any waiver of any breach in this Contract be held to be a waiver of any other or subsequent breach.

12. COMPLETION AND FINAL PAYMENT

- 12.1 Upon Total Completion, when the Contractor is ready for a final inspection of the Total Project Work, it shall notify the City and the Project Manager thereof in writing. Thereupon, the Project Manager will make final inspection of the Work and, if the Work is complete in accordance with this Contract, the Project Manager will promptly issue a final Certificate for Payment certifying to the City that the Work is complete and the Contractor is entitled to the

remainder of the unpaid Contract Price, less any amount withheld pursuant to this Contract. If the Project Manager is unable to issue its final Certificate for Payment and is required to repeat its final inspection of the Work, the Contractor shall bear the cost of such repeat final inspection(s), which cost may be deducted by the City from the Contractor's full payment.

- 12.2 The Contractor shall not be entitled to any payment unless and until it submits to the Project Manager its affidavit that all payrolls, invoices for materials and equipment, and other liabilities connected with the Work for which the City, or the City's property might be responsible, have been fully paid or otherwise satisfied; releases and waivers of lien from all Subcontractors and Suppliers of the Contractor and of any and all other parties required by the City; and consent of Surety, if any, to final payment. If any third party fails or refuses to provide a release of claim or waiver of lien as required by the City, the Contractor shall furnish a bond satisfactory to the City to discharge any such lien or indemnify the City from liability.
- 12.3 The City shall make final payment of all sums due the Contractor within thirty days of the Project Manager's execution of a final Certificate for Payment.
- 12.4 Acceptance of final payment shall constitute a waiver of all claims against the City by the Contractor except for those claims previously made in writing against the City by the Contractor, pending at the time of final payment, and identified in writing by the Contractor as unsettled at the time of its request for final inspection.

13. CLAIMS BY THE CONTRACTOR

- 13.1 All Contractor claims shall be initiated by written notice and claim to the Project Manager. Such written notice and claim must be furnished within seven calendar days after occurrence of the event, or the first appearance of the condition, giving rise to the claim.
- 13.2 The Contractor shall diligently proceed with performance of this Contract whether or not there be such a claim pending and the City shall continue to make payments to the Contractor in accordance with this Contract. The resolution of any claim shall be reflected by a Change Order executed by the City, the Project Manager and the Contractor.
- 13.3 Should concealed and unknown conditions which could not, with reasonable diligence, have been discovered in the performance of the Work (a) below the surface of the ground or (b) in an existing structure differ materially with the conditions indicated by this Contract, or should unknown conditions of an unusual nature differing materially from those ordinarily encountered in the area and generally recognized as inherent in Work of the character provided by this Contract, be encountered, the Contract Price shall be equitably adjusted by the Change Order upon the written notice and claim by either party made within seven (7) days after the first observance of the condition. As a condition precedent to the City having any liability to the Contractor for concealed or unknown conditions, the Contractor must give the City written notice of, and an opportunity to observe, the condition prior to disturbing it. The failure by the Contractor to make the written notice and claim as provided in this Subparagraph shall constitute a waiver by the Contractor of any claim arising out of or relating to such concealed or unknown condition.
- 13.4 If the Contractor wishes to make a claim for an increase in the Contract Price, as a condition precedent to any liability of the City therefore, the Contractor shall give the City written notice of such claim within seven (7) days after the occurrence of the event, or the first appearance of the condition, giving rise to such claim. Such notice shall be given by the Contractor before proceeding to execute any additional or changed Work. The failure by the Contractor to give

such notice and to give such notice prior to executing the Work shall constitute a waiver of any claim for additional compensation.

- 13.5 The City reserves the right to increase or decrease quantities, and alter the details of construction including grade and alignment as the Project Manager may consider necessary or desirable, by approved Change Order. Such modifications shall not invalidate the Contract nor release the surety. Unless such alterations and increases or decreases change the total cost of the Work, based on the originally estimated quantities and the unit prices bid, by more than 25 percent, or change the total cost of any major item, based on the originally estimated quantities and the unit price bid, by more than 25 percent, the Contractor shall perform the work altered, increased or decreased, at a negotiated price or prices. (A major item shall mean any bid item, the total cost of which exceeds 12-1/2 percent of the total Contract Price based on the proposed quantity and the contract unit price).
- 13.6 When the alterations cause an increase or decrease in excess of the 25 percent indicated above, either the Contractor or the Project Manager may request an adjustment of the unit price to be paid for the item or items.
- 13.7 If a mutually agreeable adjustment cannot be obtained, the City reserves the right to terminate the Contract as it applies to the items in question and make such arrangements as may be deemed necessary to complete the Work.
- 13.8 In connection with any claim by the Contractor against the City for compensation in excess of the Contract Price, any liability of the City for the Contractor's costs shall be strictly limited to direct costs incurred by the Contractor and shall not include standby costs, indirect costs or consequential damages of the Contractor. The City shall not be liable to the Contractor for claims of third parties.
- 13.9 If the Contractor is delayed in progressing any task which at the time of the delay is then critical or which during the delay becomes critical, as the sole result of any act or neglect to act by the City or someone acting in the City's behalf, or by changes ordered in the Work, unusual delay in transportation, unusually adverse weather conditions not reasonably anticipated, fire or any causes beyond the Contractor's control including delays resulting from the COVID-19 pandemic or any similar event, 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, normal weather conditions, the COVID-19 pandemic or any similar event, or otherwise provided, however, such hindrances and delays could be anticipated by Contractor at the time of execution. 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 Notwithstanding the foregoing or anything in the Contract to the contrary, Contractor acknowledges and agrees that the work, and the performance thereof, may be subject to current and future governmental orders or directives regarding safety protocols related COVID-19 or similar event, and Contractor agrees that all Work shall be performed in accordance with the same, including but not limited to directives regarding social distancing, hygiene and other efforts to slow the spread of COVID-19 or similar event. Failure of Contractor to comply with such order or directive shall be deemed an event of default under this Contract, and City shall not be responsible for any increase in the Contract Sum or the Contract Time related to City's enforcement of such orders or directives, or Contractor's failure to comply with such orders or directives. If Work on the Critical Path is delayed due to COVID-19 or similar event reasons outside the control of the contractor, an equitable adjustment in the Contract Sum and/or the Contract Time shall be made to the Contract as the City may reasonably decide.
- 13.13 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. The Contractor further agrees that it shall abide by the Prairie Village Non Discrimination Code (Section 5-801 et seq) and shall not discriminate against any person in the performance of Work under the present contract because of sexual orientation or gender identity. If the City determines that the Contractor has violated any applicable provision of any local, state or federal law, or has discriminated against any person because of race, religion, color, sex, sexual orientation, gender identity, disability, age, national origin, or ancestry, such violation and/or discrimination shall constitute a breach of contract and the City may cancel, terminate or suspend this agreement in whole or in part. The parties do not intend this provision to subject any party to liability under local, state or federal laws unless it applies.
 - D. 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;

- E. 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
 - F. 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.
 - G. 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

HARBOUR CONSTRUCTION LLC

(company name)

By: _____

By: _____
(signed)

Eric Mikkelson

(typed name)

Mayor

(typed title)

City of Prairie Village

HARBOUR CONSTRUCTION LLC

(typed company name)

7700 Mission Road

2717 S 88TH STREET

(typed address)

Prairie Village, Kansas 66208

KANSAS CITY, KS 66111

(typed city, state, zip)

913-385-4647

913-441-2555

(typed telephone number)

(date of execution)

(date of execution)

SEAL

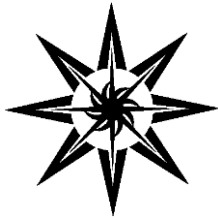
ATTEST:

APPROVED BY:

City Clerk, Adam Geffert

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.)



PUBLIC WORKS DEPARTMENT

Council Meeting Date: June 21, 2022

COU2022-52

CONSIDER CONSTRUCTION CONTRACT FOR THE 2022 RESIDENTIAL STREET REHABILITATION PROGRAM

RECOMMENDATION

Move to authorize the Mayor to sign the construction contract with Superior Bowen for the 2022 Residential Street Rehabilitation Program for \$3,456,781.

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 primarily by the 2022 Residential Street Rehabilitation Program. Funding from other agencies includes Johnson County Stormwater Management Advisory Council for Windsor Road stormwater improvements and Kansas City Missouri for State Line Road improvements from 75th to the south City Limit. A future change order will be brought before the Governing Body to include other outside funding sources such as WaterOne, Evergy and ATT. Those will be presented as soon as bids are approved or agreements are in place.

On May 7, 2018, the Governing Body authorized staff to bring a contract before Council with a selected Contractor. The Contractor, Superior Bowen (previously O'Donnell and Sons) was selected based on an evaluation of services and competitive pricing from 2015-2018. The City Staff is pleased with the response from the Contractor on any issue during construction to date and on their proactive on-street public meetings with residents prior to construction. We also utilize the "one-stop" email for residents which allows them to contact representatives from the Contractor and the City to resolve their issues or answer questions in a timely fashion. Superior Bowen acquired O'Donnell and Sons during the third year of the initial three year period. Superior Bowen has transitioned all documentation to the new name while providing the quality service to the residents and keeping the same project manager for Prairie Village. Given the Contractor's performance and continuing competitive pricing we propose to utilize them again in 2022.

City Staff has reviewed the bid proposal submitted for the 2022 Program and has confirmed the reasonableness of the offered unit pricing based upon established bids from neighboring communities for projects of similar nature. Additionally, staff compared prices from last year and noted an acceptable 7% increase in overall project costs given the recent rate of inflation.

The contract will be awarded for \$3,456,781 which includes funding from other sources as noted below. Change order authorization up to \$200,000 additional dollars from the unallocated street account is part of this approval and will allow for quick approval of possible changes required to complete the project. The Public Works Director will authorize all necessary change orders.

Paving of State Line Road in partnership with Kansas City, Missouri will be included with this project and funds will be transferred to PAVP2022 in the amount of \$305,281.05 per the project memo from April 18, 2022.

PREPARED BY

Melissa Prenger, Senior Project Manager

June 15, 2022

FUNDING SOURCE

PAVP2021	\$ 2,851,499.95
STST0003	\$ 305,281.05
DRAIN20x	\$ 150,000.00
SMAC	\$ 150,000.00
TOTAL	\$ 3,456,781.00

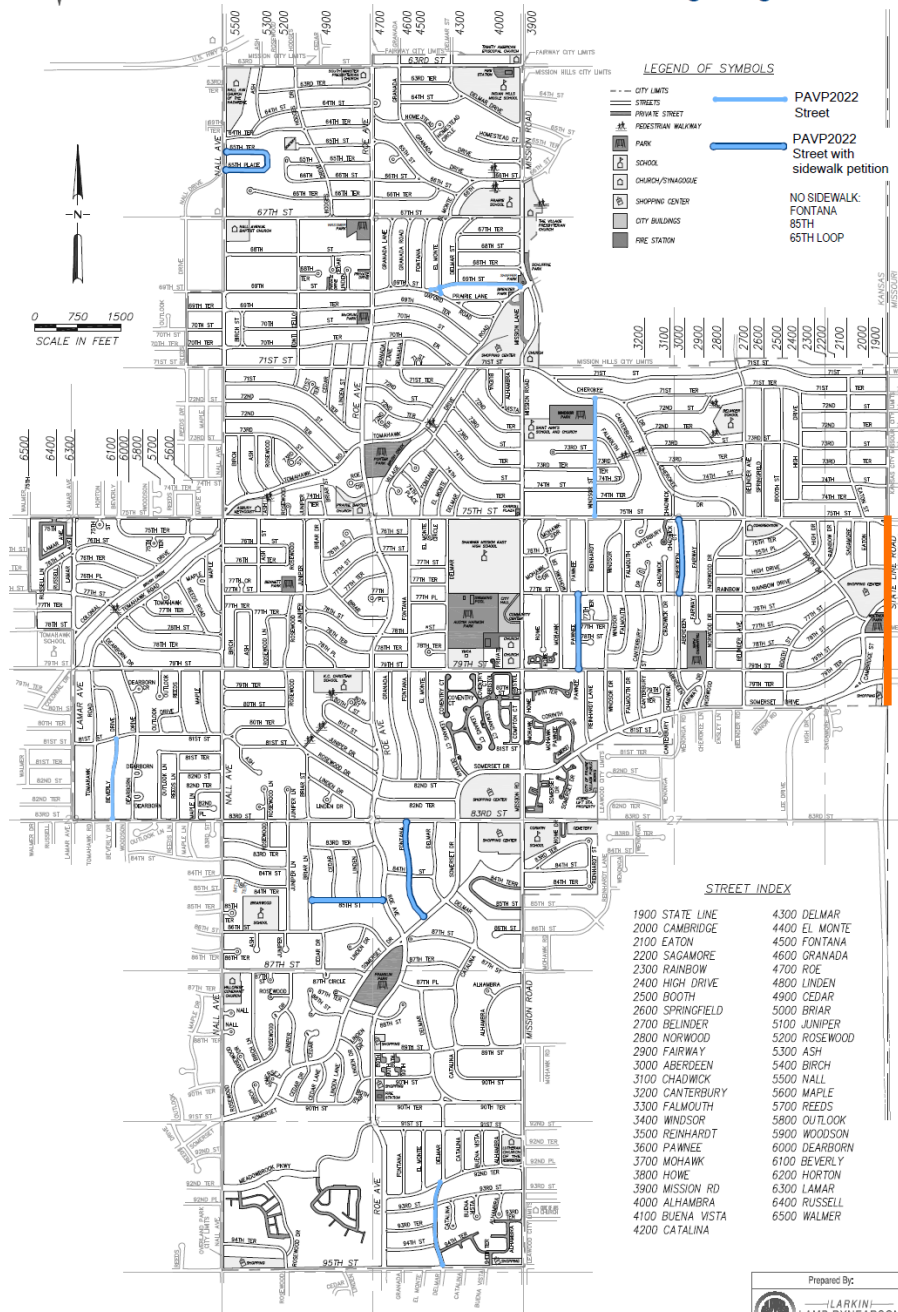
ATTACHMENTS

1. Construction Agreement with Superior Bowen



CITY OF PRAIRIE VILLAGE
Star of Kansas

2022 Residential Paving Program



PREPARED BY

Melissa Prenger, Senior Project Manager

June 15, 2022

CONSTRUCTION AGREEMENT



PAVP2022
2022 RESIDENTIAL STREET PROGRAM

BETWEEN

CITY OF PRAIRIE VILLAGE, KS

AND

SUPERIOR BOWEN ASPHALT CO. LLC

CONSTRUCTION CONTRACT
FOR
PAVP2022 | 2022 RESIDENTIAL STREET PROGRAM

BETWEEN
THE CITY OF PRAIRIE VILLAGE, KANSAS
AND
SUPERIOR BOWEN ASPHALT CO. LLC

THIS AGREEMENT, is made and entered into this ____ day of _____, 2022, by and between the City of Prairie Village, Kansas, hereinafter termed the “**City**”, and Superior Bowen Asphalt Co. LLC, hereinafter termed in this agreement, “**Contractor**”, for the construction and completion of Project 2022 RESIDENTIAL STREET 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 THREE MILLION FOUR HUNDRED FIFTY-SIX THOUSAND SEVEN HUNDRED EIGHTY-ONE AND 00/100 DOLLARS (\$3,456,781.00) for all Work covered by and included in the Contract; payment thereof to be made in cash or its equivalent and in a manner provided in the Contract Documents.

5. WORK SUPERINTENDENT

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

6. PROJECT MANAGER

- 6.1 It is mutually agreed by and between the parties to this Agreement that the Project Manager shall act as the representative of the City and shall observe and inspect, as required, the Work included herein.
- 6.2 In order to prevent delays and disputes and to discourage litigation, it is further agreed by and between the parties to this Agreement that the Project Manager shall, in good faith and to the best of its ability, determine the amount and quantities of the several kinds of work which are to be paid for under this Contract; that the Project Manager shall determine, where applicable, questions in relation to said Work and the construction thereof; that Project Manager shall, where applicable decide questions which may arise relative to the execution of this Contract on the part of said Contractor; that the Project Manager's decisions and findings shall be the conditions precedent to the rights of the parties hereto, to any action on the Contract, and to any rights of the Contractor to receive any money under this Contract provided, however, that should the Project Manager render any decision or give any direction which, in the opinion of either party hereto, is not in accordance with the meaning and intent of this Contract, either party may file with the Project Manager and with the other party, within thirty (30) days a written objection to the decision or direction so rendered and, by such action, may reserve the right to submit the question to determination in the future.
- 6.3 The Project Manager, unless otherwise directed or agreed to by the City in writing, will perform those duties and discharge those responsibilities allocated to the Project Manager as set forth in this Contract. The Project Manager shall be the City's representative from the effective date of this Contract until final payment has been made. The Project Manager shall be authorized to act on behalf of the City only to the extent provided in this Contract. The City and Project Manager may, from time to time, designate Inspectors to perform such functions.
- 6.4 The City and the Contractor shall communicate with each other in the first instance through the Project Manager.
- 6.5 The Project Manager shall be the initial interpreter of the requirements of the Project Manual and the judge of the performance by the Contractor. The Project Manager shall render written graphic interpretations necessary for the proper execution or progress of the Work with reasonable promptness on request of the Contractor.
- 6.6 The Project Manager will review the Contractor's Applications for Payment and will certify to the City for payment to the Contractor those amounts then due the Contractor as provided in this Contract. The Project Manager's recommendation of any payment requested in an Application for Payment will constitute a representation by Project Manager to City, based on Project Manager's on-site observations of the Work in progress as an experienced and qualified design professional and on Project Manager's review of the Application for Payment and the accompanying data and schedules that the Work has progressed to the point indicated; that, to the best of the Project Manager's knowledge, information and belief, the quality of the Work is in accordance with the Project Manual (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Project Manual, to a final determination of quantities and classifications for Unit Price Work if such is called for herein, and to any other qualifications stated in the recommendation); and that Contractor is entitled to payment of the amount recommended. However, by recommending any such payment Project Manager will not thereby be deemed to have represented that exhaustive or continuous on-site inspections have been made to check the quality or the quantity of the Work beyond the responsibilities

specifically assigned to Project Manager in the Project Manual or that there may not be other matters or issues between the parties that might entitle Contractor to be paid additionally by the City or the City to withhold payment to Contractor.

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

- 6.14 The Project Manager will **NOT** be responsible for Contractor's means, methods, techniques, sequences, or procedures or construction, or the safety precautions and programs incident thereto and will not be responsible for Contractor's failure to perform the Work in accordance with the Project Manual. The Project Manager will not be responsible for the acts or omissions of the Contractor or any Subcontractor or any of its or their agents or employees, or any other person at the site or otherwise performing any of the Work except as may otherwise be provided.
- 6.15 Any plan or method of work suggested by the Project Manager, or other representatives of the City, to the Contractor, but not specified or required, if adopted or followed by the Contractor in whole or in part, shall be used at the risk and responsibility of the Contractor, and the Project Manager and the City will assume no responsibility therefore.
- 6.16 It is agreed by the Contractor that the City shall be and is hereby authorized to appoint or employ, either directly or through the Project Manager, such City representatives or observers as the City may deem proper, to observe the materials furnished and the work performed under the Project Manual, and to see that the said materials are furnished, and the said work performed, in accordance with the Project Manual therefore. The Contractor shall furnish all reasonable aid and assistance required by the Project Manager, or by the resident representatives for proper observation and examination of the Work and all parts thereof.
- 6.17 The Contractor shall comply with any interpretation of the Project Manual by the Project Manager, or any resident representative or observer so appointed, when the same are consistent with the obligations of the Project Manual. However, should the Contractor object to any interpretation given by any subordinate Project Manager, resident representative or observer, the Contractor may appeal in writing to the City Director of Public Works for a decision.
- 6.18 Resident representatives, observers, and other properly authorized representatives of the City or Project Manager shall be free at all times to perform their duties, and intimidation or attempted intimidation of any one of them by the Contractor or by any of its employees, shall be sufficient reason, if the City so decides, to annul the Contract.
- 6.19 Such observation shall not relieve the Contractor from any obligation to perform said Work strictly in accordance with the Project Manual.

7. WORK SCHEDULE:

- 7.1 The Work is comprised of one large project (sometimes referred to as "**Total Project Work**") and, in some cases, is partitioned into smaller subprojects referred to in this Agreement as "**Project Segments**." A Contract Time shall be stated in the Contract Documents for both the Total Project Work and, when applicable, the Project Segments.
- 7.2 At the time of execution of this Contract, the Contractor shall furnish the Project Manager with a schedule ("**Work Schedule**") setting forth in detail (in the critical path method) the sequences proposed to be followed, and giving the dates on which it is expected that Project Segments will be started and completed within the Contract Time. The Work Schedule is subject to approval by the City.
- 7.3 Monthly Work Schedule reports shall accompany the Contractor's pay request for Work completed. Where the Contractor is shown to be behind schedule, it shall provide an accompanying written summary, cause, and explanation of planned remedial action.

Payments or portions of payments may be withheld by the City upon failure to maintain scheduled progress of the Work as shown on the approved Work Schedule.

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

8. DELAYS AND EXTENSIONS OF TIME

- 8.1 In executing the Contract, the Contractor expressly covenants and agrees that, in undertaking the completion of the Work within the Contract Time, it has taken into consideration and made allowances for all of the ordinary delays and hindrances incident to such Work, whether growing out of delays in securing materials, workers, weather conditions or otherwise. No charge shall be made by the Contractor for hindrances or delays from any cause during the progress of the Work, or any portion thereof, included in this Contract.
- 8.2 Should the Contractor, however, be delayed in the prosecution and completion of the Work by reason of delayed shipment orders, or by any changes, additions, or omissions therein ordered in writing by the City, or by strikes or the abandonment of the Work by the persons engaged thereon through no fault of the Contractor, or by any act taken by the U.S. Government such as the commandeering of labor or materials, embargoes, etc., which would

affect the fabrication or delivery of materials and/or equipment to the Work; or by neglect, delay or default of any other contractor of the City, or delays caused by court proceedings; the Contractor shall have no claims for damages or additional compensation or costs for any such cause or delay; but it shall in such cases be entitled to such extension of the time specified for the completion of the Work as the City and the Project Manager shall award in writing on account of such delays, provided, however, that claim for such extension of time is made by the Contractor to the City and the Project Manager in writing within one (1) week from the time when any such alleged cause for delay shall occur.

9. ADVERSE WEATHER:

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

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

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

- 9.7 Upon receipt of the Notice to Proceed, and continuing throughout the Contract, the Contractor shall record on its daily construction report, the occurrence of Adverse Weather and resultant impact to the Work Schedule.
- 9.8 The number of actual Adverse Weather delay days shall include days affected by actual Adverse Weather (even if Adverse Weather occurred in the previous month), and shall be

calculated chronologically from the first to the last day of each month, and be recorded as full workdays.

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

10. LIQUIDATED DAMAGES

- 10.1 Contractor agrees that time is of the essence and any term pertaining to Contractor timely performing so as to achieve Total Completion within the Contract Time is a material provision of this Contract. Further, the parties acknowledge that City's damages in the event of delay are difficult to ascertain and consequently agree that, in the event and to the extent that actual date of Total Completion is delayed beyond the Contract Time for the Total Project Work or Project Segments attributable solely or concurrently to (i) an act or omission of Contractor or any of its subcontractors or suppliers, or (ii) in whole or in part, to any other event or condition within the Contractor's reasonable control (and not for reasons solely attributable to City), the Contractor shall be assessed a liquidated damage, and not as a penalty, in the amount set forth in the Special Conditions for each calendar day beyond the applicable Contract Time. Such amount shall be deducted from any amounts due Contractor under this Agreement.

- 10.2 Further, the Contractor agrees that, in the event Contractor does not carry out such Work at such rates of progress as required by the Work Schedule approved by the City, the City may, at its option and without Contractor receiving any additional compensation therefore, require Contractor to increase the number of qualified supervisory personnel and/or workers and the amount of equipment employed in the performance of the Work to such extent as City may deem necessary or desirable. In addition, City, at its option, may supplement Contractor's manpower by entering into contracts with other contractors to perform the Work. All costs that are incurred by City, in this regard, including reasonable attorney's fees, shall be deducted from any sums due Contractor or City may make demand on Contractor for reimbursement of such costs.

11. PAYMENT PROCEDURE

- 11.1 Based upon Applications for Payment submitted to the Project Manager by the Contractor and Certificates for Payment issued by the Project Manager, the City shall make progress payments on account of the contract sum to the Contractor as provided below and elsewhere in the Contract Documents.
- 11.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month or on a mutually agreed date by City and Contractor.
- 11.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the City no later than the time of payment. The Contractor further warrants that upon submittal on the first day of each month of an Application for Payment, all Work for which payments have been received from the City shall be free and clear of liens, claims, security interest or other encumbrances in favor of the Contractor or any other person or entity whatsoever.
- 11.4 Each application for payment must be submitted with Contractor's waiver for period of construction covered by application. Each Application for Payment will be submitted with executed waivers from the subcontractors or sub-contractors and suppliers for the previous period of construction covered by the previous application. The final payment application must be submitted together with or preceded by final or complete waivers from every entity involved with performance of the Work covered by the payment request.
- 11.5 The Contractor will submit waivers on forms, and executed in a manner, acceptable to City.
- 11.6 The Contractor shall promptly pay each Subcontractor out of the amount paid to the Contractor because of such Subcontractor's Work the amount to which such Subcontractor is entitled. In the event the City becomes informed that the Contractor has not paid a Subcontractor as herein provided, the City shall have the right, but not the duty, to issue future checks in payment to the Contractor of amounts otherwise due hereunder naming the Contractor and such Subcontractor as joint payees. Such joint check procedure, if employed by the City, shall be deemed payment to the Contractor but shall create no rights in favor of any person or entity beyond the right of the named payees to payment of the check and shall not be deemed to commit the City to repeat the procedure in the future.
- 11.7 The Project Manager will, upon receipt of a written Application for Payment from the Contractor, review the amount of Work performed during the preceding period and the value thereof at the unit prices contracted. From the amounts so ascertained, there shall be deducted ten percent (10%) to be retained until after final completion of the entire Work to the satisfaction of the City. The Project Manager will submit an estimate each month to the

City for payment to the Contractor, except that no amount less than \$500.00 will be submitted unless the total amount of the Contract remaining unpaid is less than \$500.00.

- 11.8 Deductions will be made from progress payments if the Contract includes a provision for a lump sum or a percentage deduction. Lump sum deductions will be that portion of the stated lump sum computed as the ratio that the amount earned bears to the Contract Price. Percentage deductions will be computed at the stated percentage of the amount earned.
- 11.9 No progress payment, nor any use or occupancy of the Work by the City, shall be interpreted to constitute an acceptance of any Work not in strict accordance with this Contract.
- 11.10 The City may decline to make payment, may withhold funds, and, if necessary, may demand the return of some or all of the amounts previously paid to the Contractor, to protect the City from loss because of:
- Defective Work not remedied by the Contractor;
 - Claims of third parties against the City or the City's property;
 - Failure by the Contractor to pay Subcontractors or others in a prompt and proper fashion;
 - Evidence that the balance of the Work cannot be completed in accordance with the Contract for the unpaid balance of the Contract Price;
 - Evidence that the Work will not be completed in the time required for substantial or final completion;
 - Persistent failure to carry out the Work in accordance with the Contract;
 - Damage to the City or a third party to whom the City is, or may be, liable;
 - Evidence that the Work is not progressing according to agreed upon schedule by both parties.
- 11.11 In the event that the City makes written demand upon the Contractor for amounts previously paid by the City as contemplated in this subparagraph, the Contractor shall promptly comply with such demand and refund such monies to the City.
- 11.12 Neither the observation by the City or any of the City's officials, employees, or agents, nor any order by the City for payment of money, nor any payment for, or acceptance of, the whole or any part of the Work by the City or Project Manager, nor any extension of time, nor any possession taken by the City or its employees, shall operate as a waiver of any provision of this Contract, or of any power herein reserved to the City, or any right to damages herein provided, nor shall any waiver of any breach in this Contract be held to be a waiver of any other or subsequent breach.

12. COMPLETION AND FINAL PAYMENT

- 12.1 Upon Total Completion, when the Contractor is ready for a final inspection of the Total Project Work, it shall notify the City and the Project Manager thereof in writing. Thereupon, the Project Manager will make final inspection of the Work and, if the Work is complete in accordance with this Contract, the Project Manager will promptly issue a final Certificate for Payment certifying to the City that the Work is complete and the Contractor is entitled to the

remainder of the unpaid Contract Price, less any amount withheld pursuant to this Contract. If the Project Manager is unable to issue its final Certificate for Payment and is required to repeat its final inspection of the Work, the Contractor shall bear the cost of such repeat final inspection(s), which cost may be deducted by the City from the Contractor's full payment.

- 12.2 The Contractor shall not be entitled to any payment unless and until it submits to the Project Manager its affidavit that all payrolls, invoices for materials and equipment, and other liabilities connected with the Work for which the City, or the City's property might be responsible, have been fully paid or otherwise satisfied; releases and waivers of lien from all Subcontractors and Suppliers of the Contractor and of any and all other parties required by the City; and consent of Surety, if any, to final payment. If any third party fails or refuses to provide a release of claim or waiver of lien as required by the City, the Contractor shall furnish a bond satisfactory to the City to discharge any such lien or indemnify the City from liability.
- 12.3 The City shall make final payment of all sums due the Contractor within thirty days of the Project Manager's execution of a final Certificate for Payment.
- 12.4 Acceptance of final payment shall constitute a waiver of all claims against the City by the Contractor except for those claims previously made in writing against the City by the Contractor, pending at the time of final payment, and identified in writing by the Contractor as unsettled at the time of its request for final inspection.

13. CLAIMS BY THE CONTRACTOR

- 13.1 All Contractor claims shall be initiated by written notice and claim to the Project Manager. Such written notice and claim must be furnished within seven calendar days after occurrence of the event, or the first appearance of the condition, giving rise to the claim.
- 13.2 The Contractor shall diligently proceed with performance of this Contract whether or not there be such a claim pending and the City shall continue to make payments to the Contractor in accordance with this Contract. The resolution of any claim shall be reflected by a Change Order executed by the City, the Project Manager and the Contractor.
- 13.3 Should concealed and unknown conditions which could not, with reasonable diligence, have been discovered in the performance of the Work (a) below the surface of the ground or (b) in an existing structure differ materially with the conditions indicated by this Contract, or should unknown conditions of an unusual nature differing materially from those ordinarily encountered in the area and generally recognized as inherent in Work of the character provided by this Contract, be encountered, the Contract Price shall be equitably adjusted by the Change Order upon the written notice and claim by either party made within seven (7) days after the first observance of the condition. As a condition precedent to the City having any liability to the Contractor for concealed or unknown conditions, the Contractor must give the City written notice of, and an opportunity to observe, the condition prior to disturbing it. The failure by the Contractor to make the written notice and claim as provided in this Subparagraph shall constitute a waiver by the Contractor of any claim arising out of or relating to such concealed or unknown condition.
- 13.4 If the Contractor wishes to make a claim for an increase in the Contract Price, as a condition precedent to any liability of the City therefore, the Contractor shall give the City written notice of such claim within seven (7) days after the occurrence of the event, or the first appearance of the condition, giving rise to such claim. Such notice shall be given by the Contractor before proceeding to execute any additional or changed Work. The failure by the Contractor to give

such notice and to give such notice prior to executing the Work shall constitute a waiver of any claim for additional compensation.

- 13.5 The City reserves the right to increase or decrease quantities, and alter the details of construction including grade and alignment as the Project Manager may consider necessary or desirable, by approved Change Order. Such modifications shall not invalidate the Contract nor release the surety. Unless such alterations and increases or decreases change the total cost of the Work, based on the originally estimated quantities and the unit prices bid, by more than 25 percent, or change the total cost of any major item, based on the originally estimated quantities and the unit price bid, by more than 25 percent, the Contractor shall perform the work altered, increased or decreased, at a negotiated price or prices. (A major item shall mean any bid item, the total cost of which exceeds 12-1/2 percent of the total Contract Price based on the proposed quantity and the contract unit price).
- 13.6 When the alterations cause an increase or decrease in excess of the 25 percent indicated above, either the Contractor or the Project Manager may request an adjustment of the unit price to be paid for the item or items.
- 13.7 If a mutually agreeable adjustment cannot be obtained, the City reserves the right to terminate the Contract as it applies to the items in question and make such arrangements as may be deemed necessary to complete the Work.
- 13.8 In connection with any claim by the Contractor against the City for compensation in excess of the Contract Price, any liability of the City for the Contractor's costs shall be strictly limited to direct costs incurred by the Contractor and shall not include standby costs, indirect costs or consequential damages of the Contractor. The City shall not be liable to the Contractor for claims of third parties.
- 13.9 If the Contractor is delayed in progressing any task which at the time of the delay is then critical or which during the delay becomes critical, as the sole result of any act or neglect to act by the City or someone acting in the City's behalf, or by changes ordered in the Work, unusual delay in transportation, unusually adverse weather conditions not reasonably anticipated, fire or any causes beyond the Contractor's control including delays resulting from the COVID-19 pandemic or any similar event, 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, normal weather conditions, the COVID-19 pandemic or any similar event, or otherwise provided, however, such hindrances and delays could be anticipated by Contractor at the time of execution. 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 Notwithstanding the foregoing or anything in the Contract to the contrary, Contractor acknowledges and agrees that the work, and the performance thereof, may be subject to current and future governmental orders or directives regarding safety protocols related COVID-19 or similar event, and Contractor agrees that all Work shall be performed in accordance with the same, including but not limited to directives regarding social distancing, hygiene and other efforts to slow the spread of COVID-19 or similar event. Failure of Contractor to comply with such order or directive shall be deemed an event of default under this Contract, and City shall not be responsible for any increase in the Contract Sum or the Contract Time related to City's enforcement of such orders or directives, or Contractor's failure to comply with such orders or directives. If Work on the Critical Path is delayed due to COVID-19 or similar event reasons outside the control of the contractor, an equitable adjustment in the Contract Sum and/or the Contract Time shall be made to the Contract as the City may reasonably decide.
- 13.13 In addition to the Project Manual particular to Mobilization found elsewhere in this document, additional mobilization shall not be compensable for work outside of the designated areas for work deemed essential by the City. A quantity of work equal to as much as 10% of the total Contract may be required to be performed beyond the boundaries of the designated work areas.

14. CHANGES IN THE WORK

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

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

14.5 If unit prices are provided in the Contract, and if the quantities contemplated are so changed in a proposed Change Order that the application of such unit prices to the quantities of Work proposed would cause substantial inequity to the City or to the Contractor, the applicable unit prices shall be equitably adjusted.

14.6 The execution of a Change Order by the Contractor shall constitute conclusive evidence of the Contractor's agreement to the ordered changes in the Work, this Contract as thus amended, the Contract Price and the Contract Time. The Contractor, by executing the Change Order, waives and forever releases any claim including impact against the City for additional time or compensation for matters relating to or arising out of or resulting from the Work included within or affected by the executed Change Order.

15. INSURANCE AND BONDS.

15.1 The Contractor shall secure and maintain, throughout the duration of the agreement, insurance (on an occurrence basis unless otherwise agreed to) of such types and in at least such amounts as required herein. Contractor shall provide certificates of insurance and renewals thereof on forms acceptable to the City. The City shall be notified by receipt of written notice from the insurer or the Contractor at least thirty (30) days prior to material modification or cancellation of any policy listed on the Certificate.

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

15.3 Minimum Requirements Commercial General Liability Policy Limits -

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

Policy MUST include the following conditions:

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

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

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

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

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

Limits -

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

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

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

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

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

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

16. INDEMNITY

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

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

- 16.2 For purposes of this Contract, and without in any way limiting indemnification obligations that may be set forth elsewhere in the Contract, the Contractor hereby agrees to indemnify, defend and hold harmless the City from any and all Loss where Loss is caused or incurred or alleged to be caused or incurred in whole or in part as a result of the negligence or other actionable fault of the Contractor, his/her employees, agents, Subcontractors and suppliers.
- 16.3 It is agreed as a specific element of consideration of this Contract that this indemnity shall apply notwithstanding the joint, concurring or contributory or comparative fault or negligence of the City or any third party and, further, notwithstanding any theory of law including, but not limited to, a characterization of the City's or any third party's joint, concurring or contributory or comparative fault or negligence as either passive or active in nature.
- 16.4 Nothing in this section shall be deemed to impose liability on the Contractor to indemnify the City for Loss when the negligence or other actionable fault the City is the sole cause of Loss.
- 16.5 With respect to the City's rights as set forth herein, the Contractor expressly waives all statutory defenses, including, but not limited to, those under workers compensation, contribution, comparative fault or similar statutes to the extent said defenses are inconsistent with or would defeat the purpose of this section.
- 17. SUCCESSORS AND ASSIGNS**
- 17.1 The City and Contractor bind themselves, their successors, assigns and legal representatives to the other party hereto and to successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in this Contract.
- 17.2 The Contractor shall not assign or sublet the work, or any part thereof, without the previous written consent of the City, nor shall it assign, by power of attorney or otherwise, any of the money payable under this Contract unless by and with the like written consent of the City. In case the Contractor assigns all, or any part of any moneys due or to become due under this Contract, the instrument of assignment shall contain a clause substantially to the affect that it is agreed that the right of the assignee in and to any moneys due or to become due to the Contractor shall be subject to all prior liens of all persons, firms and corporations for services rendered or materials supplied for the performance of the Work called for in this Contract.
- 17.3 Should any Subcontractor fail to perform in a satisfactory manner, the work undertaken, its subcontract shall be immediately terminated by the Contractor upon notice from the City. Performing in an unsatisfactory manner is defined as consistently having more than 10% of work unacceptable. The Contractor shall be as fully responsible to the City for the acts and omissions of the subcontractors, and of persons either directly or indirectly employed by them, as Contractor is for the acts and omissions of persons directly employed. Nothing contained in this Contract shall create any contractual relations between any Subcontractor and the City, nor shall anything contained in the Contract Documents create any obligation on the part of the City to pay or to see to the payment of any sums due any Subcontractor.
- 17.4 The Contractor shall not award subcontracts which total more than forty-five (45%) of the Contract Price and shall perform within its own organization work amounting to not less than fifty-five percent (55%) of the total Contract Price. Approval by the City of any Subcontractor shall not constitute a waiver of any right of the City to reject Defective Work, material or equipment not in compliance with the requirements of the Contract Documents. The Contractor shall not make any substitution for any Subcontractor accepted by the City unless the City so agrees in writing.

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

18. NON-DISCRIMINATION LAWS

- 18.1 The Contractor agrees that:
- A. The Contractor shall observe the provisions of the Kansas Act Against Discrimination (K.S.A. 44-1001 et seq.) and shall not discriminate against any person in the performance of Work under the present contract because of race, religion, color, sex, disability, national origin, ancestry or age;
 - B. In all solicitations or advertisements for employees, the Contractor shall include the phrase, "equal opportunity employer," or a similar phrase to be approved by the Kansas Human Rights Commission (Commission);
 - C. The Contractor further agrees that it shall abide by the Prairie Village Non Discrimination Code (Section 5-801 et seq) and shall not discriminate against any person in the performance of Work under the present contract because of sexual orientation or gender identity. If the City determines that the Contractor has violated any applicable provision of any local, state or federal law, or has discriminated against any person because of race, religion, color, sex, sexual orientation, gender identity, disability, age, national origin, or ancestry, such violation and/or discrimination shall constitute a breach of contract and the City may cancel, terminate or suspend this agreement in whole or in part. The parties do not intend this provision to subject any party to liability under local, state or federal laws unless it applies.
 - D. 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;

- E. 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
 - F. 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.
 - G. 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

Superior Bowen Asphalt Co. LLC

(typed company name)

By: _____
(signed)

By: _____
(signed)

Eric Mikkelson

(typed name)

Mayor

(typed title)

City of Prairie Village

Superior Bowen Asphalt Co. LLC

(typed company name)

7700 Mission Road

520 Penway, Ste 300

(typed address)

Prairie Village, Kansas 66208

Kansas City, MO 64108

(typed city, state, zip)

816-921-8200

(typed telephone number)

(date of execution)

(date of execution)

SEAL

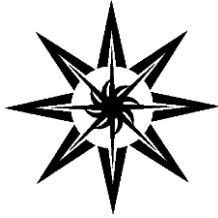
ATTEST:

APPROVED BY:

City Clerk, Adam Geffert

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.)



PUBLIC WORKS DEPARTMENT

Council Meeting Date: June 21, 2022

COU2022-53

CONSIDER APPROVAL OF A CONTRACT WITH McCONNELL AND ASSOCIATES FOR THE TALIAFERRO PARK TENNIS COURT RESURFACING

RECOMMENDATION

Move to authorize the Mayor to sign the Construction Contract with McConnell and Associates for Project BG450003 for \$19,948.40.

BACKGROUND

On April 20, 2022, the City received quotes for Project BG450003 Taliaferro Park Tennis Court Resurfacing

Quotes were sent to three vendors and the City received one quote:

McConnell and Associates	\$19,948.40
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The budget for this project is \$20,000 and the quote received is under budget.

City staff has reviewed the bids for accuracy, found no errors and recommends award to the lowest responsible bidder, McConnell and Associates.

FUNDING SOURCE

There is funding in the CIP project BG450003.

ATTACHMENTS

1. Agreement with McConnell and Associates

PREPARED BY

Melissa Prenger, Senior Project Manager

June 14, 2022

CONSTRUCTION AGREEMENT



**BG450003
TALIAFERRO PARK
Tennis Court Resurfacing**

BETWEEN

CITY OF PRAIRIE VILLAGE, KS

AND

McCONNELL & ASSOCIATES

CONSTRUCTION CONTRACT
FOR
BG450003 TALIAFERRO PARK Tennis Court Resurfacing

BETWEEN
THE CITY OF PRAIRIE VILLAGE, KANSAS
AND
McCONNELL & ASSOCIATES CORP.

THIS AGREEMENT, is made and entered into this ____ day of _____, 2022, by and between the City of Prairie Village, Kansas, hereinafter termed the “City”, and McConnell & Associates Corp., hereinafter termed in this agreement, “Contractor”, for the construction and completion of Project TALIAFERRO PARK Tennis Court Resurfacing, (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 **NINETEEN THOUSAND NINE HUNDRED FIFTY EIGHT AND 40/100 DOLLARS (\$ 19,958.40)** all Work covered by and included in the Contract; payment thereof to be made in cash or its equivalent and in a manner provided in the Contract Documents.

5. WORK SUPERINTENDENT

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

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

6. PROJECT MANAGER

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

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

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

Contract and will issue a final Certificate for Payment to the City upon compliance with the requirements of this Contract.

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

7. WORK SCHEDULE:

- 7.1 The Work is comprised of one large project (sometimes referred to as "**Total Project Work**") and, in some cases, is partitioned into smaller subprojects referred to in this Agreement as "**Project Segments**." A Contract Time shall be stated in the Contract Documents for both the Total Project Work and, when applicable, the Project Segments.
- 7.2 At the time of execution of this Contract, the Contractor shall furnish the Project Manager with a schedule ("**Work Schedule**") setting forth in detail (in the critical path method) the

sequences proposed to be followed, and giving the dates on which it is expected that Project Segments will be started and completed within the Contract Time. The Work Schedule is subject to approval by the City.

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

8. DELAYS AND EXTENSIONS OF TIME

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

charge shall be made by the Contractor for hindrances or delays from any cause during the progress of the Work, or any portion thereof, included in this Contract.

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

9. ADVERSE WEATHER:

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

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

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
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- 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 including delays resulting from the COVID-19 pandemic or any similar event, 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, normal weather conditions, the COVID-19 pandemic or any similar event, or otherwise provided, however, such hindrances and delays could be anticipated by Contractor at the time of execution. 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 Notwithstanding the foregoing or anything in the Contract to the contrary, Contractor acknowledges and agrees that the work, and the performance thereof, may be subject to current and future governmental orders or directives regarding safety protocols related COVID-19 or similar event, and Contractor agrees that all Work shall be performed in accordance with the same, including but not limited to directives regarding social distancing, hygiene and other efforts to slow the spread of COVID-19 or similar event. Failure of Contractor to comply with such order or directive shall be deemed an event of default under this Contract, and City shall not be responsible for any increase in the Contract Sum or the Contract Time related to City's enforcement of such orders or directives, or Contractor's failure to comply with such orders or directives. If Work on the Critical Path is delayed due to COVID-19 or similar event reasons outside the control of the contractor, an equitable adjustment in the Contract Sum and/or the Contract Time shall be made to the Contract as the City may reasonably decide.
- 13.13 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. The Contractor further agrees that it shall abide by the Prairie Village Non Discrimination Code (Section 5-801 et seq) and shall not discriminate against any person in the performance of Work under the present contract because of sexual orientation or gender identity. If the City determines that the Contractor has violated any applicable provision of any local, state or federal law, or has discriminated against any person because of race, religion, color, sex, sexual orientation, gender identity, disability, age, national origin, or ancestry, such violation and/or discrimination shall constitute a breach of contract and the City may cancel, terminate or suspend this agreement in whole or in part. The parties do not intend this provision to subject any party to liability under local, state or federal laws unless it applies.
 - D. 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;
 - E. 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
 - F. 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.
 - G. 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

McCONNELL & ASSOCIATES CORP

By: _____
(signed)

By: _____
(signed)

Eric Mikkelson

(typed name)

Mayor

(typed title)

City of Prairie Village

McConnell & Associates Corp.

(typed company name)

7700 Mission Road

1225 Iron Street

(typed address)

Prairie Village, Kansas 66208

North Kansas City, MO 64116

(typed city, state, zip)

913-385-4647

816-842-6066

(typed telephone number)

(date of execution)

(date of execution)

SEAL

ATTEST:

APPROVED BY:

City Clerk, Adam Geffert

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.)



Preliminary 2023 Budget Presentation

SUGGESTED MOTION

Motion to approve the preliminary budget recommended by the Finance Committee and send it to the City Council for final approval.

BACKGROUND

Attached please find the Preliminary 2023 Budget Presentation. The 2023 budget has been reviewed by the Finance Committee on May 10 and May 25, 2022, and was approved by the Finance Committee at the May 25 meeting. The preliminary budget includes the decision packages approved at the May 25 meeting, including reducing the mill levy by one mill; addition of the sustainability program management; annual mattress recycling; conducting a citizen satisfaction survey; funding the Juneteenth celebration; contributing to a public arts fund; the addition of one Information Systems position; funding for community development plan review; and the addition of a second mental health co-responder.

The Preliminary 2023 Budget Presentation includes:

- General Fund
- Mill Levy
- Personnel Services
- Contract Services
- Capital Outlay
- Other Funds including the Equipment Reserve, Solid Waste, Transient Guest Tax, and the American Recovery Act (COVID relief) funds
- Decision Packages

The 2023 budget calendar including next steps in the process can be found at <https://www.pvkansas.com/departments/finance/budget-process>.

ATTACHMENTS:

- 2023 Budget Presentation
- Preliminary 2023 Budget Document

Prepared by:
Nickie Lee
Finance Director
Date: June 15, 2022



City of Prairie Village 2023 Budget

- City Council Meeting
- June 21, 2022



Budget Approach

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- Budget Goals and Objectives (Approved March 2022)
- Insurance Cost Assumptions (Approved April 2022)
- Revenue Estimates (Reviewed April 2022)
- Internal Budget Review (April 2022)
- City Council reviewed preliminary CIP (May 2, 2022)
- Finance Committee presented with the initial budget (May 10, 2022)
- Finance Committee voted on Decision Packages (May 25, 2022)
- Finance Committee voted to advance the budget (May 25, 2022)



General Fund Budget Highlights

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- The “all in number” for expenditures in the 2023 General Fund represents an 8.5% increase in comparison to the 2022 Budget - \$27,286,443 versus \$ 25,138,229.
- The proposed \$27,286,443 budget includes:
 - Operational budget requests in all expenditure categories
 - Personnel contingency for outstanding compensation study (\$260k)
 - Seed funds for future Harmon Park capital project (\$230k in General Fund dollars plus funds from TGT and Economic Development Funds)
 - Adoption of Decision Packages, including a proposed reduction of 1 mill
- The General Fund maintains a 25% target fund balance.



City Expenditure Categories

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- General Fund operations budget (without transfers):
 - Personnel Services 12% increase, represents 48% of total expenditures
 - Contract Services 5% increase, represents 20% of total expenditures
 - Commodities 12% increase, represents 3% of total expenditures
 - Capital Outlay 15% increase, represents 1% of total expenditures
 - Contingency 0.0% increase, represents 2% of total expenditures
- General Fund Contingency: \$500,000 (same as 2022)



City Revenue Categories

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General Fund					
	2020 Actual	2021 Actual	2022 Budget	2022 Estimate	2023 Budget
Fund Balance 1/1	7,480,651	7,608,083	7,591,246	9,565,634	9,111,698
Property Taxes	8,179,161	8,667,704	9,110,562	9,110,562	9,710,829
Sales Taxes	5,446,984	6,098,163	5,570,000	5,570,000	5,675,000
Use Tax	1,811,879	2,458,591	1,554,004	1,554,004	1,940,000
Motor Vehicle Tax	746,852	798,074	796,411	796,411	861,725
Liquor Tax	109,748	140,134	105,052	169,092	157,091
Franchise Fees	1,842,970	1,871,269	1,905,795	1,906,603	1,871,238
Licenses & Permits	728,297	835,741	854,383	830,403	963,883
Charges for Services	1,722,975	1,788,547	1,851,162	1,849,587	1,870,708
Fines & Fees	694,784	829,111	868,762	623,056	758,700
Recreational Fees	29,745	414,560	424,650	401,650	400,350
Interest on Investments	139,674	17,301	134,608	120,111	113,622
Miscellaneous	106,270	162,700	130,626	119,005	146,479
Transfer from Stormwater	565,000	600,000	600,000	600,000	600,000
Total Revenue	\$22,124,338	\$24,681,896	\$23,906,015	\$23,650,482	\$25,069,624



City Expenditure Categories

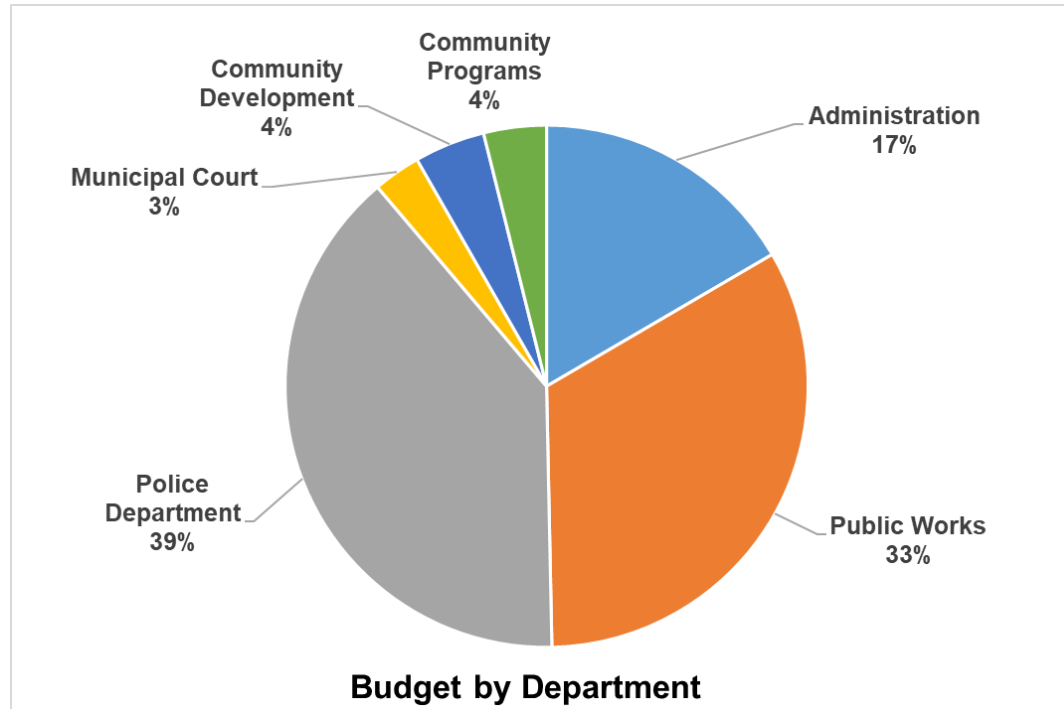
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General Fund				
	2020 Actual	2021 Actual	2022 Budget	2023 Budget
Expenditures:				
Personnel Services	10,740,208	10,922,259	11,911,253	13,301,167
Contract Services	3,940,077	4,329,936	5,284,151	5,531,597
Commodities	644,964	705,568	840,850	939,500
Capital Outlay	243,643	339,454	275,450	315,950
Contingency			500,000	500,000
Total Expenditures	15,568,892	16,297,217	18,811,704	20,588,214
Transfers to Other Funds:				
Transfer to Capital Infrastructure Fund	4,653,109	4,523,800	5,307,000	5,284,229
Transfer to Bond and Interest Fund	1,301,229	1,319,534	1,050,725	1,048,000
Transfer to Risk Management Fund	35,000	-	-	-
Transfer to Economic Dev. Fund	65,000	136,000	136,000	266,000
Transfer to Equipment Reserve Fund	455,385	530,000	332,800	600,000
Total Transfers	6,509,723	6,509,334	6,826,525	7,198,229
Total Uses	22,078,615	22,806,551	25,638,229	27,786,443



Department Budgets

7





Department Budgets

8

General Fund: Summary by Department				
Department	2020 Actual	2021 Actual	2022 Budget	2023 Budget
Administration	1,613,554	1,822,851	2,114,455	3,329,141
Public Works	5,368,596	5,659,461	6,305,508	6,650,062
Police Department	7,203,268	7,033,604	7,778,986	7,860,570
Municipal Court	456,013	500,552	575,977	589,720
Community Development	640,084	678,635	799,597	878,572
Community Programs	287,377	602,113	737,181	780,149
Total	15,568,892	16,297,217	18,311,704	20,088,214



Preliminary 2023 Budget at a Glance

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Prairie Village 2023 Budget at a Glance

Property Tax Mill Levy Rate	18.322
<i>(assuming reduction of 1 mill)</i>	
Total Assessed Valuation	\$493,052,948
Stormwater Utility Fee per Square Foot of Impervious Area	\$0.04
Total Housing Units	10,417
Population (2021 Estimate)	22,957
Total General Fund Budget	\$27,786,443
Annual City Tax Liability - Avg.	\$899
Monthly City Tax Liability - Avg.	\$75
Outstanding GO Debt as of 12/31/2022	\$10,170,000



Average Prairie Village Home

10

Year	Mill Levy Rate	Average Home Appraised Value	Prairie Village Annual Cost	Prairie Village Monthly Cost
2016 for 2017	19.471	\$274,082	\$614	\$51.00
2017 for 2018	19.311	\$303,463	\$674	\$56.00
2018 for 2019	19.314	\$334,382	\$743	\$62.00
2019 for 2020	19.320	\$359,987	\$800	\$67.00
2020 for 2021	19.321	\$377,986	\$840	\$70.00
2021 for 2022	19.322	\$380,419	\$845	\$70.42
2022 for 2023	18.322	\$426,865	\$899	\$74.92



2021 Mill Levy Rates

11

Johnson County Cities 2021 Mill Levies On each \$1,000 Tangible Assessed Valuation

City	Mill Levy					Total
	City	Fire	Bond & Interest	Stormwater	Other	
Bonner Springs	29.397		9.017		4.477	42.891
Roeland Park	26.920	10.775	1.627			39.322
Westwood Hills	22.602	10.775	4.000			37.377
Spring Hill C/F	21.364	13.076	1.571		0.277	36.288
Mission Hills	21.962	10.775	0.801			33.538
Westwood	20.700	10.775	0.497			31.972
Fairway	18.636	10.775	1.292			30.703
Prairie Village	19.322	10.775	-			30.097
Edgerton	29.913					29.913
Lenexa	23.073		6.029			29.102
Merriam	26.623		1.042			27.665
Mission	16.369	10.775				27.144
Shawnee	19.680	1.284	5.040			26.004
Olathe C/F	9.945	1.733	9.731		3.049	24.458
Leawood	19.209		4.867			24.076
De Soto	13.202	5.200	4.000			22.402
Gardner	14.048		5.806			19.854
Overland Park	13.615			0.963		14.578

S: 2021 Mill Levies on Each \$1,000 Tangible Assessed Valuation - Johnson County, Kansas worksheet
found on the Johnson County Dept of Records & Tax Administration website.



Mill Levy (cont)

12

Johnson County Cities 2021 Mill Levies (Without Fire District) On each \$1,000 Tangible Assessed Valuation

City	Mill Levy					Total
	City	Fire	Bond & Interest	Stormwater	Other	
Bonner Springs	29.397		9.017		4.477	42.891
Spring Hill C/F	21.364	13.076	1.571		0.277	36.288
Edgerton	29.913					29.913
Lenexa	23.073		6.029			29.102
Roeland Park	26.920	-	1.627			28.547
Merriam	26.623		1.042			27.665
Westwood Hills	22.602	-	4.000			26.602
Shawnee	19.680	1.284	5.040			26.004
Olathe C/F	9.945	1.733	9.731		3.049	24.458
Leawood	19.209		4.867			24.076
Mission Hills	21.962	-	0.801			22.763
De Soto	13.202	5.200	4.000			22.402
Westwood	20.700	-	0.497			21.197
Fairway	18.636	-	1.292			19.928
Gardner	14.048		5.806			19.854
Prairie Village	19.322	-	-			19.322
Mission	16.369	-				16.369
Overland Park	13.615			0.963		14.578

S: 2021 Mill Levies on Each \$1,000 Tangible Assessed Valuation - Johnson County, Kansas worksheet found on the Johnson County Dept of Records & Tax Administration website.

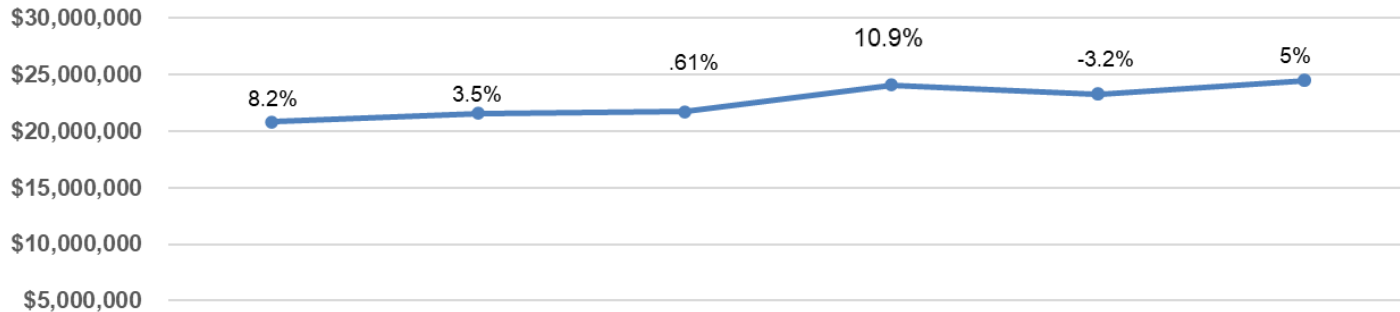


Revenue Trends 2018 - 2023

13

Property Tax	41%	Franchise Fees	8%	Recreation Fees	2%
Sales Tax	23%	License and Permits	4%	Charges for Services	8%
Use Tax	8%	Fines and Fees	3%	Other	3%

Total General Fund Revenue 2018 - 2023 Projected



	2018	2019	2020	2021	2022 Budget	2023 Budget
Total	\$20,853,276	\$21,585,014	\$21,716,171	\$24,081,897	\$23,306,015	\$24,469,624



Expenditure Trends 2020 - 2023

14

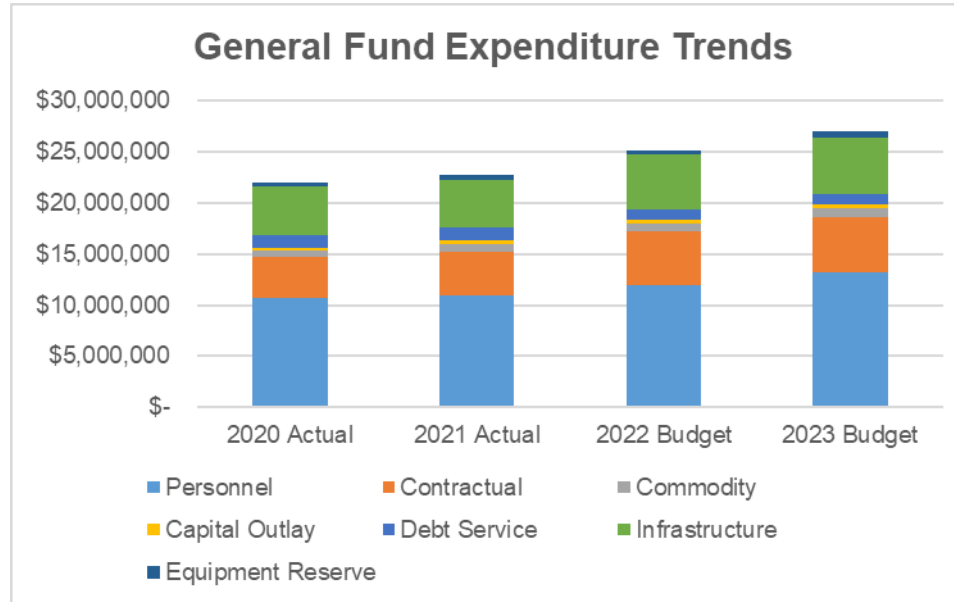
Personnel Services
Contract Services
Commodities

49%
20%
3%

Capital Outlay
Debt Service
Infrastructure

1%
4%
21%

Equipment Reserve 2%





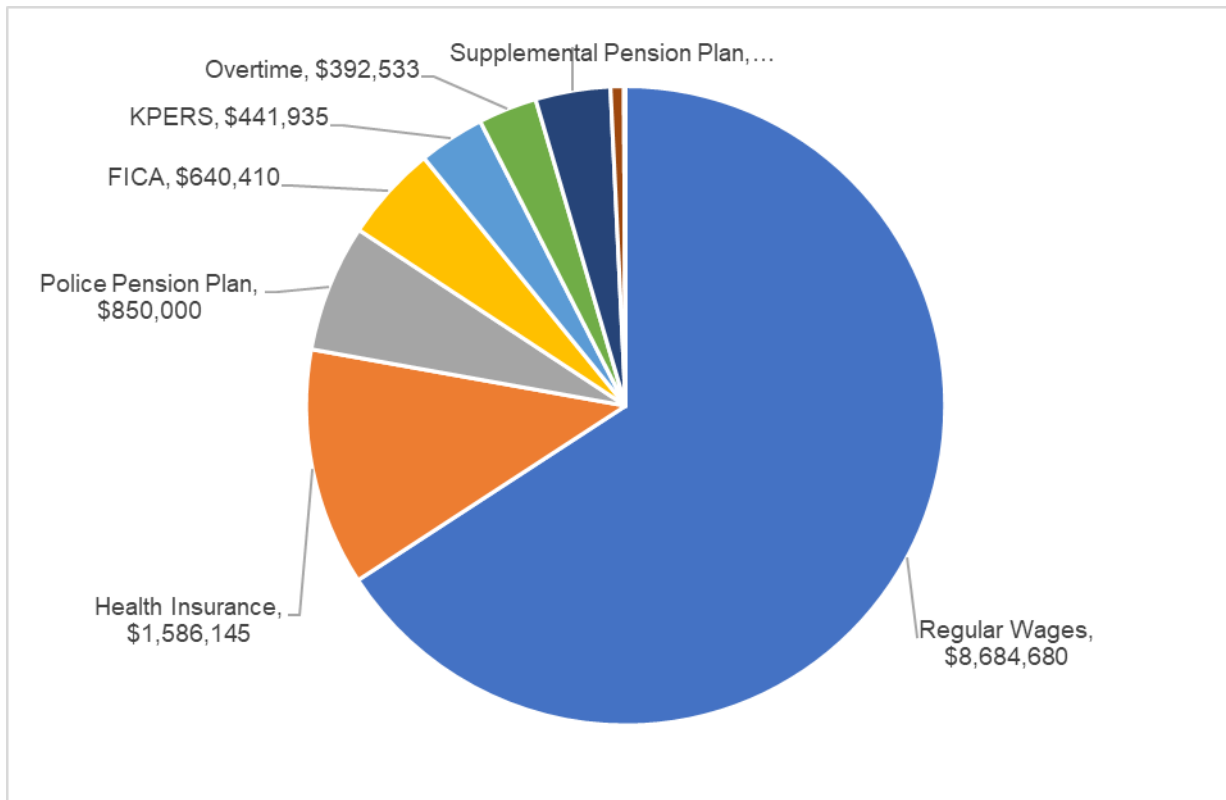
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PERSONNEL SERVICES



Personnel Services (all funds)

16





Personnel Services (all funds)

17

Personnel Services, All Funds				
	2020 Actual	2021 Actual	2022 Budget	2023 Budget
Regular Wages	\$7,241,875	\$7,117,021	\$8,011,486	\$8,684,680
Health Insurance	\$1,154,162	\$1,169,762	\$1,410,739	\$1,586,145
Police Pension Plan	\$850,000	\$850,000	\$850,000	\$850,000
FICA	\$553,055	\$568,934	\$604,357	\$640,410
KPERS	\$405,567	\$394,895	\$437,745	\$441,935
Overtime	\$251,785	\$305,183	\$317,162	\$392,533
Supplemental Pension Plan	\$249,405	\$254,891	\$263,351	\$500,573
Dental/Vision/Life/LTD	\$77,936	\$80,029	\$89,406	\$88,634
State Unemployment Insurance	\$7,465	\$7,424	\$7,900	\$8,368
Employee Assistance Program	\$4,116	\$2,893	\$3,076	\$2,068
Identity Theft Insurance	\$1,177	\$1,245	\$1,295	\$960
Total	\$10,796,543	\$10,752,277	\$11,996,516	\$13,196,305



Personnel Services

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- ❑ The City is currently conducting a compensation and benefits study with McGrath Consulting - final study expected in Summer 2022
- ❑ Staff built a 5% merit pool into the recommended 2023 budget plus a 3% contingency pool to make additional adjustments if needed based on recommendations from the study
- ❑ Health Insurance budget assumes a 12.5% increase – there is a rate cap of 12.5% built into the City's agreement with Cigna for 2023
- ❑ \$500,000 in ARPA funds have been set aside for any recommended immediate adjustments



Personnel Services

19

FTE by Department	
Administration	14
Public Works	31
Police	59.5
Municipal Court	5.25
Community Development	7
Community Programs	1.5
Governing Body (<i>Unpaid</i>)	13
Total	131.25

Does not include seasonal employees. The seasonal employee budget included in Community Programs is \$404,000.



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CONTRACT SERVICES



Contract Services

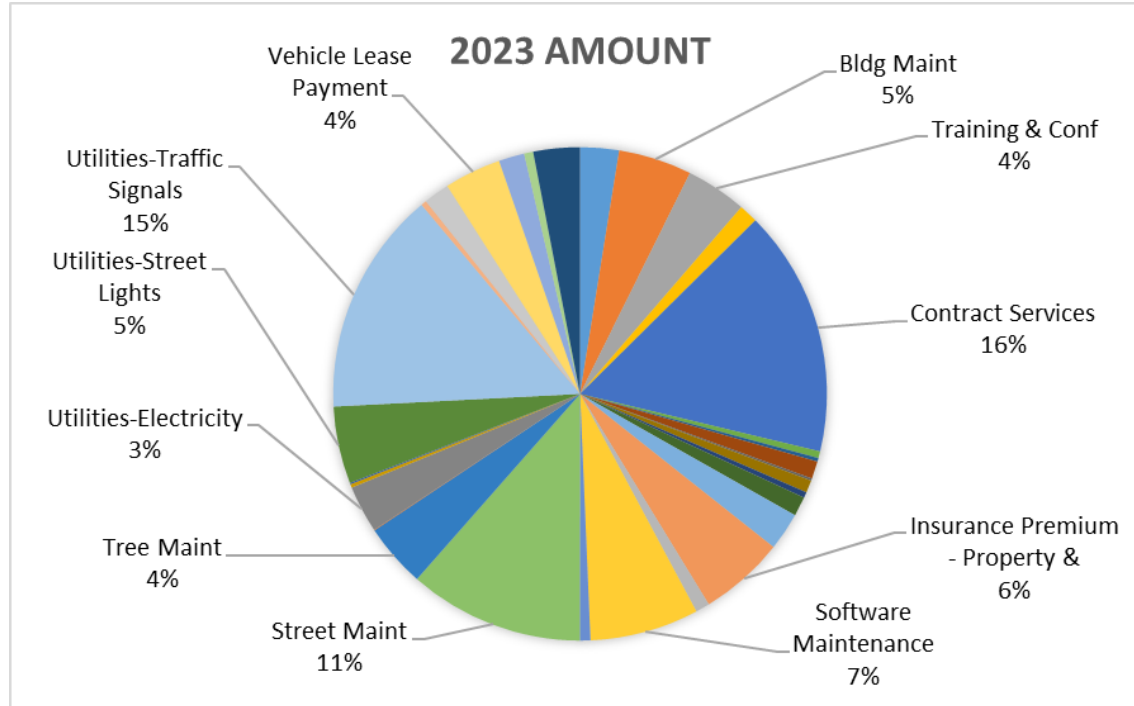
21

- Contract Services
 - ▣ Accounts for 20% of the General Fund expenditure budget
 - ▣ Includes a 5% increase between 2022 and 2023
 - ▣ Contract Service includes:
 - Traffic Signals
 - Street Maintenance & Repair
 - Insurance – Property & Workers Compensation
 - Consulting services
 - Street Lights
 - Tree Maintenance
 - Building Maintenance
 - Legal
 - Utilities
 - Training
 - Software Maintenance Contracts
 - Lease Fee Payments (*Shifted from Equipment Reserve Capital Budget starting in 2022*)



Contract Services

22





23

COMMODITIES



Commodities

24

□ Commodities

- ▣ Accounts for 3% of the General Fund expenditure budget
- ▣ Includes a 12% increase between 2022 and 2023
- ▣ Commodities includes:
 - Office supplies
 - Postage
 - Fuel - \$4 per gallon (usage audit conducted)



25

CAPITAL OUTLAY



Capital Outlay

26

□ Capital Outlay

- Accounts for 1% of the General Fund expenditure budget
- Includes a 15% increase in expenditures over the 2022 budget
- Capital Outlay includes:
 - Equipment with a useful life greater than one year
 - Non-Leased Vehicles (*Leased vehicles now reflected as a lease payment in Contractual Services*)
 - Field equipment



Contingency

27

- Contingency - \$500,000
 - ▣ Accounts for 2% of the General Fund expenditure budget
 - ▣ There was no change from between the 2022 and 2023 budget
 - ▣ Contingency funds are budgeted for emergencies and unplanned major expenditures



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EQUIPMENT RESERVE FUND



Equipment Reserve

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	2023 Request
IT Projects	
PD Laptop Replacement (2023 - 2024 project)	20,000
Server Replacement	10,000
PD Radio Replacement (2027 project)	50,000
PD In car video / BWC (2025 project)	20,000
Traffic Camera/Fixed Location License Plate Reader	50,000
Switches (Network)	15,000
Network Back Up (DATTO) Recovery	45,000
Springbrook Financial System Cloud Migration	15,750
Citywide Laptop/Computer Replacement	25,000
City Hall Camera Replacement	10,000
Livescan Fingerprint Machine	17,000
Security Incident Event Management	50,000
Record Digitization (Microfilm/Laserfiche)	30,000
Total IT Projects	\$ 357,750
Equipment/Vehicle Replacement	
PW Mower (Annual)	16,000
PW Internat'l Dump Truck (Annual)	225,000
Total Equipment/Vehicle Replacement	\$ 241,000
Total Expenditures	\$ 598,750



Equipment Replacement Schedule

30

LARGE VEHICLE Replacement Schedule For Equipment Reserve

Asset #	Make	Description	Year	Year Replace	Est Replace Value	2023	2024	2025	2026	2027
5430	Internat'l	Dump Truck	2011	2023	\$ 225,000.00	\$ 225,000.00				
5447	Internat'l	Dump Truck	2012	2024	\$ 225,000.00		\$225,000.00			
5686	Internat'l	Dump Truck	2014	2025	\$ 225,000.00			\$225,000.00		
5692	Internat'l	Dump Truck	2015	2026	\$ 225,000.00				\$225,000.00	
1472	Internat'l	Jet Truck	1998	2027	\$ 225,000.00					\$ 225,000.00
						\$ 225,000.00	\$225,000.00	\$225,000.00	\$225,000.00	\$ 225,000.00



31

SOLID WASTE FUND



2023 Solid Waste Rates

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	Residential Rate Per Household
2022 Rates	\$18.92 per month/\$227 per year
2023 Proposed Rates	\$20.42 per month/\$245 per year

- 3.25% rate increase with Republic for 2023
- 1.5 month reserve amount needed for 2023 = \$257,664
- Proposed 2023 rates include building back reserves to 1.5 months of expenditures in the solid waste fund due to revenues from interest coming in significantly lower than historic collections in 2021 and 2022
- The Finance Committee voted to fund the annual mattress recycling program decision package from the Solid Waste Fund, which increased the annual assessment by \$2 to \$245 per year



Solid Waste Assessment History

33

Year	Annual Assessment
2013	\$158.52
2014	\$174.00
2015	\$174.00
2016	\$174.00
2017	\$192.00
2018	\$192.00
2019	\$207.00
2020	\$228.00
2021	\$218.00
2022	\$227.00
2023	\$245.00



2023 Solid Waste Fund Budget

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Solid Waste Management Fund

	2020 Actual	2021 Actual	2022 Budget	2022 Estimate	2023 Budget
Fund Balance 1/1	\$ 187,024	\$ 297,790	\$ 273,212	\$ 240,396	\$ 207,430
Revenues:					
Licenses & Permits	5,058	2,845	2,500	2,500	2,800
Charges for Services	1,911,831	1,842,953	1,918,150	1,917,923	2,076,321
Interest on Investments	45,941	4,671	40,000	20,000	30,195
Miscellaneous	-	-	-	1,400	2,057
Total Revenue	1,962,830	1,850,469	1,960,650	1,941,823	2,111,373
 Total Sources	 1,962,830	 1,850,469	 1,960,650	 1,941,823	 2,111,373
Expenditures:					
Personnel Services	34,818	36,896	41,941	41,941	45,713
Contract Services	1,817,246	1,870,967	1,930,026	1,932,848	2,014,445
Commodities	-	-	1,500	-	1,000
Contingency	-	-	260,395	-	257,645
Total Expenditures	1,852,064	1,907,863	2,233,862	1,974,789	2,318,803
 Total Uses	 1,852,064	 1,907,863	 2,233,862	 1,974,789	 2,318,803
Sources Over(Under) Uses	110,766	(57,394)	(273,212)	(32,966)	(207,430)
Fund Balance @ 12/31	\$ 297,790	\$ 240,396	\$ -	\$ 207,430	\$ (0)



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OTHER FUNDS AND PROGRAMS



Outside Agency Funding

36

City of Prairie Village Outside Agency Funding

	2020 Actuals	2021 Budget	2021 Actuals	2022 Adopted	2023 Preliminary
Outside Agencies					
Alcohol Funds - dispersed to various agencies	40,000	40,000	38,822	44,000	44,000
United Community Services - Human Service Fund	8,300	8,300	8,300	10,000	10,000
National League of Cities	1,953	2,000	-	2,000	1,000
League of Kansas Municipalities	16,705	16,000	17,491	17,000	18,000
MARC	6,593	8,500	8,714	8,800	9,500
NE JO CO Chamber Membership	2,200	2,300	4,400	2,300	2,300
NE Jo CO Chamber for Events & Chamber dinner	750	1,950	320	1,950	1,950
SMEF (Shawnee Mission Educational Foundation)	500	1,500	1,500	1,500	1,500
Committees					
Village Fest	12,655	20,000	6,573	20,000	35,000
Arts Council	14,500	14,500	14,500	14,500	10,000
Environmental Committee	-	8,000	11,999	8,000	8,000
Jazz Fest	10,000	10,000	10,000	10,000	35,000
Diversity Committee	-	-	1,284	10,000	16,500



2023 Economic Development Fund

37

Economic Development Fund					
	2020 Actual	2021 Actual	2022 Budget	2022 Estimate	2023 Budget
Fund Balance 1/1	\$ 146,721	\$ 137,281	\$ 136,120	\$ 170,819	\$ 165,502
Revenues:					
Interest on Investments	1,502	583	567	1,043	695
Total Revenue	1,502	583	567	1,043	695
Transfers from Other funds:					
Transfer from General Fund	65,000	136,000	136,000	136,000	266,000
Total	65,000	136,000	136,000	136,000	266,000
Total Sources	66,502	136,583	136,567	137,043	266,695
Expenditures:					
Contract Services: Exterior and Sustainability Grant Programs	75,942	103,046	94,000	142,360	104,000
Contract Services: Property Tax Rebate	-	-	-	-	20,000
Harmon Park	-	-	-	-	250,000
Contingency	-	-	178,687	-	58,197
Total Expenditures	75,942	103,046	272,687	142,360	432,197
Total Uses	75,942	103,046	272,687	142,360	432,197
Sources Over(Under) Uses	(9,440)	33,538	(136,120)	(5,317)	(165,502)
Fund Balance @ 12/31	\$ 137,281	\$ 170,819	\$ -	\$ 165,502	\$ (0)



2023 American Rescue Plan Act Budget

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- City of Prairie Village Allocation: \$3,402,421
- Timeline:
 - Project and Expenditure Report submitted April 30, 2022
 - Full Funding will be received by July 2022
 - Funds must be obligated by December 31, 2024
 - Funds must be expended by December 31, 2026



2023 American Rescue Plan Act Budget

39

Staff Proposal

- ❑ Pool Repair: \$1,200,000
- ❑ Possible compensation/benefit adjustments if recommended through the compensation and benefit study: \$500,000
- ❑ Phone System/Information Technology Needs: \$300,000
- ❑ City Hall & Police Department Improvements/Infrastructure: Remaining Funds (approximately \$1,402,421)



2023 Transient Guest Tax Budget

40

Transient Guest Tax					
	2020 Actual	2021 Actual	2022 Budget	2022 Estimate	2023 Budget
Fund Balance 1/1	\$ -	\$ 55,001	\$ -	\$ 112,831	\$ 279,033
Revenues:					
Transient Guest Tax	54,769	202,504	225,000	280,000	280,000
Interest on Investments	232	304	-	1,428	268
Total Revenue	55,001	202,808	225,000	281,428	280,268
Total Sources	55,001	202,808	225,000	281,428	280,268
Expenditures:					
Contract Services	-	144,978	225,000	83,600	165,100
Capital Outlay (Harmon Park)	-	-	-	-	365,000
Reserves	-	-	-	31,626	29,201
Total Expenditures	-	144,978	225,000	115,226	559,301
Total Uses	-	144,978	225,000	115,226	559,301
Sources Over(Under) Uses	55,001	57,830	-	166,202	(279,033)
Fund Balance @ 12/31	\$ 55,001	\$ 112,831	\$ -	\$ 279,033	\$ 0



2023 Transient Guest Tax Budget

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Detailed Expenditure	2022	2023
Arts Council Annual Allocation	-	10,000
VillageFest	15,000	35,000
JazzFest	25,000	35,000
Diversity Committee	-	16,500
Juneteenth Festival	-	15,000
Holiday Event	3,000	3,000
Meadowbrook JCPRD Festival	10,000	10,000
Meadowbrook/VT Partnership	25,000	25,000
Public Art Fund	-	10,000
Capital Outlay (Harmon Park)	-	365,000
City Admin Fee (2%)	5,600	5,600
Reserves (10%)	31,626	29,201
	\$ 115,226	\$ 559,301



2023 CIP Budget

42

PROJECT #	PROJECT DESCRIPTION	PREVIOUS BUDGET	2023 BUDGET	2024 BUDGET	2025 BUDGET	2026 BUDGET	PROJECT TOTAL
PARK							
POOLRESV	Park Infrastructure Reserve	\$ 153,136.69	\$ 105,000.00	\$ 105,000.00	\$ 105,000.00	\$ 105,000.00	\$ 573,136.69
	Taliaferro Play Elements	\$ 20,000.00	\$ 165,000.00				\$ 185,000.00
	Lighting at Skate Park and Weltner Basketball Court	\$ 10,000.00	\$ 105,000.00				\$ 115,000.00
	Park Signage	\$ 15,000.00	\$ 90,000.00				\$ 105,000.00
	Lighting at Community Center Basketball Court	\$ 5,000.00		\$ 35,000.00			\$ 40,000.00
	Bennett Park Shelter & Play Area			\$ 170,000.00			\$ 170,000.00
	Harmon Park Pavilion & Restroom		\$ 845,000.00	\$ 280,000.00			\$ 1,125,000.00
	Franklin Park Historical Marker & Surfacing			\$ 10,000.00	\$ 330,000.00		\$ 340,000.00
	Windsor Trail & Playset				\$ 15,000.00	\$ 280,000.00	\$ 295,000.00
	Porter Shelter & Playset					\$ 20,000.00	\$ 20,000.00
	Pool Painting					\$ 80,000.00	\$ 80,000.00
PARK TOTAL PER YEAR		\$ 203,136.69	\$ 1,310,000.00	\$ 600,000.00	\$ 450,000.00	\$ 485,000.00	\$ 3,048,136.69
			\$ -	\$ -	\$ -	\$ -	
DRAINAGE							
WDPRRESV	Water Discharge Program Reserve	\$ 30,874.13	\$ 20,000.00	\$ 20,000.00	\$ 20,000.00	\$ 20,000.00	\$ 110,874.13
DRAIN23x	Drainage Repair Program		\$ 900,000.00	\$ 900,000.00	\$ 900,000.00	\$ 900,000.00	\$ 3,600,000.00
DRAINAGE TOTAL PER YEAR		\$ 30,874.13	\$ 920,000.00	\$ 920,000.00	\$ 920,000.00	\$ 920,000.00	\$ 3,710,874.13



2023 CIP Budget

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PROJECT #	PROJECT DESCRIPTION	PREVIOUS BUDGET	2023 BUDGET	2024 BUDGET	2025 BUDGET	2026 BUDGET	PROJECT TOTAL
STREETS							
TRAFRESV	Traffic Calming Program Reserve	\$ 22,372.92		\$ 20,000.00			\$ 42,372.92
PAVP2023	Residential Street Rehabilitation Program		\$ 3,166,000.00	\$ 3,166,000.00	\$ 3,166,000.00	\$ 3,166,000.00	\$ 12,664,000.00
UBAS2022	UBAS Overlay Program		\$ 400,000.00	\$ 400,000.00	\$ 400,000.00	\$ 400,000.00	\$ 1,600,000.00
NAAV0005	Nall Ave - 67th St to 75th St (CARS & OP)	\$ 250,000.00	\$ 2,584,000.00				\$ 2,834,000.00
MIRD0009	Mission Rd - 63rd St to 67th Ter (CARS)		\$ 85,000.00	\$ 720,000.00			\$ 805,000.00
NAAV0007	Nall Ave - 75th St to 79th St (CARS)		\$ 110,000.00	\$ 760,000.00			\$ 870,000.00
ROAV0007	Roe Ave - N City Limit to 63rd St		\$ 5,000.00	\$ 11,000.00			\$ 16,000.00
SODR0005	Somerset Dr - State Line to Reinhardt UBAS (CARS)			\$ 20,000.00	\$ 688,000.00		\$ 708,000.00
	63rd St - Roe Ave to Nall Ave (Mission Admin)			\$ 30,000.00	\$ 213,800.00		\$ 243,800.00
75ST0002	75th St - State Line to Mission Rd (CARS)			\$ 20,000.00	\$ 762,000.00		\$ 782,000.00
	Roe Ave - 63rd St to 83rd St (CARS)				\$ 50,000.00	\$ 1,208,000.00	\$ 1,258,000.00
83ST0003	83rd St - E City Limit to Nall Ave (CARS)					\$ 160,000.00	\$ 160,000.00
NAAV0006	Nall Ave - 63rd St to 67th St UBAS (CARS)					\$ 20,000.00	\$ 20,000.00
STREET TOTAL PER YEAR		\$ 272,372.92	\$ 6,350,000.00	\$ 5,147,000.00	\$ 5,279,800.00	\$ 4,954,000.00	\$ 22,003,172.92



2023 CIP Budget

44

PROJECT #	PROJECT DESCRIPTION	PREVIOUS BUDGET	2023 BUDGET	2024 BUDGET	2025 BUDGET	2026 BUDGET	PROJECT TOTAL
BUILDING							
BLDGResv	Building Reserve	\$ 165,431.24	\$ 50,000.00	\$ 50,000.00	\$ 50,000.00	\$ 50,000.00	\$ 365,431.24
BG510003	City Hall Remodel	\$ 130,000.00	\$ 300,000.00				\$ 430,000.00
BUILDING TOTAL PER YEAR		\$ 295,431.24	\$ 350,000.00	\$ 50,000.00	\$ 50,000.00	\$ 50,000.00	\$ 795,431.24
			\$ -	\$ -	\$ -	\$ -	
OTHER							
ADARESvX	ADA Compliance Program Reserve	\$ 66,275.91	\$ 25,000.00	\$ 25,000.00	\$ 25,000.00	\$ 25,000.00	\$ 166,275.91
CONC2023	Concrete Repair Program		\$ 600,000.00	\$ 600,000.00	\$ 600,000.00	\$ 600,000.00	\$ 2,400,000.00
SIDEWALK & CURB TOTAL PER YEAR		\$ 66,275.91	\$ 625,000.00	\$ 625,000.00	\$ 625,000.00	\$ 625,000.00	\$ 2,566,275.91
			\$ -	\$ -	\$ -	\$ -	
CIP TOTAL		\$ 868,090.89	\$ 9,555,000.00	\$ 7,342,000.00	\$ 7,324,800.00	\$ 7,034,000.00	\$ 32,123,890.89



2023 CIP Budget

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	FUNDING DESCRIPTION	2023 FUNDING	2024 FUNDING	2025 FUNDING	2026 FUNDING	FUNDING TOTAL
CASH	CAPITAL RESERVE	\$ -	\$ -	\$ -	\$ -	\$ -
CASH	GENERAL FUND	\$ 5,284,229.00	\$ 4,715,000.00	\$ 4,753,800.00	\$ 4,670,000.00	\$ 19,423,029.00
BUILD	BUILDING BOND	\$ -	\$ -	\$ -	\$ -	\$ -
DRAIN	STORMWATER FUND	\$ 1,000,000.00	\$ 1,000,000.00	\$ 1,000,000.00	\$ 1,000,000.00	\$ 4,000,000.00
DRAIN	SMAC GRANT	\$ -	\$ -	\$ -	\$ -	\$ -
DRAIN	DRAIN BOND	\$ -	\$ -	\$ -	\$ -	\$ -
PARK	SPECIAL PARK	\$ 157,091.00	\$ 150,000.00	\$ 150,000.00	\$ 150,000.00	\$ 607,091.00
PARK	PARK SALES TAX	\$ -	\$ -	\$ -	\$ -	\$ -
STREET	CARS GRANT	\$ 1,292,000.00	\$ 740,000.00	\$ 725,000.00	\$ 604,000.00	\$ 3,361,000.00
STREET	SPECIAL HIGHWAY	\$ 619,880.00	\$ 600,000.00	\$ 600,000.00	\$ 600,000.00	\$ 2,419,880.00
STREET	STREET BOND	\$ -	\$ -	\$ -	\$ -	\$ -
MISC	FUNDING FROM OTHERS	\$ 586,800.00	\$ 137,000.00	\$ 96,000.00	\$ 10,000.00	\$ 829,800.00
ECODEVO	ECONOMIC DEVELOPMENT	\$ 250,000.00	\$ -	\$ -	\$ -	\$ 250,000.00
TGT	TRANSIENT GUEST TAX	\$ 365,000.00	\$ -	\$ -	\$ -	\$ 365,000.00
TOTAL FUNDING BY YEAR		\$ 9,555,000.00	\$ 7,342,000.00	\$ 7,324,800.00	\$ 7,034,000.00	\$ 31,255,800.00



Decision Packages – Approved by Finance Committee

(Included in 2023 Preliminary Budget)

46

Approved Decision Package	Funding Source	Approved Amount	Description	Finance Committee Vote (Yay-Nay)
Mayor/Council Submitted Items				
Mill Levy Reduction (1 mill or amount tbd)	General Fund	\$ (493,000)	Reduce the mill levy by 1 mill or amount to be determined based on budget process	5 to 0
Sustainability Program Management	General Fund	\$ 50,000	Explore consultation for sustainability program management	5 to 0
Annual Mattress Recycling	Solid Waste Fund	\$ 15,000	Annual mattress collection	5 to 0
Citizen Satisfaction Survey	General Fund	\$ 15,000	Does the Council desire another citizen survey? (Last one was 2018.)	5 to 0
Juneteenth Celebration	TGT Funds	\$ 15,000	The Diversity Committee is requesting a separate budget for the Juneteenth Celebration for 2023	5 to 0
Public Arts Fund Annual Contribution	TGT Funds	\$ 10,000	Endowment for future city owned public art; range from \$5,000-\$10,000	5 to 0
Staff Submitted Items				
Information Systems Administrator FTE	General Fund	\$ 115,000	Additional FTE in IT to assist with cyber security efforts and other IT tasks	5 to 0
Community Development Plan Review	General Fund	\$ 40,000	Contracted plan review services	5 to 0
Second Mental Health Co-Responder	General/Special Alcohol Funds	\$ 35,000	Shared mental health co-responder position and cost with Leawood and Mission Hills (\$28,000 Special Alcohol/\$7,000 General Fund)	5 to 0



Senate Bill 13 Overview

47

- During the 2021 legislative session, the tax lid was removed and the legislature enacted SB13 and HB2104, establishing new notice and public hearing requirements **if the proposed budget will exceed the property tax levy's revenue neutral rate.**
- The revenue neutral rate is **the tax rate in mills that will generate the same property tax in dollars as the previous tax year** using the current tax year's total assessed valuation.
- The County Clerk shall divide the property tax revenue for each taxing subdivision levied for the previous tax year by the total of taxable assessed valuation in such taxing subdivisions for the current tax year to express the rate in mills.
- The City's Revenue Neutral Rate provided by Johnson County is **17.247**. Therefore, even with the mill levy roll back, the City will need to go through the Revenue Neutral Rate process.



Next Steps

48

- **June 15th** *County Clerks calculated and notified each taxing subdivision of the revenue neutral rate*
- **June 21st** Council Meeting: Preliminary 2023 Budget to Council for 1st time
- **July 5th** Council Meeting: Resolution Stating Intent to Exceed Revenue Neutral Rate
- **July 18th** Permission to Publish the 2023 Budget
- **July 20th** *Deadline for Governing Bodies notify County Clerk if intend to exceed revenue neutral rate*
- **August 10th** *County Clerk consolidates information from taxing entities and sends notification to taxpayers*
- **August 25th** Budget Due to County Clerk if not exceeding revenue neutral rate
- **September 6th** Revenue Neutral Rate Hearing/Budget Hearing/Adopt 2023 Budget
 - *If exceeding Revenue Neutral Rate*
- **September 20th** *Last day to hold a public hearing to consider exceeding the revenue neutral rate*
- **October 1st** *Budget Due to County Clerk if exceeding revenue neutral rate*

2023 BUDGET

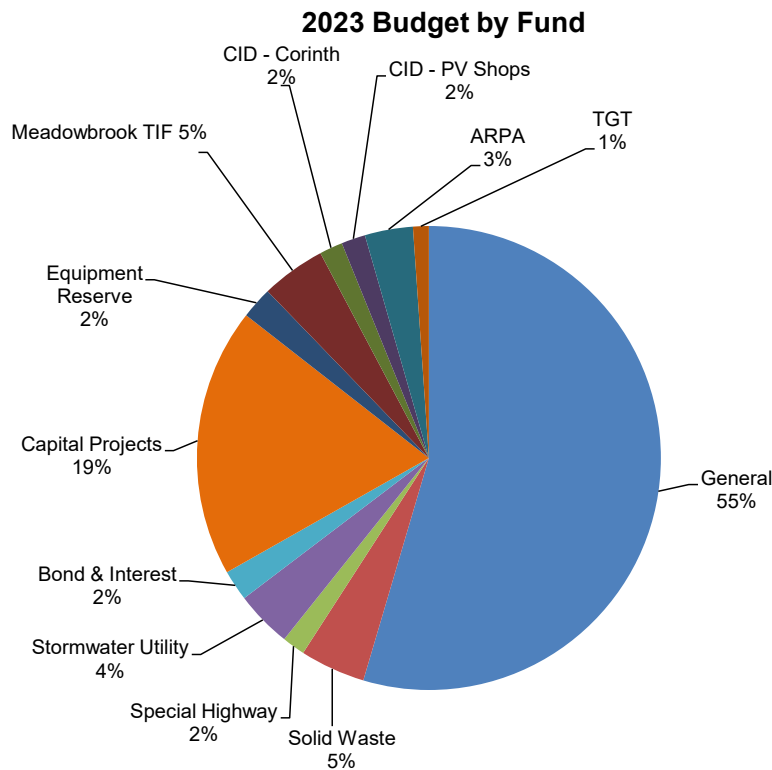
City of Prairie Village, Kansas

Preliminary
Budget as of
June 21, 2022



2023 Budget by Fund

Fund	2020 Actual	2021 Actual	2022 Budget	2023 Budget
General	\$ 21,996,899	\$ 22,724,346	\$ 25,638,229	\$ 27,786,443
Solid Waste	1,852,064	1,907,863	2,233,862	2,318,803
Special Highway	600,397	597,000	712,225	814,830
Stormwater Utility	1,565,000	1,600,000	1,951,384	2,012,544
Special Parks & Rec	109,748	140,134	105,117	157,091
Special Alcohol	181,779	140,620	172,552	225,589
Bond & Interest	1,320,850	1,323,000	1,111,220	1,084,318
Capital Projects	12,866,039	11,603,631	8,436,000	9,555,000
Risk Management Reserve	29,956	35,410	218,142	181,795
Economic Development	75,942	103,046	272,687	432,197
Equipment Reserve	687,397	264,560	345,537	1,125,570
Meadowbrook TIF	1,574,523	1,897,461	1,353,974	2,280,255
CID - Corinth	540,834	575,319	605,257	825,866
CID - PV Shops	611,488	434,239	605,704	857,259
ARPA	-	-	-	1,705,090
Transient Guest Tax	-	144,978	225,000	559,301
Total	\$ 44,012,915	\$ 43,491,609	\$ 43,986,890	\$ 51,921,951



Note: The following funds are not included in the graph because they account for less than 1% of the total budgeted expenditures - Special Parks & Recreation, Special Alcohol, Risk Management, and Economic Development.

General Fund

	2020 Actual	2021 Actual	2022 Budget	2022 Estimate	2023 Budget
Fund Balance 1/1	\$ 7,480,651	\$ 7,608,090	\$ 7,591,246	\$ 9,565,634	\$ 8,944,122
Revenues:					
Property Taxes	8,179,161	8,667,704	9,110,562	9,110,562	9,710,829
Sales Taxes	5,446,984	6,098,163	5,570,000	5,570,000	5,675,000
Use Tax	1,811,879	2,458,591	1,554,004	1,554,004	1,940,000
Motor Vehicle Tax	746,852	798,074	796,411	796,411	861,725
Liquor Tax	109,748	140,134	105,052	169,092	157,091
Franchise Fees	1,842,970	1,871,269	1,905,797	1,906,603	1,871,238
Licenses & Permits	728,297	835,741	854,383	830,403	963,883
Charges for Services	1,722,975	1,788,547	1,851,162	1,849,587	1,870,708
Fines & Fees	694,784	829,111	868,762	623,056	758,700
Recreational Fees	29,745	414,560	424,650	401,650	400,350
Interest on Investments	139,674	40,534	134,608	120,111	113,622
Miscellaneous	106,270	139,467	130,622	119,005	146,479
Total Revenue	21,559,338	24,081,897	23,306,014	23,050,482	24,469,624
Transfers from Other funds:					
Transfer from Stormwater Utility Fund	565,000	600,000	600,000	600,000	600,000
Total	565,000	600,000	600,000	600,000	600,000
Total Sources	22,124,338	24,681,897	23,906,014	23,650,482	25,069,624
Expenditures:					
Personnel Services	10,740,208	10,922,259	11,911,253	11,673,028	13,301,167
Contract Services	3,972,364	4,247,731	5,284,151	4,678,468	5,531,597
Commodities	581,970	705,568	840,850	824,033	939,500
Capital Outlay	192,633	339,454	275,450	269,941	315,950
Contingency	-	-	500,000	-	500,000
Total Expenditures	15,487,176	16,215,012	18,811,704	17,445,470	20,588,214
Transfers to Other Funds:					
Transfer to Capital Infrastructure Fund	4,653,109	4,523,800	5,307,000	5,307,000	5,284,229
Transfer to Bond & Interest Fund	1,301,229	1,319,534	1,050,725	1,050,725	1,048,000
Transfer to Risk Management Fund	35,000	-	-	-	-
Transfer to Economic Development Fund	65,000	136,000	136,000	136,000	266,000
Transfer to Equipment Reserve Fund	455,385	530,000	332,800	332,800	600,000
Total	6,509,723	6,509,334	6,826,525	6,826,525	7,198,229
Total Uses	21,996,899	22,724,346	25,638,229	24,271,995	27,786,443
Sources Over(Under) Uses	127,439	1,957,551	(1,732,215)	(621,513)	(2,716,819)
Fund Balance @ 12/31	\$ 7,608,090	\$ 9,565,634	\$ 5,859,031	\$ 8,944,122	\$ 6,227,303

Funding Sources: Property tax, sales tax, franchise fees, grants from other governments, user fees and charges.

Expenditures: General operating expenditures and a portion of infrastructure improvement expenditures.

Solid Waste Management Fund

	2020 Actual	2021 Actual	2022 Budget	2022 Estimate	2023 Budget
Fund Balance 1/1	\$ 187,024	\$ 297,790	\$ 273,212	\$ 240,396	\$ 207,430
Revenues:					
Licenses & Permits	5,058	2,845	2,500	2,500	2,800
Charges for Services	1,911,831	1,842,953	1,918,150	1,917,923	2,076,321
Interest on Investments	45,941	4,671	40,000	20,000	30,195
Miscellaneous			-	1,400	2,057
Total Revenue	1,962,830	1,850,469	1,960,650	1,941,823	2,111,373
 Total Sources	 1,962,830	 1,850,469	 1,960,650	 1,941,823	 2,111,373
Expenditures:					
Personnel Services	34,818	36,896	41,941	41,941	45,713
Contract Services	1,817,246	1,870,967	1,930,026	1,932,848	2,014,445
Commodities	-	-	1,500	-	1,000
Contingency	-	-	260,395	-	257,645
Total Expenditures	1,852,064	1,907,863	2,233,862	1,974,789	2,318,803
 Total Uses	 1,852,064	 1,907,863	 2,233,862	 1,974,789	 2,318,803
Sources Over(Under) Uses	110,766	(57,394)	(273,212)	(32,966)	(207,430)
Fund Balance @ 12/31	\$ 297,790	\$ 240,396	\$ -	\$ 207,430	\$ (0)

Funding Sources: Special assessments on property tax bills.

Expenditures: In 2017 the City contracted with Republic Trash Services for solid waste collection, recycling, composting services and large item pick up as well as a portion of the City's administrative costs including personal services and supplies. The 2023 budget includes a 3.25% contractual increase and the inclusion of \$2 per month to fund annual mattress recycling.

2018 Assessment: \$192.00
 2019 Assessment: \$207.00
 2020 Assessment: \$228.00
 2021 Assessment: \$218.00
 2022 Assessment: \$227.00
 2023 Assessment: \$245.00

Special Highway Fund

	2020 Actual	2021 Actual	2022 Budget	2022 Estimate	2023 Budget
Fund Balance 1/1	\$ 161,680	\$ 146,465	\$ 132,405	\$ 204,012	\$ 187,147
Revenues:					
Intergovernmental	570,612	653,512	573,320	572,332	619,880
Interest on Investments	14,570	1,035	6,500	7,803	7,803
Total Revenue	585,182	654,547	579,820	580,135	627,683
Total Sources	585,182	654,547	579,820	580,135	627,683
Expenditures:					
Contingency	-	-	50,720	-	194,950
Total Expenditures	-	-	115,225	-	194,950
Transfers to Other Funds:					
Transfer to Capital Infrastructure Fund	600,397	597,000	597,000	597,000	619,880
Total	600,397	597,000	597,000	597,000	619,880
Total Uses	600,397	597,000	712,225	597,000	814,830
Sources Over(Under) Uses	(15,215)	57,547	(132,405)	(16,865)	(187,147)
Fund Balance @ 12/31	\$ 146,465	\$ 204,012	\$ -	\$ 187,147	\$ 0

Funding Sources: State gasoline tax (per gallon)

Expenditures: Transfer to the Capital Infrastructure Fund for street improvements.

Stormwater Utility Fund

	2020 Actual	2021 Actual	2022 Budget	2022 Estimate	2023 Budget
Fund Balance 1/1	\$ 133,165	\$ 238,303	\$ 269,031	\$ 271,231	\$ 327,972
Revenues:					
Licenses & Permits	14,000	14,140	11,000	11,000	11,000
Charges for Services	1,602,404	1,614,391	1,619,676	1,619,676	1,628,000
Interest on Investments	53,733	4,397	51,677	26,065	45,572
Total Revenue	1,670,138	1,632,928	1,682,353	1,656,741	1,684,572
Total Sources	1,670,138	1,632,928	1,682,353	1,656,741	1,684,572
Expenditures:					
Contingency	-	-	351,384	-	412,544
Total Expenditures	-	-	351,384	-	412,544
Transfers to Other Funds:					
Transfer to General Fund	565,000	600,000	600,000	600,000	600,000
Transfer to Bond & Interest Fund	-	-	-	-	-
Transfer to Capital Infrastructure Fund	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000
Total	1,565,000	1,600,000	1,600,000	1,600,000	1,600,000
Total Uses	1,565,000	1,600,000	1,951,384	1,600,000	2,012,544
Sources Over(Under) Uses	105,138	32,928	(269,031)	56,741	(327,972)
Fund Balance @ 12/31	\$ 238,303	\$ 271,231	\$ (0)	\$ 327,972	\$ (0)

Funding Sources: Special assessments on the property tax bills - fee per square foot of impervious area (\$0.040/sq. ft.)

Expenditures: Operation and maintenance of the City's stormwater system in accordance with NPDES guidelines.

Notes: The stormwater utility fee was a new revenue source in 2009. The fee is dedicated to funding the City's stormwater program and compliance with NPDES guidelines.

Special Park & Recreation Fund

	2020 Actual	2021 Actual	2022 Budget	2022 Estimate	2023 Budget
Fund Balance 1/1	\$ -	\$ 0	\$ -	\$ 0	\$ (0)
Revenues:					
Liquor Tax	109,748	140,134	105,052	169,092	157,091
Interest on Investments	-		65	0	-
Total Revenue	109,748	140,134	105,117	169,092	157,091
Total Sources	109,748	140,134	105,117	169,092	157,091
Expenditures:					
Contingency	-	-	117	-	-
Total Expenditures	-	-	117	-	-
Transfers to Other Funds:					
Transfer to Capital Infrastructure Fund	109,748	140,134	105,000	169,092	157,091
Total	109,748	140,134	105,000	169,092	157,091
Total Uses	109,748	140,134	105,117	169,093	157,091
Sources Over(Under) Uses	0	0	-	(1)	-
Fund Balance @ 12/31	\$ 0	\$ 0	\$ -	\$ (0)	\$ (0)

Funding Sources: Special alcohol tax per K.S.A. 79-41a04 (1/3 of total alcohol tax received by the City)

Expenditures: Park and pool improvements.

Special Alcohol Fund

	2020 Actual	2021 Actual	2022 Budget	2022 Estimate	2023 Budget
Fund Balance 1/1	\$ 84,674	\$ 14,082	\$ -	\$ 13,673	\$ 42,105
Revenues:					
Liquor Tax	109,748	140,134	105,052	169,092	157,091
Interest on Investments	1,439	77	2,500	758	1,393
Miscellaneous	-	-	65,000	-	25,000
Total Revenue	111,187	140,212	172,552	169,850	183,484
Total Sources	111,187	140,212	172,552	169,850	183,484
Expenditures:					
Personnel Services	96,722	60,202	100,128	95,122	108,754
Contract Services	71,187	65,210	71,115	46,296	74,814
Commodities	13,870	15,209	-	-	16,900
Capital Outlay	-	-	-	-	-
Contingency	-	-	1,309	-	25,121
Total Expenditures	181,779	140,620	172,552	141,417	225,589
Total Uses	181,779	140,620	172,552	141,417	225,589
Sources Over(Under) Uses	(70,592)	(409)	-	28,433	(42,105)
Fund Balance @ 12/31	\$ 14,082	\$ 13,673	\$ -	\$ 42,105	\$ 0

Funding Sources: Special alcohol tax per K.S.A. 79-41a04 (1/3 of total alcohol tax received by the City)

Expenditures: Alcohol rehabilitation, including grants to local agencies through United Community Services and partial funding of the City's D.A.R.E. Program and mental health co-responder contract.

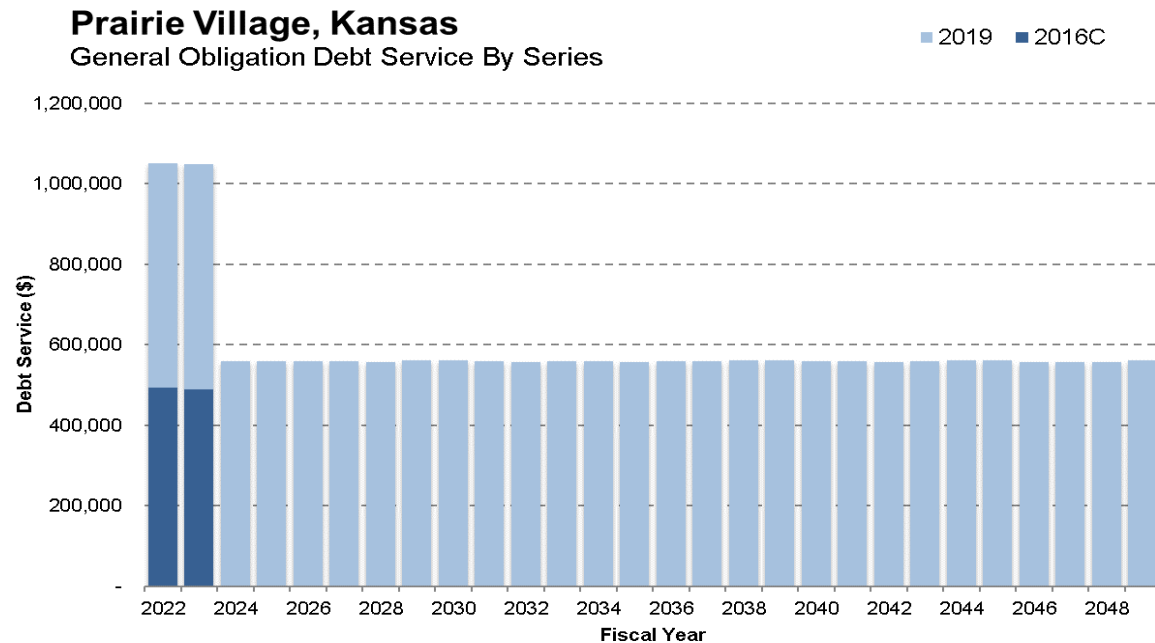
Bond & Interest Fund

	2020 Actual	2021 Actual	2022 Budget	2022 Estimate	2023 Budget
Fund Balance 1/1	\$ 55,472	\$ 37,204	\$ 34,738	\$ 33,990	\$ 34,793
Revenues:					
Property Taxes	-	-	-	-	-
Motor Vehicle Tax	-	-	-	-	-
Interest on Investments	1,353	252	1,507	803	1,525
Total Revenue	1,353	252	1,507	803	1,525
Transfers from Other funds:					
Transfer from General Fund	1,301,229	1,319,534	1,074,975	1,074,975	1,048,000
Transfer from Stormwater Fund	-	-	-	-	-
Total	1,301,229	1,319,534	1,074,975	1,074,975	1,048,000
Total Sources	1,302,582	1,319,786	1,076,482	1,075,778	1,049,525
Expenditures:					
Debt Service	1,320,850	1,323,000	1,074,975	1,074,975	1,048,000
Contingency	-	-	36,245	-	36,318
Total Expenditures	1,320,850	1,323,000	1,111,220	1,074,975	1,084,318
Total Uses	1,320,850	1,323,000	1,111,220	1,074,975	1,084,318
Sources Over(Under) Uses	(18,268)	(3,214)	(34,738)	803	(34,793)
Fund Balance @ 12/31	\$ 37,204	\$ 33,990	\$ -	\$ 34,793	\$ 0

Funding Sources: Property tax, motor vehicle tax, transfers from General Fund

Expenditures: Debt service payments on the City's outstanding General Obligation bonds.

Notes: The City's outstanding bonds will be paid off in 2049.



Capital Infrastructure Fund

	2020 Actual	2021 Actual	2022 Budget	2022 Estimate	2023 Budget
Fund Balance 1/1	\$ 10,735,605	\$ 9,751,701	\$ 9,000,258	\$ 6,212,266	\$ 5,677,822
Revenues:					
Intergovernmental	5,422,283	1,746,069	805,000	805,000	1,878,800
Bond Proceeds	-	-	-	-	-
Interest on Investments	147,653	61,402	60,000	60,000	87,447
Miscellaneous	44,133	3,800	1,000	1,000	1,000
Net Inc/Decr in Fair Value	(95,187)	(8,010)	-	-	-
Total Revenue	5,518,882	1,803,261	866,000	866,000	1,967,247
Transfers from Other funds:					
Transfer from General Fund	4,653,109	4,523,800	5,319,000	5,319,000	5,284,229
Transfer from Special Highway Fund	600,397	597,000	597,000	597,000	619,880
Transfer from Stormwater Utility Fund	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000
Transfer from Special Parks & Rec Fund	109,748	140,134	105,000	119,557	157,091
Transfer from Transient Guest Tax Fund	-	-	-	-	365,000
Transfer from Economic Development Fund	-	-	-	-	250,000
Total	6,363,254	6,260,934	7,021,000	7,035,557	7,676,200
Total Sources	11,882,136	8,064,195	7,887,000	7,901,557	9,643,447
Expenditures:					
Infrastructure	12,866,039	11,603,631	8,436,000	8,436,000	9,555,000
Total Expenditures	12,866,039	11,603,631	8,436,000	8,436,000	9,555,000
Total Uses	12,866,039	11,603,631	8,436,000	8,436,000	9,555,000
Sources Over(Under) Uses	(983,904)	(3,539,436)	(549,000)	(534,443)	88,447
Fund Balance @ 12/31	\$ 9,751,701	\$ 6,212,266	\$ 8,451,258	\$ 5,677,822	\$ 5,766,269

Funding Sources: Transfers from the General Fund, Stormwater Utility Fund, Special Parks & Recreation Fund, Economic Development Fund, Transient Guest Tax Fund, and grants from other governments

Expenditures: Capital Infrastructure Program - Please see the CIP Section of this document for the detailed plan including projects and programs.

Capital Infrastructure Fund

CIP Expenditure Total = \$9,555,000

2023 PROJECT DESCRIPTION	2023 EXPENDITURES
Park Infrastructure Reserve	\$105,000
Taliaferro Play Elements	\$165,000
Lighting at Skate Park and Weltner Basketball Court	\$105,000
Park Signage	\$90,000
Harmon Park Pavilion and Restroom	\$845,000
PARK TOTAL PER YEAR	\$1,310,000
Water Discharge Program Reserve	\$20,000
Drainage Repair Program	\$900,000
DRAINAGE TOTAL PER YEAR	\$920,000
Residential Street Rehabilitation Program	\$3,166,000
UBAS Overlay Program	\$400,000
Nall Ave - 67th St to 75th St (CARS & OP)	\$2,584,000
Mission Rd - 63rd St to 67th Ter (CARS)	\$85,000
Nall Ave - 75th St to 79th St (CARS)	\$110,000
Roe Ave - N City Limit to 63rd St	\$5,000
STREET TOTAL PER YEAR	\$6,350,000
Building Reserve	\$50,000
City Hall Remodel	\$300,000
BUILDINGS TOTAL PER YEAR	\$350,000
ADA Compliance Program Reserve	\$25,000
Concrete Repair Program	\$600,000
OTHER TOTAL PER YEAR	\$625,000
CIP TOTAL	\$9,555,000

Risk Management Reserve Fund

	2020 Actual	2021 Actual	2022 Budget	2022 Estimate	2023 Budget
Fund Balance 1/1	\$ 231,311	\$ 249,968	\$ 210,395	\$ 215,579	\$ 178,687
Revenues:					
Interest on Investments	5,194	1,021	7,747	3,108	3,108
Miscellaneous	8,418	-	-	-	-
Total Revenue	13,612	1,021	7,747	3,108	3,108
Transfers from Other funds:					
Transfer from General Fund	35,000	-	-	-	-
Transfer from Special Alcohol Fund	-	-	-	-	-
Total	35,000	-	-	-	-
Total Sources	48,612	1,021	7,747	3,108	3,108
Expenditures:					
Contract Services	29,956	35,410	40,000	40,000	40,000
Risk Management Reserve	-	-	178,142	-	141,795
Total Expenditures	29,956	35,410	218,142	40,000	181,795
Total Uses	29,956	35,410	218,142	40,000	181,795
Sources Over(Under) Uses	18,657	(34,389)	(210,395)	(36,892)	(178,687)
Fund Balance @ 12/31	\$ 249,968	\$ 215,579	\$ -	\$ 178,687	\$ (0)

Funding Sources: Transfers from the General Fund, insurance claim reimbursements, interest on idle funds

Expenditures: Risk management related expenditures, such as insurance deductibles

Economic Development Fund

	2020 Actual	2021 Actual	2022 Budget	2022 Estimate	2023 Budget
Fund Balance 1/1	\$ 146,721	\$ 137,281	\$ 136,120	\$ 170,819	\$ 165,502
Revenues:					
Interest on Investments	1,502	583	567	1,043	695
Total Revenue	1,502	583	567	1,043	695
Transfers from Other funds:					
Transfer from General Fund	65,000	136,000	136,000	136,000	266,000
Total	65,000	136,000	136,000	136,000	266,000
Total Sources	66,502	136,583	136,567	137,043	266,695
Expenditures:					
Contract Services: <i>Exterior and Sustainability Grant Programs</i>	75,942	103,046	94,000	142,360	104,000
Contract Services: <i>Property Tax Rebate</i>	-	-	-	-	20,000
Harmon Park	-	-	-	-	250,000
Contingency	-	-	178,687	-	58,197
Total Expenditures	75,942	103,046	272,687	142,360	432,197
Total Uses	75,942	103,046	272,687	142,360	432,197
Sources Over(Under) Uses	(9,440)	33,538	(136,120)	(5,317)	(165,502)
Fund Balance @ 12/31	\$ 137,281	\$ 170,819	\$ -	\$ 165,502	\$ (0)

Funding Sources: Transfers from the General Fund, interest on idle funds

Expenditures: Used for activities that foster and promote economic development within the City per Ordinance No. 2153.

Economic Development Fund Allocation	2022 Bud	2022 Est	2023 Bud
Beginning balance	\$136,120	\$170,819	\$165,502
Interest	567	1,043	695
Transfer from General Fund (Public Safety Sales Tax & Minor Home Repair)	136,000	136,000	266,000
City Owned Art Restoration (clean, repair, replace & restore @ \$50,000)	-	(20,860)	-
Exterior Grant Program	(74,000)	(74,000)	(74,000)
Sustainability Grant Program	(20,000)	(20,000)	(30,000)
Potential Survey	-	(27,500)	-
Property tax rebate program	-	-	(20,000)
Harmon Park	-	-	(250,000)
Contingency	(178,687)	-	(58,197)
Total	\$0	\$165,502	\$0

Equipment Reserve Fund

	2020 Actual	2021 Actual	2022 Budget	2022 Estimate	2023 Budget
Fund Balance 1/1	\$ 699,272	\$ 473,429	\$ 9,617	\$ 782,500	\$ 522,118
Revenues:					
Interest on Investments	6,168	2,479	3,120	4,324	3,452
Total Revenue	6,168	2,479	3,120	4,324	3,452
Transfers from Other funds:					
Transfer from General Fund	455,385	571,153	332,800	332,800	600,000
Total	455,385	571,153	332,800	332,800	600,000
Total Sources	461,553	573,632	335,920	337,124	603,452
Expenditures:					
Capital Outlay	687,397	264,560	286,000	597,506	598,750
Contingency	-	-	59,537	-	526,820
Total Expenditures	687,397	264,560	345,537	597,506	1,125,570
Total Uses	687,397	264,560	345,537	597,506	1,125,570
Sources Over(Under) Uses	(225,843)	309,071	(9,617)	(260,382)	(522,118)
Fund Balance @ 12/31	\$ 473,429	\$ 782,500	\$ -	\$ 522,118	\$ (0)

Funding Sources: Transfers from the General Fund, interest on idle funds

Expenditures: Acquisition of equipment, vehicles and technology projects.

Equipment Reserve Fund Plan

Equipment Reserve Expenditure Total = \$598,750

2023 PROJECT DESCRIPTION	2023 EXPENDITURES
PD Laptop Replacement (2023 - 2024 project)	\$20,000
Server Replacement	\$10,000
PD Radio Replacement (2027 project)	\$50,000
PD In car video / BWC (2025 project)	\$20,000
Traffic Camera/Fixed Location License Plate Reader	\$50,000
Switches (Network)	\$15,000
Network Back Up (DATTO) Recovery	\$45,000
Springbrook Financial System Cloud Migration	\$15,750
Citywide Laptop/Computer Replacement	\$25,000
City Hall Camera Replacement	\$10,000
Livescan Fingerprint Machine	\$17,000
Security Incident Event Management	\$50,000
Record Digitization (Microfilm/Laserfiche)	\$30,000
TOTAL	\$357,750
Public Works Equipment	
PW Mower (Annual)	\$16,000
PW Internat'l Dump Truck (Annual)	\$225,000
TOTAL	\$241,000
EQUIPMENT RESERVE TOTAL	\$598,750

Meadowbrook TIF Fund

	2020 Actual	2021 Actual	2022 Budget	2022 Estimate	2023 Budget
Fund Balance 1/1	\$ 137,750	\$ 128,919	\$ 128,919	\$ 69	\$ 69,711
Revenues:					
Incremental Property Taxes	1,559,039	1,767,968	1,219,711	2,106,200	2,205,200
Interest on Investments	6,653	642	5,344	642	5,344
Total Revenue	1,565,693	1,768,611	1,225,055	2,106,842	2,210,544
Expenditures:					
Contract Services	1,184,824	1,342,211	373,480	2,037,200	10,000
Debt Service (Payment to Trustee)	389,699	555,250	851,575		2,136,200
Contingency (TIF Commercial Balance)			128,919		134,055
Total Expenditures	1,574,523	1,897,461	1,353,974	2,037,200	2,280,255
Total Uses	1,574,523	1,897,461	1,353,974	2,037,200	2,280,255
Sources Over(Under) Uses	(8,831)	(128,851)	(128,919)	69,642	(69,711)
Fund Balance @ 12/31	\$ 128,919	\$ 69	\$ -	\$ 69,711	\$ (0)

Funding Sources: Incremental Property Tax

Expenditures: TIF contractual payment.

Notes: The Tax Increment Financing (TIF) fund accounts for public revenues and expenditures related to the Tax Increment Fund districts. Tax Increment Financing is used to capture future gains in taxes to finance improvements in the districts. TIF is designed to fund improvements in areas where redevelopment may not occur without it. When a TIF district is developed, or redeveloped, there is an increase in the value of the property. The increased value of the property increases tax revenue. The increased tax revenues are the "incremental property tax". TIF's use the future increased revenue for repayment of eligible costs in the districts.

There are two TIF districts in Prairie Village:

- (1) Commercial district (95th and Nall Avenue)
- (2) Park and Village district (Meadowbrook Park)

CID - Corinth Fund

	2020 Actual	2021 Actual	2022 Budget	2022 Estimate	2023 Budget
Fund Balance 1/1	\$ 85,493	\$ 107,442	\$ -	\$ 145,256	\$ 171,535
Revenues:					
Sales Taxes	558,590	612,766	600,000	600,000	650,000
Interest on Investments	4,192	367	5,257	2,279	4,331
Total Revenue	562,783	613,133	605,257	602,279	654,331
Expenditures:					
Contract Services	540,834	575,319	605,257	576,000	825,866
Total Expenditures	540,834	575,319	605,257	576,000	825,866
Total Uses	540,834	575,319	605,257	576,000	825,866
Sources Over(Under) Uses	21,949	37,814	-	26,279	(171,535)
Fund Balance @ 12/31	\$ 107,442	\$ 145,256	\$ -	\$ 171,535	\$ (0)

Funding Sources: Monies received from the Community Improvement District additional 1% sales tax

Expenditures: Development within Corinth Square per Developer Agreement

CID - PV Shops Fund

	2020 Actual	2021 Actual	2022 Budget	2022 Estimate	2023 Budget
Fund Balance 1/1	\$ 185,419	\$ 112,252	\$ -	\$ 248,046	\$ 251,555
Revenues:					
Sales Taxes	532,322	569,574	600,000	575,000	600,000
Interest on Investments	5,999	459	5,704	4,509	5,704
Total Revenue	538,321	570,033	605,704	579,509	605,704
Total Sources	538,321	570,033	605,704	579,509	605,704
Expenditures:					
Contract Services	611,488	434,239	605,704	576,000	857,259
Total Expenditures	611,488	434,239	605,704	576,000	857,259
Total Uses	611,488	434,239	605,704	576,000	857,259
Sources Over(Under) Uses	(73,167)	135,793	-	3,509	(251,555)
Fund Balance @ 12/31	\$ 112,252	\$ 248,046	\$ -	\$ 251,555	\$ (0)

Funding Sources: Monies received from the Community Improvement District additional 1% sales tax

Expenditures: Development within PV Shops per Developer Agreement

Transient Guest Tax

	2020 Actual	2021 Actual	2022 Budget	2022 Estimate	2023 Budget
Fund Balance 1/1	\$ -	\$ 55,001	\$ -	\$ 112,831	\$ 279,033
Revenues:					
Transient Guest Tax	54,769	202,504	225,000	280,000	280,000
Interest on Investments	232	304	-	1,428	268
Total Revenue	55,001	202,808	225,000	281,428	280,268
Total Sources	55,001	202,808	225,000	281,428	280,268
Expenditures:					
Contract Services	-	144,978	225,000	83,600	165,100
Capital Outlay (Harmon Park)	-	-	-	-	365,000
Reserves	-	-	-	31,626	29,201
Total Expenditures	-	144,978	225,000	115,226	559,301
Total Uses	-	144,978	225,000	115,226	559,301
Sources Over(Under) Uses	55,001	57,830	-	166,202	(279,033)
Fund Balance @ 12/31	\$ 55,001	\$ 112,831	\$ -	\$ 279,033	\$ 0

Funding Sources: Monies received from transient guest tax (TGT) levied upon gross rental receipts paid by guests for lodging in the city.

Expenditures: To be used on expenses in compliance with State Statute.

Details	2020	2021	2022	2022	2023
Arts Council Annual Allocation	\$0	\$0	\$0	\$0	\$10,000
VillageFest	-	-	-	15,000	35,000
JazzFest	-	-	-	25,000	35,000
Diversity Committee	-	-	-	0	16,500
Juneteenth Festival	-	-	-	0	15,000
Holiday	-	-	-	3,000	3,000
Meadowbrook JCPRD Festival	-	-	-	10,000	10,000
Meadowbrook/VT Partnership	-	-	-	25,000	25,000
Public Art Fund	-	-	-	-	10,000
Capital Outlay (Harmon Park)	-	-	-	-	365,000
Contractual Payment to Trustee	-	114,978	-	-	-
City Admin Fee (2%)	-	-	-	5,600	5,600
Reserves (10% plus misc.)	-	-	-	31,626	29,201
	\$ -	\$ 114,978	\$ -	\$ 115,226	\$ 559,301

ARPA Fund

	2020 Actual	2021 Actual	2022 Budget	2022 Estimate	2023 Budget
Fund Balance 1/1	\$ -	\$ -	\$ -	\$ 1,701,226	\$ 1,703,090
Revenues:					
Intergovernmental (Federal Funds)	-	1,701,211	-	1,701,211	-
Interest on Investments	-	15	-	654	2,000
Miscellaneous	-	-	-	-	-
Total Revenue	-	1,701,226	-	1,701,864	2,000
Total Sources	-	1,701,226	-	1,701,864	2,000
Expenditures:					
Personnel Services	-	-	-	500,000	-
Capital Outlay	-	-	-	1,200,000	1,702,421
Contingency	-	-	-	-	2,669
Total Expenditures	-	-	-	1,700,000	1,705,090
Total Uses	-	-	-	1,700,000	1,705,090
Sources Over(Under) Uses	-	1,701,226	-	1,864	(1,703,090)
Fund Balance @ 12/31	\$ -	\$ 1,701,226	\$ -	\$ 1,703,090	\$ 0

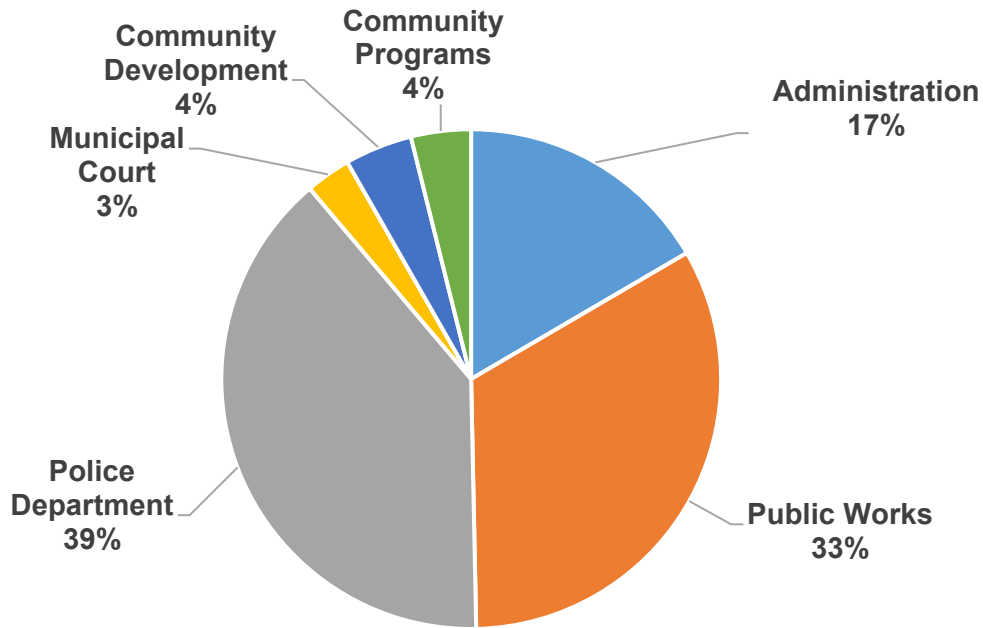
Funding Sources: Monies received from the Federal Government American Rescue Plan Act (ARPA) in response to the COVID-19 pandemic. Total allocation is \$3,402,421.

Expenditures: Must be spent on qualified expenditure categories including public health, revenue replacement, premium pay, or infrastructure. Must be obligated by December 31, 2024 and expended by December 31, 2026.

Details	2020	2021	2022	2022	2023
Public Health Expenditures	\$0	\$0	\$0	\$10,000	\$0
Potential Compensation Adjustments	-	-	-	500,000	0
Pool Improvement Project	-	-	-	1,200,000	0
IT/Phone System Improvements	-	-	-	-	300,000
Infrastructure TBD	-	-	-	-	1,402,421
Miscellaneous	-	-	-	-	-
	\$ -	\$ -	\$ -	\$ 1,710,000	\$ 1,702,421

General Fund: Summary by Department

Department	2020 Actual	2021 Actual	2022 Budget	2023 Budget
Administration	1,613,554	1,822,851	2,114,455	3,329,141
Public Works	5,368,596	5,659,461	6,305,508	6,650,062
Police Department	7,203,268	7,033,604	7,778,986	7,860,570
Municipal Court	456,013	500,552	575,977	589,720
Community Development	640,084	678,635	799,597	878,572
Community Programs	287,377	602,113	737,181	780,149
Total	15,568,892	16,297,217	18,311,704	20,088,214



Budget by Department

2023 Budget

FTE Summary by Department

Department	2020 Actual	2021 Actual	2022 Budget	2023 Budget
Administration	9.48	9.48	10.55	10.55
Information Technology	-	-	2.00	3.00
Public Works	30.00	30.00	31.00	31.00
Police Department	61.00	61.00	59.00	59.50
Municipal Court	5.25	5.25	5.25	5.25
Community Development	8.32	8.32	7.45	7.45
Community Programs (<i>Inc. Seasonal</i>)	20.80	20.80	21.30	21.30
Total FTE	134.85	134.85	136.55	138.05
City Governance (<i>unpaid positions</i>)	13.00	13.00	13.00	13.00

FTE Summary by Program

Program	2020 Actual	2021 Actual	2022 Budget	2023 Budget
Management & Planning	2.48	2.48	3.85	3.85
Information Technology	-	-	2.00	3.00
Public Works Mgmt., Engineering & Admin	8.00	8.00	8.00	8.00
Drainage Operation & Maintenance	6.00	6.00	6.00	6.00
Vehicle Maintenance	3.00	3.00	3.00	3.00
Street Operation & Maintenance	5.00	5.00	5.00	5.00
Parks and Grounds Maintenance	8.00	8.00	9.00	9.00
Police Department Administration	2.00	2.00	2.00	2.00
Staff Services	10.00	10.00	10.00	10.00
Community Services	2.00	2.00	2.00	2.00
Crime Prevention	1.00	1.00	1.00	1.00
Patrol	29.00	29.00	29.00	29.50
Investigations	6.00	6.00	6.00	6.00
Special Investigations	2.00	2.00	3.00	3.00
D.A.R.E.	1.00	1.00	1.00	1.00
Professional Standards	1.00	1.00	1.00	1.00
Traffic	5.00	5.00	4.00	4.00
Information Technology	2.00	2.00	-	-
Bailiff	0.25	0.25	0.25	0.25
Court Clerk	5.00	5.00	5.00	5.00
Human Resources	1.00	1.00	1.00	1.00
Finance	2.00	2.00	2.00	2.00
Codes Administration	7.87	7.87	7.00	7.00
Solid Waste Management	0.45	0.45	0.45	0.45
City Clerk	4.00	4.00	3.70	3.70
Community Programs	1.00	1.00	1.50	1.50
Swimming Pool	16.60	16.60	16.60	16.60
Concession Stand	3.00	3.00	3.00	3.00
Tennis	0.20	0.20	0.20	0.20
Total FTE	134.85	134.85	136.55	138.05
Mayor & Council (<i>unpaid positions</i>)	13.00	13.00	13.00	13.00

2023 Budget

FTE Summary by Department

Department	2020 Actual	2021 Actual	2022 Budget	2023 Budget
Administration	9.48	9.48	10.55	10.55
Information Technology	-	-	2.00	3.00
Public Works	30.00	30.00	31.00	31.00
Police Department	61.00	61.00	59.00	59.50
Municipal Court	5.25	5.25	5.25	5.25
Community Development	8.32	8.32	7.45	7.45
Community Programs (Inc. Seasonal)	20.80	20.80	21.30	21.30
Total FTE	134.85	134.85	136.55	138.05
City Governance (unpaid positions)	13.00	13.00	13.00	13.00

FTE Summary by Position

Department/Position	2020 Actual	2021 Actual	2022 Budget	2023 Budget
Administration				
City Administrator	1.00	1.00	1.00	1.00
Deputy City Administrator	0.48	0.48	0.85	0.85
Assistant City Administrator	-	-	1.00	1.00
Public Information Officer	1.00	1.00	1.00	1.00
Human Resources Manager	1.00	1.00	1.00	1.00
Finance Director	1.00	1.00	1.00	1.00
Accounting Clerk	1.00	1.00	1.00	1.00
Receptionist	1.00	1.00	0.70	0.70
Administrative Support Specialist	2.00	2.00	2.00	2.00
City Clerk	1.00	1.00	1.00	1.00
Information Technology	-	-	2.00	3.00
Total	9.48	9.48	12.55	13.55
Public Works				
Public Works Director	1.00	1.00	1.00	1.00
Senior Project Manager	-	-	1.00	1.00
Project Inspector	1.00	1.00	1.00	1.00
Manager of Engineering Services	1.00	1.00	-	-
Office Manager	1.00	1.00	1.00	1.00
Field Superintendent	1.00	1.00	1.00	1.00
Construction Inspector	2.00	2.00	2.00	2.00
Administrative Support Specialist	1.00	1.00	1.00	1.00
Stormwater Engineer	1.00	1.00	1.00	1.00
Forestry Specialist	1.00	1.00	1.00	1.00
Crew Leader	5.00	5.00	5.00	5.00
Maintenance Workers	14.00	14.00	15.00	15.00
Mechanic	1.00	1.00	1.00	1.00
Total	30.00	30.00	31.00	31.00
Police Department				
Police Chief	1.00	1.00	1.00	1.00
Police Captain	2.00	2.00	3.00	3.00
Police Sergeant	7.00	7.00	5.00	5.00
Police Corporal	3.00	3.00	4.00	4.00
Police Officer	33.00	33.00	34.00	34.00
Executive Assistant	1.00	1.00	1.00	1.00
Communications Supervisor	1.00	1.00	-	-
Dispatcher	6.00	6.00	6.00	6.00
Records Clerk	2.00	2.00	2.00	2.00
Property Room Clerk	1.00	1.00	1.00	1.00
Crime Analyst	-	-	-	0.50
Community Service Officer	2.00	2.00	2.00	2.00
Information Technology	2.00	2.00	-	-
Total	61.00	61.00	59.00	59.50

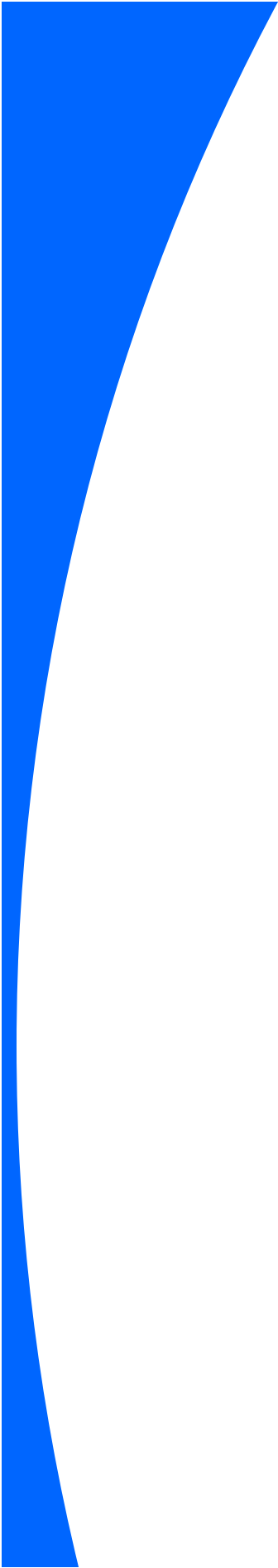
2023 Budget

FTE Summary by Position

Department/Position	2020 Actual	2021 Actual	2022 Budget	2023 Budget
Municipal Justice				
Court Bailiff	0.25	0.25	0.25	0.25
Court Administrator	1.00	1.00	1.00	1.00
Court Clerk	4.00	4.00	4.00	4.00
Total	5.25	5.25	5.25	5.25
Community Development				
Deputy City Administrator	0.52	0.52	0.15	0.15
Receptionist	0.30	0.30	0.30	0.30
Codes Support Specialist	2.00	2.00	2.00	2.00
Building Official	1.00	1.00	1.00	1.00
Code Enforcement Officer	2.00	2.00	2.00	2.00
Building Inspector	2.00	2.00	2.00	2.00
Management Intern	0.50	0.50	-	-
Total	8.32	8.32	7.45	7.45
Community Programs				
Assistant City Administrator	1.00	1.00	1.00	1.00
Special Events Coordinator	-	-	0.50	0.50
Pool Manager	0.35	0.35	0.35	0.35
Assistant Pool Manager	0.50	0.50	0.50	0.50
Guards	14.75	14.75	14.75	14.75
Coaches	1.00	1.00	1.00	1.00
Concession Worker	3.00	3.00	3.00	3.00
Tennis Instructor	0.20	0.20	0.20	0.20
Total	20.80	20.80	21.30	21.30
Grand Total	134.85	134.85	136.55	138.05
Unpaid Positions				
Mayor	1.00	1.00	1.00	1.00
Council Member	12.00	12.00	12.00	12.00
Total	13.00	13.00	13.00	13.00
Appointed/Contracted Officials				
City Attorney/Assistant City Attorney	0.05	0.05	0.05	0.05
City Planner	0.05	0.05	0.05	0.05
City Treasurer	0.05	0.05	0.05	0.05
City Prosecutor	0.50	0.50	0.50	0.50
Municipal Judge	0.50	0.50	0.50	0.50
Public Defender	0.25	0.25	0.25	0.25
Total	1.40	1.40	1.40	1.40

City of Prairie Village 2023 Budget Calendar

Month	Date	Action Item
February	2/22/22	Council Meeting - Handout 2023 Budget Calendar Outline
March	3/3/22	Meet with Johnson County Appraiser - Beau Boisvert
	3/7/22	Council Meeting - (1) 2023 Budget Goals and Objectives (2) Mill Rate Handout (3) Decision Packages (<i>send to Nickie by 4/8/2022</i>)
	3/21/22	4th Quarter 2021 Financial Report
April	4/4/22	Council Meeting - (1) Worker's Compensation and Insurance Cost Assumptions (<i>moved to 4/18/22</i>) (2) Committee 2023 Budget and Funding requests (Village Fest, Arts Council, Environmental, Diversity and Jazz Fest)
	4/8/22	Department budget requests due
	4/11 - 4/15/22	Budget review process with individual departments
	4/18/22	Council Meeting - (1) Decision Package Discussion (2) Preliminary Revenue Estimate (3) Worker's Compensation and Insurance Cost Assumptions (<i>moved from 4/4/22</i>)
May	5/2/22	Council Meeting - (1) CIP Discussion and Annual Road Condition Report
	5/10/22	Finance Committee Meeting - Preliminary 2023 Budget Established and Decision Packages
	5/16/22	Council Meeting
	5/25/22	Finance Committee Meeting - Preliminary 2023 Budget Established and Decision Packages (Continued)
	5/30/22	HOLIDAY
June	6/6/22	Council Meeting
	6/15/22	SB 13: County Clerk will calculate and notify taxing entities of revenue neutral rate
	6/21/22	Council Meeting - 2023 Budget Discussion and Approval of Preliminary Budget
July	7/4/22	HOLIDAY
	7/5/22	Council Meeting - SB 13 Resolution Stating Intent to Exceed Revenue Neutral Rate and Set the Public Hearing Date
	7/18/22	Council Meeting - Request Permission to Publish 2023 Budget & Set Budget Adoption Public Hearing Date
	7/20/22	SB 13: Governing Bodies notify County Clerk of intent to exceed revenue neutral rate w/ date, time and location of hearing
August	8/1/22	Council Meeting
	8/10/22	Notification sent to taxpayers, if exceeding revenue neutral rate
	8/15/22	Council Meeting
	8/23/22	Latest date for notice to be published in the Legal Record for RNR and Budget hearing
	8/25/22	Submit budget forms to County Clerk (due August 25th) <i>If not exceeding revenue neutral rate</i>
September	9/6/22	Council Meeting - SB 13 Public Hearing (Must be no later than September 20) and Budget Hearing/Adoption
October	10/1/22	Submit budget forms to County Clerk if Exceeding Revenue Neutral Rate (due October 1st)
	10/1-10/31/22	Finalize Budget Book; Submit to GFOA Award Program



**Additional 2023 Budget information can be
found on the City's website at**

www.pvkansas.com.

2023 Proposed Budget as of 6/21/2022

MAYOR'S ANNOUNCEMENTS
Tuesday, June 21, 2022

Environmental Committee	06/22/2022	5:30 p.m.
Independence Day – City offices closed	07/04/2022	
VillageFest	07/04/2022	
City Council	07/05/2022	6:00 p.m.
Arts Council	07/06/2022	5:30 p.m.
Diversity Committee	07/12/2022	5:30 p.m.
Planning Commission	07/12/2022	7:00 p.m.
City Council	07/18/2022	6:00 p.m.

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INFORMATIONAL ITEMS
June 21, 2022

1. Planning Commission meeting minutes – May 3, 2022
2. Diversity Committee meeting minutes – May 10, 2022
3. JazzFest Committee meeting minutes – June 1, 2022

PLANNING COMMISSION MINUTES MAY 3, 2022

ROLL CALL

The Planning Commission of the City of Prairie Village met in regular session on Tuesday, May 3, 2022, at 7:00 p.m. Commission members attended a virtual meeting via the Zoom software platform. Acting Chair Nancy Wallerstein called the meeting to order at 7:00 p.m. with the following members present: Jon Birkel, Melissa Brown and Jeffrey Valentino.

The following individuals were present in their advisory capacity to the Planning Commission: Abby Kinney, Gould Evans; Jamie Robichaud, Deputy City Administrator; Mitch Dringman, Building Official; Greg Shelton, Council Liaison; Adam Geffert, City Clerk/Planning Commission Secretary.

APPROVAL OF MINUTES

Mr. Valentino moved for the approval of the minutes of the February 1, 2022, regular Planning Commission meeting. Ms. Brown seconded the motion, which passed 3-0, with Mr. Birkel in abstention.

PUBLIC HEARINGS

PC2022-105 Renewal of Special Use Permit for Service Station, Car Wash and Convenience Store
Minit Mart, LLC
9440 Mission Road
Zoning: C-2
Applicant: Christopher S. Burger, Stevens & Brand, LLP

Ms. Kinney stated that the applicant was requesting the renewal of a special use permit for a service station. The original building was constructed in 1963; in 1992, the City approved a special use permit for the service station for 30 years. The permit was most recently updated in 2014 for the reconstruction of the car wash. The current application is only a renewal and does not involve any physical or operational changes to the property or use. The City does not have records of any complaints or other reports of non-compliance with ordinances or the conditions of the special use permit.

Ms. Kinney noted that staff recommended that the Planning Commission should recommend approval of the renewal of the special use permit to City Council, subject to the following conditions:

1. The use continues to comply with all conditions of the original special use permit and renewals, and all other applicable standards of the zoning ordinance.
2. Staff recommends approval with no expiration date, but the permit is still subject to revocation for non-compliance with any ordinance standards, other regulations, or special use permit conditions; or if unforeseen problems or significant changes in conditions in the area make the use and operation no longer consistent with the findings of the Commission.
3. The application be subject to all conditions of the original special use permit, except for those changes approved through the applicable to site plan process according to the standards in place at the time of a proposed change. The original conditions listed in Special Use Permit 91-13 are summarized as:
 1. Compliance with all City standards and regulations.
 2. The use is conducted according to the approved plans filed with the permit (unless above exception applies).
 3. Environmental audits / compliance shall be provided prior to any construction.
 4. Uses are limited to those permitted by the zoning code.
 5. 30-year period (except recommending no expiration with this renewal).
 6. Ability for revocation continues.

Mrs. Wallerstein recommended changing the wording of condition #3-5 to “Previously a 30-year time period, with the recommendation of no expiration with this renewal.”

Chris Burger of Stevens and Brand LLP, 900 Massachusetts, Suite 500, Lawrence, KS, was present on behalf of the applicant.

Mrs. Wallerstein opened the public hearing at 7:13 p.m. With no one present to speak, Mrs. Wallerstein closed the hearing at 7:14 p.m.

Mr. Valentino made a motion to recommend approval of the renewal of the special use permit with the listed conditions, including Mrs. Wallerstein’s edit of condition #3-5. Ms. Brown seconded the motion, which passed 4-0.

NON-PUBLIC HEARINGS

PC2022-106 Lot Split - 4109 W. 85th Street and 4113 W. 85th Street
Zoning: R-1A
Applicant: Kevin Green

Ms. Kinney stated that the applicant was requesting to split an existing lot into two lots to allow the individual ownership of each side of a single duplex building. This property is part of an overall development project for adult senior dwellings that includes a special use permit and final development plan.

The Planning Commission initially approved a preliminary development plan, final plat and final development plan for Mission Chateau at its March 2016 meeting. At that time, it was understood that the large lot to the south would be re-platted at a future date to facilitate the construction and sale of villas, according to the final development plan. A final plat for lots 3 through 13 for each of the twin villa lots was approved by the Planning Commission in July 2016 and accepted by the City Council. Each of these lots included a two-unit building.

As part of the special use permit and final development plan, it was understood that the twin villas would be individually owned, and a subsequent administrative step would be necessary to facilitate recording of documents to allow sale and individual ownership of each unit in each of the twin villa buildings. Three similar applications have been filed and approved by the Planning Commission for lots 8, 9, and 10.

Planning staff recommends that the Planning Commission approve the lot split subject to the following conditions:

1. That the applicant record the approved lot split with the register of deeds and provide a copy of the recorded document prior to issuance of an occupancy permit.
2. That each of the resulting lots and the building continue to be subject to all conditions of approval of the special use permit, preliminary and final development plans, and final plat, as well as the covenants recorded with the previous final plat.

Rob Young of R.L. Buford and Associates LLC, representing Kevin Green Homes, 6610 Royal Street, Pleasant Valley, MO, was present at the meeting.

Mr. Valentino made a motion to approve the lot split with the listed conditions. Mr. Birkel seconded the motion, which passed 4-0.

PC2022-107 Site Plan Exception for Retaining Wall
7801 Chadwick Street
Zoning: R-1A
Applicant: Russell Davidson

Ms. Kinney stated that the applicant was requesting the reconstruction and replacement of an existing retaining wall on the south side of the lot. The wall extends approximately 136', has an average height of 2.5', and does not exceed 4' at any location. The wall transitions the grade between two houses, and similar conditions exist along this block to accommodate the north/south grade of the block. The retaining wall is closer than 2' to the property line; the permit application was denied by the Building Official because zoning regulations require at least a 2' setback for retaining walls.

Ms. Kinney said that unlike fences, which are typically placed directly on the property line, the City's zoning regulations consider the unique combination of grading, property maintenance, and massing that is associated with constructing retaining walls. The

setback assures that all aspects and potential impacts of the retaining wall - including maintenance of the upper and lower portions - can occur on the site of the wall. The Planning Commission can approve different arrangements on a site-by-site basis through the site plan review process, if it results in a project that is more compatible, provides better screening, provides better storm drainage management, or provides a more appropriate utilization of the site.

Planning staff recommends that the site plan be approved, and the retaining wall be allowed to remain where it was originally constructed, subject to the following condition:

1. The applicant submit a drainage permit, which must be approved by Public Works, demonstrating no impact on adjacent property or other drainage.

Applicant and property owner Russell Davidson was present at the meeting.

Mr. Valentino made a motion to approve the site plan exception for the retaining wall with the listed condition. Ms. Brown seconded the motion, which passed 4-0.

PC2022-109 Site Plan Exception for Fence
9119 Alhambra Street
Zoning: R-1A
Applicant: Jason Leiker

Ms. Kinney said that the applicant was seeking to construct a 6' high privacy fence in the rear yard of the house along the street side lot line on 92nd Terrace. The fenced area would begin at the southeast corner of the house and extend approximately 12' along the building line at the 20' side setback. From this point, the fenced area would extend south to the street side lot line, and then extend along that lot line for approximately 31.5' east to the rear lot line where the fence would extend along the entire rear lot line.

Ms. Kinney noted that zoning regulations were recently amended to address fences along street-side property lines. The amendment adjusted the fence standard to match many existing conditions where street-side fences are at or near the property line. The new requirement is that street-side fences of a corner lot be on private property or at least 18 inches from a public sidewalk. However, where any street-side property line abuts the front lot line of an abutting lot (a "reverse corner" pattern), then the past standard applies that the fence be set back from the right-of-way at least 15' or at least one-half of the front yard of the adjacent building.

The existing condition on this lot would not trigger this additional setback rule. The property to the east along 92nd Terrace is a large institutional use that orients towards Mission Road and 91st Terrace. The 92nd Terrace corner of this property is oriented as a side or rear situation for this institutional property, not the front orientation that is the concern of the ordinance section requiring an additional setback on street corners. However, this property is platted with two existing lots that do front on 92nd Terrace. While the current arrangement of the institutional property extends onto these lots and would

not allow development of the lots as houses, it is possible that through infill or redevelopment in the future they could accommodate single family homes that front on 92nd Terrace. Ms. Kinney noted that the subject property and the new house to the north are both new construction on similarly platted lots, however none of the institutional buildings, structures, or facilities extended onto these lots, and they remain open and undeveloped.

Planning staff recommends approval of the fence site plan with the exception for the street-side additional setback given the above considerations, and subject to the extent shown in Exhibit 2A of the application.

Mrs. Wallerstein asked how the proposed fence would affect the vacant lot to the east once a home is built on it facing 92nd Terrace. Ms. Robichaud stated that staff was not aware of any plans to build on the two vacant lots, which were currently owned by the church to the north. As a result, any potential buyer of the vacant lot to the east of the property would be aware of the fence's location before making a purchase, making the exception unique and not precedent setting.

Mr. Valentino asked if the proposed fence location would potentially block site lines for drivers and cause safety issues. Ms. Robichaud said that the fence would still be set back significantly from the street and would not be in the right-of-way.

Applicant and property owner Jason Leiker was present to discuss the application. He noted that he wished to have the fence built at its proposed location to accommodate a swimming pool in the backyard. He added that the fence would still sit over 10' from the street.

Mr. Birkel made a motion to approve the site plan exception for the fence as presented in Exhibit 2A. Mr. Valentino seconded the motion, which passed 3-1, with Ms. Brown in opposition.

PC2022-110 Lot Split - 7540 Delmar Street
 Zoning: R-1A
 Applicant: Scott Confer, Phelps Engineering

Ms. Kinney stated that the applicant was requesting to split an existing lot into two lots to allow two single-family structures to be built. The existing lot is approximately 165' wide by 304' deep, resulting in a lot that is nearly 50,000 square feet. The proposal is to split the lot down the middle for two lots that are 82.5' wide, resulting in two lots that are each approximately 24,900 square feet. An existing house will be torn down to allow for two new houses.

Planning staff recommends approval of the lot split subject to the following conditions:

1. Prior to recording, a note be added to the survey plat that the existing structure over the proposed lot line is to be demolished, and the split is subject to approval and execution of a demolition permit.
2. The lots are assigned addresses and lot identification numbers acceptable to the Johnson County Land Records requirements.

Applicant Scott Confer of Phelps Engineering was present on behalf of applicant Jim Lambie, 8712 W. 151st Street, Overland Park, KS.

Mr. Valentino made a motion to approve the lot split with the two listed conditions. Mr. Birkel seconded the motion, which passed 4-0.

OTHER BUSINESS

ADJOURNMENT

With no further business to come before the Commission, Acting Chair Nancy Wallerstein adjourned the meeting at 8:02 p.m.

Adam Geffert
City Clerk/Planning Commission Secretary

Diversity Committee meeting minutes

May 10, 2022

Submitted by Dennis Solis

Agenda- Approved

Minutes approved

Citizen Advisory Board- George- candidate was interviewed today- Mike Thompson/ positive interview

BIPOC Playdate- Etienne/ various ideas presented- Conversation pieces etc. Possibly do event a couple of weeks after the Juneteenth Event.

Juneteenth Celebration Update- George presented poster/Band confirmed/ recruiting vendors/layout of event in process/ NAACP will do fish fries /And group will do hot dogs. Dennis please send the diversity committee the volunteer sign up. I will refer this to Sherri Solis.

Social Media- Nothing new at this time. Melissa is hoping to interview the mayor for July /August issue of Village Voice. Group feels the mayor is the right interview for June.

Note: Election is in November

Volunteering at Harvesters- TBD

Another option- Federal- Head Start Program/ Helps children in need in Jo Co- Bigger need than people aware of - Possibly June 3

Note- Arts fair- June 10-12

New Business

1. To **sell alcohol- Special use permit for Juneteenth**/Vote is yes/ Dennis abstained
2. **Prairie Village jazz fair-** Melissa (Arts council committee)
3. **American Jazz museum** – looking for volunteers
4. **Long and short term goals of Diversity Committee-** think about 2- 3 suggestion of priorities ahead of next meeting

Note- members of the committee cycling out (after a year/ or 2 years) a member can re-apply for another term.

Agenda items for June

Panel discussion?

Housing Committee- Todd Harris- helpful, but decided he could not fulfill the committees meeting commitments. Mayor Mikkelson asked the committee to consider someone new to step in and serve on this Committee. There were no volunteers at this time.

Question from Tim Schartzkopf- Assistant City Administrator- There are any recognition days through the year. Which groups do we recognize and acknowledge? After some discussion- The level of recognition will vary. Some acknowledgements will be more elaborate and others simple. Tim suggested he would take this issue back to the administration?

Prairie Village Jazz Fest 2022
Committee Meeting
Wednesday June 1, 2022, 5:30 p.m.
Multipurpose Room

Attendees

Dave Hassett	Food and Beverage Chair
Amanda Hassett	VIP Services Chair
Elissa Andre	Marketing Chair
Joyce Hagen Mundy	Volunteers Chair
Brooke Morehead	Fundraising Chair
J.D. Kinney	Special Events Coordinator, Committee Chair
Dave Robinson	Prairie Village City Council, Council Liaison
Mike Polich	Infrastructure Chair
Alex Toepfer	Talent Chair
John Wilinski	Backstage and Artist Hospitality Chair

Not attending

Jim Barnes	Stage and Technical Chair
Trudy Williams	Prairie Village Arts Council Liaison
Kyle Vanlanduyt	Master of Ceremonies

Committee Chair's Report

No update

Fundraising and Sponsorships

Humana and Renewal by Andersen have been emailed the revised marketing invitation.
Brooke Morehead to reach out to Dial Senior Living.

There was discussion regarding the Transient Guest Tax as a funding vehicle and how much additional fundraising for marketing and non-marketing sponsorships is needed or desired.

Talent

SME Blue Knights, Back Alley Brass Band, Ray Keller Octet, Eddie Moore, and The Adam Larson Band featuring Terrell Stafford have all returned signed contracts and their deposits have been issued. Information from Terrell Stafford has been requested to secure his hotel reservation. Social media and online marketing content to be secured from artists as available.

F&B

Onsite test of tap to pay terminals to be conducted at Harmon Park at beverage tent and main admission gate to ensure appropriate speed and connectivity. Dave Hassett to forward Burg & Barrel contract and send reminder to other vendors to submit contracts and power requirements. Dave to

contract ice vendor used in previous years. Dave to request social media info for the food trucks and forward information to Elissa for inclusion in online marketing.

VIP Services

Six resin white folding side tables have been purchased and are stored at Public Works. Butterfluff Popcorn and other packaged, non-perishable snacks will be provided to guests in the VIP area. Vouchers provided for food trucks for VIP guests discussion ongoing.

Stage, Lighting and Technical Services

No update

Rented Infrastructure

Site layout of rented tents reviewed by Dave Hassett, Mike Polich and John Wilinski. JD to prepare bid proposals for Marquee and AAA.

JD contacted Madden Rental regarding Port a Potties and handwash stations.

JD to contact company that rents ATM for the day.

Alex Toepfer confirmed that SME Band Boosters will do trash and recycling collection for a \$500 donation as in past years.

Marketing

Shawnee Mission/Blue Valley Post announcement of Jazz Fest 2022 lineup pending.

Inn at Meadowbrook has approved artwork for lineup fan. Artist performance times confirmed with Alex and Elissa. Lineup fan production and delivery schedule projected for June 30-July 2 in time for distribution at VillageFest.

The Bridge FM listeners Guide secured and materials submission pending.

KC Studio barter arrangement still pending.

Backstage/Artist Hospitality

Airfare budget for Mr. Stafford raised to \$650 during contract negotiations. Increase based on typical nonstop round trip airfare between Kansas City and Philadelphia where Mr Stafford resides.

Prairie Village City Committees at Jazz Fest

Diversity Committee	No update
Arts Council	Confirmed desire to participate, details of activity TBD
Foundation	No Update
Tree Board	Requested a tent, table and chairs
Environmental	Requested a tent, table and chairs

The next Jazz Fest Committee meeting was scheduled for Wednesday June 29, 2022, at 5:30 pm. In the Multipurpose Room

The meeting concluded at 6:25 p.m.

Respectfully submitted: JD Kinney