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
Monday, August 1, 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

VII. PUBLIC PARTICIPATION

Participants may speak for up to three minutes. To submit written comment to the Council, please email afreburg@pvkansas.com prior to 3 p.m. on August 1. 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 – July 18, 2022

IX. COMMITTEE REPORTS

X. MAYOR'S REPORT

XI. STAFF REPORTS

XII. OLD BUSINESS

XIII. NEW BUSINESS

COU2022-55 Consider approval of a contract with Superior Bowen for the 2022 UBAS program
Melissa Prenger

COU2022-56 Consider approval of a contract with Superior Bowen for the 2022 CARS program
Melissa Prenger

COU2022-57 Consider approval of inspection contract with Trekk Design Group
Melissa Prenger

COU2022-58 Consider approval of an agreement for reconstruction of pedestrian bridges
Melissa Prenger

COU2022-59 Consider approval of an agreement with BBN Architects for parks branding
Melissa Prenger

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

COU2022-60 Consider approval of a debris management agreement with AshBritt
Tim Schwartzkopf

Consider Memorandum of Understanding Extension with Bird Rides, Inc.
Keith Bredehoeft

XV. **ANNOUNCEMENTS**

XVI. **ADJOURNMENT**

PRAIRIE VILLAGE
KANSAS

CITY COUNCIL
CITY OF PRAIRIE VILLAGE
JULY 18, 2022

The City Council of Prairie Village, Kansas, met in regular session on Monday, July 18, at 6:00 p.m. Mayor Mikkelson presided.

ROLL CALL

Roll was called by the City Clerk with the following Councilmembers in attendance: Chad Herring, Cole Robinson, Inga Selders, Ron Nelson, Lauren Wolf, Bonnie Limbird (via Zoom), Dave Robinson, Piper Reimer, Greg Shelton, Courtney McFadden and Ian Graves. Staff present: Byron Roberson, Chief of Police; Keith Bredehoeft, Director of Public Works; City Attorney David Waters, attorney with Spencer Fane LLP; Wes Jordan, City Administrator; Nickie Lee, Deputy City Administrator; Meghan Buum, Assistant City Administrator; Jason Hannaman, Finance Director; Adam Geffert, City Clerk.

PLEDGE OF ALLEGIANCE

APPROVAL OF AGENDA

Mr. Nelson made a motion to approve the agenda for July 18, 2022. Mr. Herring seconded the motion, which passed 11-0.

INTRODUCTION OF STUDENTS AND SCOUTS

Boy Scout Lawrence Fein was present to earn his communications merit badge.

PRESENTATIONS

- Mayor Mikkelson presented resident Mark Morgan with the Citizen Spirit Award for his many contributions to the City.

PUBLIC PARTICIPATION

The following residents voiced concerns regarding certain proposals recommended by the Ad Hoc Housing Committee:

- Bob Beachy, 8108 El Monte Street
- Ted Odell, 7916 Aberdeen Street
- Shannon Healy, 3104 W. 71st Street
- Brooke Morehead, 7921 Fontana Street

- Lee Larson, 8879 Juniper Street
- Charlotte White, 6805 Cedar Street
- Lori Sharp, 3604 W. 71st Street
- Thorne Daimler, 4529 W. 65th Street
- Dr. Charles Satterlee, 8600 Mission Road
- Chet Hanson, 4620 W. 72nd Street
- Jori Nelson, 4802 W. 69th Terrace
- John Cantrell, 8236 Nall Avenue
- Jan Bleakley, 8621 Delmar Street
- Mike Vianello, 5209 W. 83rd Terrace
- Bob Gibbons, 2904 W. 71st Street
- Pauline O'Keefe, 7223 Mission Road, #118
- Barbara Cantrell, 8236 Nall Avenue
- Karen Gibbons, 2904 W. 71st Street
- Mary-Michael Sterchi, 8401 Linden Lane
- Sarah Blick, 4844 Somerset Drive
- Steve Snitz, 4310 W. 70th Terrace

CONSENT AGENDA

Mayor Mikkelson asked if there were any items to remove from the consent agenda for discussion:

1. Approval of regular City Council meeting minutes - June 21, 2022
2. Approval of expenditure ordinance #3015
3. Approval of expenditure ordinance #3016
4. Consider resolutions designating City officials and staff authorized to act on behalf of the City for investments and financial transactions
5. Consider an ordinance approving the Prairie Village Jazz Festival as a special event and authorizing the sale, consumption and possession of alcoholic liquor and cereal malt beverages within the boundaries of a barricaded public area of the event
6. Consider request for alcoholic beverage waiver for Harmon Park for the Prairie Village Jazz Festival
7. Consider approval of short-term special use permit for the KU Kickoff event at Corinth Square

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

COMMITTEE REPORTS

- Ms. Selders read a statement in which she apologized to members of the Diversity Committee for negative interactions that occurred with public attendees at the committee's most recent meeting.

- Ms. Reimer stated that she had attended the Northeast Johnson County Chamber of Commerce's legislative wrap-up on June 24. She also shared information about the Environmental Committee's booth at VillageFest, and that recruitment for the 2022-23 Teen Council would begin soon.

- Mrs. McFadden reported that the VillageFest event was a success and thanked those that participated.

- Mr. Dave Robinson noted that JazzFest planning continued, and that all performers and vendors had been booked.

MAYOR'S REPORT

- Mayor Mikkelson stated that he had participated in the following events since the last Council meeting:

    - Coffee with a Cop on June 22
    - A ribbon-cutting event for the grand opening of the new Sherwin-Williams store in Corinth Quarter
    - Fox 4 News' "Zip Trip" segment about Prairie Village on June 24
    - The community garden group's summer solstice event on June 24
    - The Ad Hoc Civic Center Committee's meeting with potential partners
    - MARC and UCS Board meetings
    - The Northeast Johnson County Chamber's golf tournament
    - The Prairie Ridge Homes Association's "Fun Fest" event

- The Mayor said residents Ann Lilak and Deborah English were presented spirit awards at VillageFest.
- The Mayor noted that the radios shipped to sister-city Dolyna, Ukraine, had reached their destination, and that a letter of thanks had been received from the Ukrainian Consultant General's office.
- The Mayor said a party for retiring Westwood Hills Mayor Paula Schwach would be held on July 19.

STAFF REPORTS

- Ms. Lee introduced new Finance Director Jason Hannaman.

- Chief Roberson said the annual National Night Out would be held on August 2.

- Mr. Bredehoeft stated that proposed repairs to the pedestrian bridge crossing Brush Creek at Tomahawk Road and Ash Street would be presented to Council in August. He also noted that an update would be given regarding the City's one-year trial period with Bird Scooters at an upcoming meeting.

- Mr. Waters provided an update on new guidance from the Attorney General on the Kansas Open Meetings Act. With the state's COVID-related emergency order now expired, the Attorney General determined that all public meetings, including those for committees, must offer the opportunity for the public to attend and participate in-person, rather than just virtually. He also noted that the council policy on remote participation would also be revised in the near future.

- CFD#2 Fire Chief Steve Chick announced that four fire district employees would be retiring later in the week. He noted that the department's mill levy rate had declined for the past three years due to efficient budgeting, and even though employee retirement benefits would increase in 2023 as part of an effort to attract and retain staff, a small rate reduction was still planned.

- Mr. Jordan said that along with new Financial Director Jason Hannaman, three new Public Works employees and a receptionist at City Hall had been hired since the last Council meeting. Applications to the police department had also increased significantly since 2021.

OLD BUSINESS

There was no old business to come before the Council.

NEW BUSINESS

COU2022-54 **Consider Resolution #2022-13 of the City's intent to exceed the revenue neutral rate and establishing the date and time of a public hearing for the 2023 budget**

Ms. Lee stated that staff had worked to develop the 2023 budget over the preceding several months, and that Council had approved the preliminary budget at its June 21 meeting. The proposed budget would maintain the same level of services as the 2022 budget while adding certain decision package items, including a one mill reduction from 19.322 to 18.322.

Per Senate Bill 13, the proposed budget would require a revenue neutral rate hearing because it would exceed the revenue neutral rate provided by the county clerk. During the 2021 legislative session, the "tax lid" was removed and the legislature enacted SB13 and House Bill 2104, establishing new notice and public hearing requirements if the proposed budget exceeded the property tax levy's revenue neutral rate.

Ms. Lee said that the revenue neutral rate was equivalent to the tax rate in mills that would generate the same property tax in dollars as the previous tax year using the current tax year's total assessed valuation. In Prairie Village, the revenue neutral rate would be 17.247 mills in 2023. Since the proposed budget would require 18.322 mills, a public hearing would need to be held. The hearing had been proposed for the City Council's regular meeting on Tuesday, September 6, 2022. The budget public hearing and adoption of the 2023 budget would follow the revenue neutral rate hearing.

Ms. Lee added that in addition to the general fund, the budget document in the packet included budget authority for all other funds, including the solid waste fund, with a proposed annual assessment of $245 per household, an $18 increase from the 2022 rate of $227. The new rate included the cost of an annual mattress recycling program.

Mrs. McFadden made a motion to approve a resolution of the City's intent to exceed its revenue neutral rate, establishing the date and time of a public hearing on such matter and providing for the giving of notice of such public hearing. The motion was seconded by Mr. Graves and passed 11-0.

COUNCIL COMMITTEE OF THE WHOLE

There were no items to come before the Council Committee of the Whole.

EXECUTIVE SESSION

At 8:11 p.m., Mr. Herring made a motion for the City Council to recess into executive session for a period of 40 minutes for the purpose of discussing an economic development matter with the city attorney, under the justification for consulting with an attorney which would be deemed privileged in the attorney-client relationship, K.S.A. 75-4319(b)(2). The Governing Body, City Administrator, Deputy City Administrator, Assistant City Administrator, and City Attorney would be present. The motion was seconded by Mr. Shelton and passed 11-0.

The open meeting resumed at 8:51 p.m.

At 8:56, Mr. Herring made a motion for the City Council to recess into executive session for a period of 20 minutes for the purpose of discussing an economic development matter with the city attorney, under the justification for consulting with an attorney which would be deemed privileged in the attorney-client relationship, K.S.A. 75-4319(b)(2). The Governing Body, City Administrator, Deputy City Administrator, Assistant City Administrator, and City Attorney would be present. The motion was seconded by Mr. Shelton and passed 11-0.
The open meeting resumed at 9:16 p.m.

ANNOUNCEMENTS

Announcements were included in the Council meeting packet.

PRAIRIE VILLAGE
KANSAS

ADJOURNMENT

Mayor Mikkelson declared the meeting adjourned at 9:17 p.m.

Adam Geffert
City Clerk

PUBLIC WORKS DEPARTMENT

Council Meeting: August 1, 2022

COU2022-55 CONSIDER APPROVAL OF A CONTRACT WITH SUPERIOR BOWEN FOR THE 2022 UBAS PROGRAM (UBAS2022)

RECOMMENDATION

Move to authorize the Mayor to sign the Construction Contract with Superior Bowen Asphalt Company, LLC. for the 2022 UBAS Program in the amount of $395,000.

BACKGROUND

Ultra-thin bonded asphalt surface (UBAS) is an asphalt surface treatment used to help extend the life of a road by placing a thin overlay onto a prepared asphalt surface. The overlay can disperse water quickly off the surface, which reduces roadway spray from vehicles and provides greater visibility in wet weather. This treatment is being used on Prairie Village arterial and collector streets.

On June 22, 2022, the office of the City Clerk opened bids for the 2022 UBAS Program.

Two bids were received:

McAnany Construction	$ 349,640.55
Superior Bowen	$ 337,154.30
Engineer's Estimate	$ 399,953.64

City staff has reviewed the bids for accuracy and recommends awarding to the project to Superior Bowen.

The project was bid at $337,154.30. There is $395,000 budgeted for the construction of this project and the contract will be awarded for that amount. Locations will be adjusted (increased) to utilize the $395,000 budget.

FUNDING SOURCE

There is funding available in the CIP Project UBAS2022.

ATTACHMENTS

1. Construction Agreement with Superior Bowen.
2. UBAS2022 Map

PREPARED BY

Melissa Prenger, Senior Project Manager July 25, 2022

CONSTRUCTION AGREEMENT

UBAS2022 |
2022 UBAS PROGRAM

BETWEEN

CITY OF PRAIRIE VILLAGE, KS

AND

SUPERIOR BOWEN ASPHALT CO, LLC

CONSTRUCTION CONTRACT
FOR
UBAS2022 | 2022 UBAS PROGRAM

BETWEEN
THE CITY OF PRAIRIE VILLAGE, KANSAS
AND
SUPERIOR BOWEN ASPHALT COMPANY, 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 UBAS 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 the 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 HUNDRED NINETY FIVE THOUSAND AND 00/100 **DOLLARS ($395,000.00)** for all Work covered by and included in the Contract; payment thereof to be made in cash or its equivalent and in a manner provided in the Contract Documents.

5. WORK SUPERINTENDENT

5.1 The Contractor shall provide and maintain, continually on the site of Work during its progress, an adequate and competent superintendent of all operations for and in connection with the Work being performed under this Contract, either personally or by a duly authorized superintendent or other representative. This representative shall be designated in writing at the preconstruction meeting.

5.2 The superintendent, or other representative of the Contractor on the Work, who has charge thereof, shall be fully authorized to act for the Contractor, and to receive whatever orders as may be given for the proper prosecution of the Work, or notices in connection therewith. Use of Subcontractors on portions of the Work shall not relieve the Contractor of the obligation to have a competent superintendent on the Work at all times.

5.3 The City shall have the right to approve the person who will be the Superintendent based on skill, knowledge, experience and work performance. The City shall also have the right to request replacement of any superintendent.

5.4 The duly authorized representative shall be official liaison between the City and the Contractor regarding the signing of pay estimates, change orders, workday reports and other forms necessary for communication and Work status inquiries. Upon Work commencement, the City shall be notified, in writing, within five (5) working days of any changes in the Contractor's representative. In the absence of the Contractor or representative, suitable communication equipment, which will assure receipt of messages within one (1) hour during the course of the workday, will also be required.

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

6. PROJECT MANAGER

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

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

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

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

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

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

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

6.7 The Project Manager may refuse to recommend the whole or any part of any payment if, in Project Manager's opinion, it would be incorrect to make such representations to City. Project Manager may also refuse to recommend any such payment, or, because of subsequently discovered evidence or the results of subsequent inspections or tests, nullify any such payment previously recommended, to such extent as may be necessary in the Project Manager's opinion to protect the City from loss because:

- The Work is defective, or completed Work has been damaged requiring correction or replacement,
- The Contract Price has been reduced by Written Amendment or Change Order,
- The City has been required to correct Defective Work or complete Work in accordance with the Project Manual.

6.8 The City may refuse to make payment of the full amount recommended by the Project Manager because claims have been made against City on account of Contractor's performance or furnishing of the Work or liens have been filed in connection with the Work or there are other items entitling City to a set-off against the amount recommended, but City must give Contractor written notice (with a copy to Project Manager) stating the reasons for such action.

6.9 The Project Manager will have the authority to reject Work which is defective or does not conform to the requirements of this Contract. If the Project Manager deems it necessary or advisable, the Project Manager shall have authority to require additional inspection or testing of the Work for compliance with Contract requirements.

6.10 The Project Manager will review, or take other appropriate action as necessary, concerning the Contractor's submittals, including Shop Drawings, Product Data and Samples. Such review, or other action, shall be for the sole purpose of determining general conformance with the design concept and information given through the Project Manual.

6.11 The Project Manager shall have authority to order minor changes in the Work not involving a change in the Contract Price or in Contract Time and consistent with the intent of the Contract. Such changes shall be effected by verbal direction and then recorded on a Field Order and shall be binding upon the Contractor. The Contractor shall carry out such Field Orders promptly.

6.12 The Project Manager, upon written request from the Contractor shall conduct observations to determine the dates of Substantial Completion, Total Completion and the date of Final Acceptance. The Project Manager will receive and forward to the City for the City's review and records, written warranties and related documents from the Contractor required by this Contract and will issue a final Certificate for Payment to the City upon compliance with the requirements of this Contract.

6.13 The Project Manager's decisions in matters relating to aesthetic effect shall be final if consistent with the intent of this Contract.

6.14 The Project Manager will **NOT** be responsible for Contractor's means, methods, techniques, sequences, or procedures or construction, or the safety precautions and programs incident thereto and will not be responsible for Contractor's failure to perform the Work in accordance with the Project Manual. The Project Manager will not be responsible for the acts or omissions of the Contractor or any Subcontractor or any of its or their agents or employees, or any other person at the site or otherwise performing any of the Work except as may otherwise be provided.

6.15 Any plan or method of work suggested by the Project Manager, or other representatives of the City, to the Contractor, but not specified or required, if adopted or followed by the Contractor in whole or in part, shall be used at the risk and responsibility of the Contractor, and the Project Manager and the City will assume no responsibility therefore.

6.16 It is agreed by the Contractor that the City shall be and is hereby authorized to appoint or employ, either directly or through the Project Manager, such City representatives or observers as the City may deem proper, to observe the materials furnished and the work performed under the Project Manual, and to see that the said materials are furnished, and the said work performed, in accordance with the Project Manual therefore. The Contractor shall furnish all reasonable aid and assistance required by the Project Manager, or by the resident representatives for proper observation and examination of the Work and all parts thereof.

6.17 The Contractor shall comply with any interpretation of the Project Manual by the Project Manager, or any resident representative or observer so appointed, when the same are consistent with the obligations of the Project Manual. However, should the Contractor object to any interpretation given by any subordinate Project Manager, resident representative or observer, the Contractor may appeal in writing to the City Director of Public Works for a decision.

6.18 Resident representatives, observers, and other properly authorized representatives of the City or Project Manager shall be free at all times to perform their duties, and intimidation or attempted intimidation of any one of them by the Contractor or by any of its employees, shall be sufficient reason, if the City so decides, to annul the Contract.

6.19 Such observation shall not relieve the Contractor from any obligation to perform said Work strictly in accordance with the Project Manual.

7. WORK SCHEDULE:

7.1 The Work is comprised of one large project (sometimes referred to as "**Total Project Work**") and, in some cases, is partitioned into smaller subprojects referred to in this Agreement as "**Project Segments**." A Contract Time shall be stated in the Contract Documents for both the Total Project Work and, when applicable, the Project Segments.

7.2 At the time of execution of this Contract, the Contractor shall furnish the Project Manager with a schedule ("**Work Schedule**") setting forth in detail (in the critical path method) the sequences proposed to be followed, and giving the dates on which it is expected that Project Segments will be started and completed within the Contract Time. The Work Schedule is subject to approval by the City.

7.3 Monthly Work Schedule reports shall accompany the Contractor's pay request for Work completed. Where the Contractor is shown to be behind schedule, it shall provide an accompanying written summary, cause, and explanation of planned remedial action.

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

7.4 At a minimum the Contractor shall update and submit the Work Schedule for review weekly, unless otherwise agreed upon by the City.

7.5 The Contractor, within ten (10) calendar days after being instructed to do so in a written notice from the City, shall commence the Work to be done under this Contract.

7.6 If at any time, in the opinion of the Project Manager or City, proper progress is not being maintained; changes shall be proposed in the Work Schedule and resubmitted for consideration and approval.

7.7 If the Contractor has not completed Project Segments and is within a non-performance penalty period, it shall not be allowed to undertake a new Project Segment until the Project Segment in dispute is completed, unless expressly permitted by the City.

7.8 The operation of any tool, equipment, vehicle, instrument, or other noise-producing device is prohibited to start before or continue after the hours of 7 AM and 10 PM, Monday through Friday (except Fridays which shall be until Midnight) and 8 AM and midnight on Weekends (except Sunday which shall be 10 PM). Violation of this requirement is Prima Facia Violation of City Municipal Code 11-202.

7.9 No work shall be undertaken on Saturdays, Sundays and Holidays (Christmas, New Years, Martin Luther King's Birthday, President's Day, Memorial Day, Independence Day, Labor Day and Thanksgiving) without the express written approval of the City Project Manager. If it is necessary to perform proper care, maintenance, or protection of work already completed or of equipment used, or in the case of an emergency verbal permission may be obtained through the Project Manager.

7.10 Night work may be established by the Contractor, as a regular procedure, with the written permission of the City; such permission, however, may be revoked at any time by the City if the Contractor fails to maintain adequate equipment for the proper prosecution and control of all operations performed as part of the Work.

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

8. DELAYS AND EXTENSIONS OF TIME

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

8.2 Should the Contractor, however, be delayed in the prosecution and completion of the Work by reason of delayed shipment orders, or by any changes, additions, or omissions therein ordered in writing by the City, or by strikes or the abandonment of the Work by the persons engaged thereon through no fault of the Contractor, or by any act taken by the U.S. Government such as the commandeering of labor or materials, embargoes, etc., which would

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

9. ADVERSE WEATHER:

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

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

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

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

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

- The weather experienced at the Work site during the Contract period is more severe than the Adverse Weather anticipated for the Work location during any given month.
- The Unusually Severe Weather actually caused a delay to the completion of the Work.
- The delay must be beyond the control and without fault or negligence by the Contractor.

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

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

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

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

9.8 The number of actual Adverse Weather delay days shall include days affected by actual Adverse Weather (even if Adverse Weather occurred in the previous month), and shall be

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

9.9 If the number of actual Adverse Weather delay days in a given month exceeds the number of days anticipated above, the difference shall be multiplied by 7/5 to convert any qualifying workday delays to calendar days. The resulting number of qualifying lost days shall be added to the Contract Time.

9.10 The determination that Unusually Severe Weather occurred does not automatically mean an extension of time will be granted. The Contractor must substantiate the Unusually Severe Weather delayed work activities on the critical path of the Work Schedule.

9.11 Full consideration for equivalent fair weather workdays shall be given. If the number of actual Adverse Weather delays in a given month is less than the number of days anticipated as indicated above, the difference shall be multiplied by 7/5 to convert any workday increases to calendar days. The resulting number of qualifying extra days will be accumulated and subtracted from any future month's days lost due to unusually severe weather.

9.12 The net cumulative total of extra days/lost days shall not result in a reduction of Contract Time and the date of Substantial Completion shall not be changed because of unusually favorable weather.

9.13 In converting workdays to calendar days, fractions 0.5 and greater shall be rounded up to the next whole number. Fractions less than 0.5 shall be dropped.

9.14 The Contractor shall summarize and report all actual Adverse Weather delay days for each month to the Project Manager by the tenth (10th) day of the following month. A narrative indicating the impact of Adverse Weather conditions on the Work Schedule shall be included.

9.15 Any claim for extension of time due to Unusually Severe Weather shall be submitted to the Project Manager within 7 days of the last day of the commencement of the event giving rise to the delay occurred. Resolution of any claim shall follow the procedures described above.

9.16 The Contractor shall include and indicate the monthly-anticipated Adverse Weather days, listed above, in the Work Schedule. (Reference Section 7.1 for Work Schedule requirements)

9.17 The Contractor shall indicate the approved Adverse Weather days (whether less or more than the anticipated days) in its Work Schedule updates.

10. LIQUIDATED DAMAGES

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

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

11. PAYMENT PROCEDURE

11.1 Based upon Applications for Payment submitted to the Project Manager by the Contractor and Certificates for Payment issued by the Project Manager, the City shall make progress payments on account of the contract sum to the Contractor as provided below and elsewhere in the Contract Documents.

11.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month or on a mutually agreed date by City and Contractor.

11.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the City no later than the time of payment. The Contractor further warrants that upon submittal on the first day of each month of an Application for Payment, all Work for which payments have been received from the City shall be free and clear of liens, claims, security interest or other encumbrances in favor of the Contractor or any other person or entity whatsoever.

11.4 Each application for payment must be submitted with Contractor's waiver for period of construction covered by application. Each Application for Payment will be submitted with executed waivers from the subcontractors or sub-contractors and suppliers for the previous period of construction covered by the previous application. The final payment application must be submitted together with or preceded by final or complete waivers from every entity involved with performance of the Work covered by the payment request.

11.5 The Contractor will submit waivers on forms, and executed in a manner, acceptable to City.

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

11.7 The Project Manager will, upon receipt of a written Application for Payment from the Contractor, review the amount of Work performed during the preceding period and the value thereof at the unit prices contracted. From the amounts so ascertained, there shall be deducted ten percent (10%) to be retained until after final completion of the entire Work to the satisfaction of the City. The Project Manager will submit an estimate each month to the

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

11.8 Deductions will be made from progress payments if the Contract includes a provision for a lump sum or a percentage deduction. Lump sum deductions will be that portion of the stated lump sum computed as the ratio that the amount earned bears to the Contract Price. Percentage deductions will be computed at the stated percentage of the amount earned.

11.9 No progress payment, nor any use or occupancy of the Work by the City, shall be interpreted to constitute an acceptance of any Work not in strict accordance with this Contract.

11.10 The City may decline to make payment, may withhold funds, and, if necessary, may demand the return of some or all of the amounts previously paid to the Contractor, to protect the City from loss because of:

- Defective Work not remedied by the Contractor;
- Claims of third parties against the City or the City's property;
- Failure by the Contractor to pay Subcontractors or others in a prompt and proper fashion;
- Evidence that the balance of the Work cannot be completed in accordance with the Contract for the unpaid balance of the Contract Price;
- Evidence that the Work will not be completed in the time required for substantial or final completion;
- Persistent failure to carry out the Work in accordance with the Contract;
- Damage to the City or a third party to whom the City is, or may be, liable;
- Evidence that the Work is not progressing according to agreed upon schedule by both parties.

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

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

12. COMPLETION AND FINAL PAYMENT

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

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

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

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

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

13. CLAIMS BY THE CONTRACTOR

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

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

13.3 Should concealed and unknown conditions which could not, with reasonable diligence, have been discovered in the performance of the Work (a) below the surface of the ground or (b) in an existing structure differ materially with the conditions indicated by this Contract, or should unknown conditions of an unusual nature differing materially from those ordinarily encountered in the area and generally recognized as inherent in Work of the character provided by this Contract, be encountered, the Contract Price shall be equitably adjusted by the Change Order upon the written notice and claim by either party made within seven (7) days after the first observance of the condition. As a condition precedent to the City having any liability to the Contractor for concealed or unknown conditions, the Contractor must give the City written notice of, and an opportunity to observe, the condition prior to disturbing it. The failure by the Contractor to make the written notice and claim as provided in this Subparagraph shall constitute a waiver by the Contractor of any claim arising out of or relating to such concealed or unknown condition.

13.4 If the Contractor wishes to make a claim for an increase in the Contract Price, as a condition precedent to any liability of the City therefore, the Contractor shall give the City written notice of such claim within seven (7) days after the occurrence of the event, or the first appearance of the condition, giving rise to such claim. Such notice shall be given by the Contractor before proceeding to execute any additional or changed Work. The failure by the Contractor to give

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

13.5 The City reserves the right to increase or decrease quantities, and alter the details of construction including grade and alignment as the Project Manager may consider necessary or desirable, by approved Change Order. Such modifications shall not invalidate the Contract nor release the surety. Unless such alterations and increases or decreases change the total cost of the Work, based on the originally estimated quantities and the unit prices bid, by more than 25 percent, or change the total cost of any major item, based on the originally estimated quantities and the unit price bid, by more than 25 percent, the Contractor shall perform the work altered, increased or decreased, at a negotiated price or prices. (A major item shall mean any bid item, the total cost of which exceeds 12-1/2 percent of the total Contract Price based on the proposed quantity and the contract unit price).

13.6 When the alterations cause an increase or decrease in excess of the 25 percent indicated above, either the Contractor or the Project Manager may request an adjustment of the unit price to be paid for the item or items.

13.7 If a mutually agreeable adjustment cannot be obtained, the City reserves the right to terminate the Contract as it applies to the items in question and make such arrangements as may be deemed necessary to complete the Work.

13.8 In connection with any claim by the Contractor against the City for compensation in excess of the Contract Price, any liability of the City for the Contractor's costs shall be strictly limited to direct costs incurred by the Contractor and shall not include standby costs, indirect costs or consequential damages of the Contractor. The City shall not be liable to the Contractor for claims of third parties.

13.9 If the Contractor is delayed in progressing any task which at the time of the delay is then critical or which during the delay becomes critical, as the sole result of any act or neglect to act by the City or someone acting in the City's behalf, or by changes ordered in the Work, unusual delay in transportation, unusually adverse weather conditions not reasonably anticipated, fire or any causes beyond the Contractor's control 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)	_____ (typed name)
Mayor (typed title)	_____ (typed title)
City of Prairie Village (typed company name)	SUPERIOR BOWEN ASPHALT CO, LLC (typed company name)
7700 Mission Road (typed address)	520 W PENWAY, STE 300 (typed address)
Prairie Village, Kansas 66208 (typed city, state, zip)	KANSAS CITY, MO 64108 (typed city, state, zip)
_____	816-918-4445 (typed telephone number)
_____ (date of execution)	_____ (date of execution)

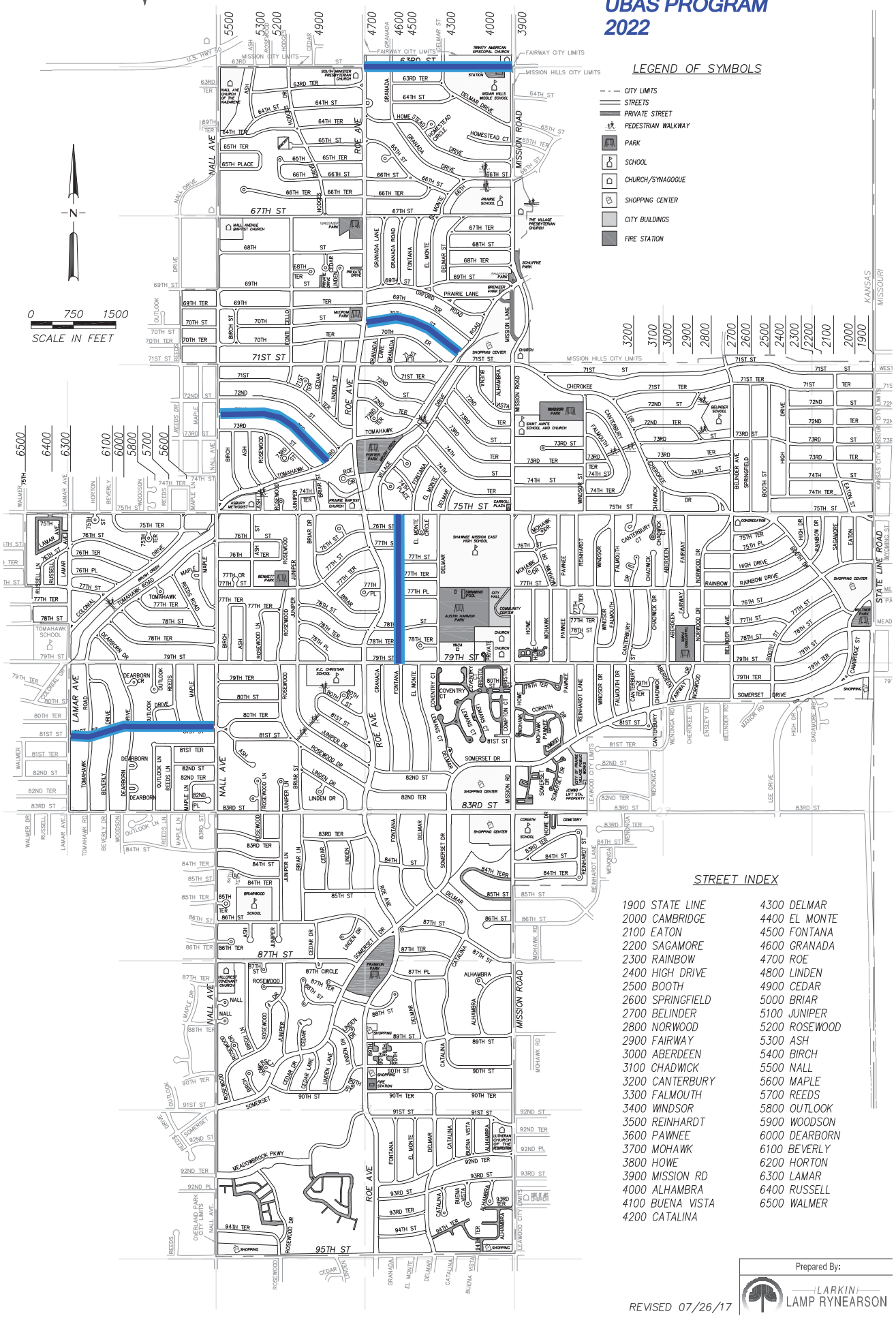
SEAL

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.)

CITY OF PRAIRIE VILLAGE *Star of Kansas*

UBAS PROGRAM 2022



STREET INDEX

1900 STATE LINE	4300 DELMAR
2000 CAMBRIDGE	4400 EL MONTE
2100 EATON	4500 FONTANA
2200 SAGAMORE	4600 GRANADA
2300 RAINBOW	4700 ROE
2400 HIGH DRIVE	4800 LINDEN
2500 BOOTH	4900 CEDAR
2600 SPRINGFIELD	5000 BRIAR
2700 BELINDER	5100 JUNIPER
2800 NORWOOD	5200 ROSEWOOD
2900 FAIRWAY	5300 ASH
3000 ABERDEEN	5400 BIRCH
3100 CHADWICK	5500 NALL
3200 CANTERBURY	5600 MAPLE
3300 FALMOUTH	5700 REEDS
3400 WINDSOR	5800 OUTLOOK
3500 REINHARDT	5900 WOODSON
3600 PAWNEE	6000 DEARBORN
3700 MOHAWK	6100 BEVERLY
3800 HOWE	6200 HORTON
3900 MISSION RD	6300 LAMAR
4000 ALHAMBRA	6400 RUSSELL
4100 BUENA VISTA	6500 WALMER
4200 CATALINA	

REVISED 07/26/17

Prepared By:

LARKIN LAMP RYNEARSON

PUBLIC WORKS DEPARTMENT

Council Meeting Date: August 1, 2022

COU2022-56 CONSIDER APPROVAL OF CONSTRUCTION CONTRACT WITH SUPERIOR BOWEN FOR THE 2022 CARS PROGRAM (NAAV0004)

RECOMMENDATION

Move to authorize the Mayor to sign the construction contract with Superior Bowen Asphalt Company, LCC for the 2022 CARS Programs for $1,042,200.97.

BACKGROUND

This project consists of mill and overlay of Nall Avenue, 79th Street to 83rd Street with new sidewalk construction on the east side from 79th Street to 81st Street and sidewalk replacement on the west side.

On June 29, 2022, the City Clerk opened bids for the project.

Two acceptable bids were received:

JM Fahey Construction Co	$1,049,529,75
Superior Bowen Asphalt Co	$1,042,200.97
Engineer's Estimate	$1,073,161.00

The Engineer has reviewed all bids, found no errors, and recommends award of the low bid.

The contract will be awarded for $1,042,200.97. Change order authorization up to $50,000 additional dollars 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.

This project is a part of the 2022 CIP.

FUNDING SOURCE

Funding is available in the CIP project NAAV0004 with 50% of construction related costs reimbursed under interlocal agreement with Johnson County CARS program.

ATTACHMENTS

1. Construction Contract with Superior Bowen

PREPARED BY

Melissa Prenger, Senior Project Manager July 25, 2022

CONSTRUCTION AGREEMENT

NAAV0004
2022 C.A.R.S. PROGRAM
NALL AVENUE (79th St. to 83rd St.)

BETWEEN

CITY OF PRAIRIE VILLAGE, KS

AND

SUPERIOR BOWEN ASPHALT COMPANY, LLC

CONSTRUCTION CONTRACT
FOR
NAAV0004 Nall Avenue, 79th Street to 83rd Street
2022 C.A.R.S. PROGRAM
BETWEEN
THE CITY OF PRAIRIE VILLAGE, KANSAS
AND
SUPERIOR BOWEN ASPHALT COMPANY, 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 Company, LLC, hereinafter termed in this agreement, "**Contractor**", for the construction and completion of Project 2022 C.A.R.S. 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 the 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 **ONE MILLION FORTY TWO THOUSAND TWO HUNDRED AND 97/100 DOLLARS ($1,042,200.97)** for all Work covered by and included in the Contract; payment thereof to be made in cash or its equivalent and in a manner provided in the Contract Documents.

5. WORK SUPERINTENDENT

5.1 The Contractor shall provide and maintain, continually on the site of Work during its progress, an adequate and competent superintendent of all operations for and in connection with the Work being performed under this Contract, either personally or by a duly authorized superintendent or other representative. This representative shall be designated in writing at the preconstruction meeting.

5.2 The superintendent, or other representative of the Contractor on the Work, who has charge thereof, shall be fully authorized to act for the Contractor, and to receive whatever orders as may be given for the proper prosecution of the Work, or notices in connection therewith. Use of Subcontractors on portions of the Work shall not relieve the Contractor of the obligation to have a competent superintendent on the Work at all times.

5.3 The City shall have the right to approve the person who will be the Superintendent based on skill, knowledge, experience and work performance. The City shall also have the right to request replacement of any superintendent.

5.4 The duly authorized representative shall be official liaison between the City and the Contractor regarding the signing of pay estimates, change orders, workday reports and other forms necessary for communication and Work status inquiries. Upon Work commencement, the City shall be notified, in writing, within five (5) working days of any changes in the Contractor's representative. In the absence of the Contractor or representative, suitable communication equipment, which will assure receipt of messages within one (1) hour during the course of the workday, will also be required.

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

6. PROJECT MANAGER

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

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

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

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

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

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

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

6.7 The Project Manager may refuse to recommend the whole or any part of any payment if, in Project Manager's opinion, it would be incorrect to make such representations to City. Project Manager may also refuse to recommend any such payment, or, because of subsequently discovered evidence or the results of subsequent inspections or tests, nullify any such payment previously recommended, to such extent as may be necessary in the Project Manager's opinion to protect the City from loss because:

- The Work is defective, or completed Work has been damaged requiring correction or replacement,
- The Contract Price has been reduced by Written Amendment or Change Order,
- The City has been required to correct Defective Work or complete Work in accordance with the Project Manual.

6.8 The City may refuse to make payment of the full amount recommended by the Project Manager because claims have been made against City on account of Contractor's performance or furnishing of the Work or liens have been filed in connection with the Work or there are other items entitling City to a set-off against the amount recommended, but City must give Contractor written notice (with a copy to Project Manager) stating the reasons for such action.

6.9 The Project Manager will have the authority to reject Work which is defective or does not conform to the requirements of this Contract. If the Project Manager deems it necessary or advisable, the Project Manager shall have authority to require additional inspection or testing of the Work for compliance with Contract requirements.

6.10 The Project Manager will review, or take other appropriate action as necessary, concerning the Contractor's submittals, including Shop Drawings, Product Data and Samples. Such review, or other action, shall be for the sole purpose of determining general conformance with the design concept and information given through the Project Manual.

6.11 The Project Manager shall have authority to order minor changes in the Work not involving a change in the Contract Price or in Contract Time and consistent with the intent of the Contract. Such changes shall be effected by verbal direction and then recorded on a Field Order and shall be binding upon the Contractor. The Contractor shall carry out such Field Orders promptly.

6.12 The Project Manager, upon written request from the Contractor shall conduct observations to determine the dates of Substantial Completion, Total Completion and the date of Final Acceptance. The Project Manager will receive and forward to the City for the City's review and records, written warranties and related documents from the Contractor required by this Contract and will issue a final Certificate for Payment to the City upon compliance with the requirements of this Contract.

6.13 The Project Manager's decisions in matters relating to aesthetic effect shall be final if consistent with the intent of this Contract.

6.14 The Project Manager will **NOT** be responsible for Contractor's means, methods, techniques, sequences, or procedures or construction, or the safety precautions and programs incident thereto and will not be responsible for Contractor's failure to perform the Work in accordance with the Project Manual. The Project Manager will not be responsible for the acts or omissions of the Contractor or any Subcontractor or any of its or their agents or employees, or any other person at the site or otherwise performing any of the Work except as may otherwise be provided.

6.15 Any plan or method of work suggested by the Project Manager, or other representatives of the City, to the Contractor, but not specified or required, if adopted or followed by the Contractor in whole or in part, shall be used at the risk and responsibility of the Contractor, and the Project Manager and the City will assume no responsibility therefore.

6.16 It is agreed by the Contractor that the City shall be and is hereby authorized to appoint or employ, either directly or through the Project Manager, such City representatives or observers as the City may deem proper, to observe the materials furnished and the work performed under the Project Manual, and to see that the said materials are furnished, and the said work performed, in accordance with the Project Manual therefore. The Contractor shall furnish all reasonable aid and assistance required by the Project Manager, or by the resident representatives for proper observation and examination of the Work and all parts thereof.

6.17 The Contractor shall comply with any interpretation of the Project Manual by the Project Manager, or any resident representative or observer so appointed, when the same are consistent with the obligations of the Project Manual. However, should the Contractor object to any interpretation given by any subordinate Project Manager, resident representative or observer, the Contractor may appeal in writing to the City Director of Public Works for a decision.

6.18 Resident representatives, observers, and other properly authorized representatives of the City or Project Manager shall be free at all times to perform their duties, and intimidation or attempted intimidation of any one of them by the Contractor or by any of its employees, shall be sufficient reason, if the City so decides, to annul the Contract.

6.19 Such observation shall not relieve the Contractor from any obligation to perform said Work strictly in accordance with the Project Manual.

7. WORK SCHEDULE:

7.1 The Work is comprised of one large project (sometimes referred to as "**Total Project Work**") and, in some cases, is partitioned into smaller subprojects referred to in this Agreement as "**Project Segments**." A Contract Time shall be stated in the Contract Documents for both the Total Project Work and, when applicable, the Project Segments.

7.2 At the time of execution of this Contract, the Contractor shall furnish the Project Manager with a schedule ("**Work Schedule**") setting forth in detail (in the critical path method) the sequences proposed to be followed, and giving the dates on which it is expected that Project Segments will be started and completed within the Contract Time. The Work Schedule is subject to approval by the City.

7.3 Monthly Work Schedule reports shall accompany the Contractor's pay request for Work completed. Where the Contractor is shown to be behind schedule, it shall provide an accompanying written summary, cause, and explanation of planned remedial action. Payments or portions of payments may be withheld by the City upon failure to maintain scheduled progress of the Work as shown on the approved Work Schedule.

7.4 At a minimum the Contractor shall update and submit the Work Schedule for review weekly, unless otherwise agreed upon by the City.

7.5 The Contractor, within ten (10) calendar days after being instructed to do so in a written notice from the City, shall commence the Work to be done under this Contract.

7.6 If at any time, in the opinion of the Project Manager or City, proper progress is not being maintained; changes shall be proposed in the Work Schedule and resubmitted for consideration and approval.

7.7 If the Contractor has not completed Project Segments and is within a non-performance penalty period, it shall not be allowed to undertake a new Project Segment until the Project Segment in dispute is completed, unless expressly permitted by the City.

7.8 The operation of any tool, equipment, vehicle, instrument, or other noise-producing device is prohibited to start before or continue after the hours of 7 AM and 10 PM, Monday through Friday (except Fridays which shall be until Midnight) and 8 AM and midnight on Weekends (except Sunday which shall be 10 PM). Violation of this requirement is Prima Facia Violation of City Municipal Code 11-202.

7.9 No work shall be undertaken on Saturdays, Sundays and Holidays (Christmas, New Years, Martin Luther King's Birthday, President's Day, Memorial Day, Independence Day, Labor Day and Thanksgiving) without the express written approval of the City Project Manager. If it is necessary to perform proper care, maintenance, or protection of work already completed or of equipment used, or in the case of an emergency verbal permission may be obtained through the Project Manager.

7.10 Night work may be established by the Contractor, as a regular procedure, with the written permission of the City; such permission, however, may be revoked at any time by the City if the Contractor fails to maintain adequate equipment for the proper prosecution and control of all operations performed as part of the Work.

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

8. DELAYS AND EXTENSIONS OF TIME

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

8.2 Should the Contractor, however, be delayed in the prosecution and completion of the Work by reason of delayed shipment orders, or by any changes, additions, or omissions therein

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

9. ADVERSE WEATHER:

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

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

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

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

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

- The weather experienced at the Work site during the Contract period is more severe than the Adverse Weather anticipated for the Work location during any given month.
- The Unusually Severe Weather actually caused a delay to the completion of the Work.
- The delay must be beyond the control and without fault or negligence by the Contractor.

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

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

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

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

9.8 The number of actual Adverse Weather delay days shall include days affected by actual Adverse Weather (even if Adverse Weather occurred in the previous month), and shall be calculated chronologically from the first to the last day of each month, and be recorded as full workdays.

9.9 If the number of actual Adverse Weather delay days in a given month exceeds the number of days anticipated above, the difference shall be multiplied by 7/5 to convert any qualifying workday delays to calendar days. The resulting number of qualifying lost days shall be added to the Contract Time.

9.10 The determination that Unusually Severe Weather occurred does not automatically mean an extension of time will be granted. The Contractor must substantiate the Unusually Severe Weather delayed work activities on the critical path of the Work Schedule.

9.11 Full consideration for equivalent fair weather workdays shall be given. If the number of actual Adverse Weather delays in a given month is less than the number of days anticipated as indicated above, the difference shall be multiplied by 7/5 to convert any workday increases to calendar days. The resulting number of qualifying extra days will be accumulated and subtracted from any future month's days lost due to unusually severe weather.

9.12 The net cumulative total of extra days/lost days shall not result in a reduction of Contract Time and the date of Substantial Completion shall not be changed because of unusually favorable weather.

9.13 In converting workdays to calendar days, fractions 0.5 and greater shall be rounded up to the next whole number. Fractions less than 0.5 shall be dropped.

9.14 The Contractor shall summarize and report all actual Adverse Weather delay days for each month to the Project Manager by the tenth (10th) day of the following month. A narrative indicating the impact of Adverse Weather conditions on the Work Schedule shall be included.

9.15 Any claim for extension of time due to Unusually Severe Weather shall be submitted to the Project Manager within 7 days of the last day of the commencement of the event giving rise to the delay occurred. Resolution of any claim shall follow the procedures described above.

9.16 The Contractor shall include and indicate the monthly-anticipated Adverse Weather days, listed above, in the Work Schedule. (Reference Section 7.1 for Work Schedule requirements)

9.17 The Contractor shall indicate the approved Adverse Weather days (whether less or more than the anticipated days) in its Work Schedule updates.

10. LIQUIDATED DAMAGES

10.1 Contractor agrees that time is of the essence and any term pertaining to Contractor timely performing so as to achieve Total Completion within the Contract Time is a material provision of this Contract. Further, the parties acknowledge that City's damages in the event of delay are difficult to ascertain and consequently agree that, in the event and to the extent that actual date of Total Completion is delayed beyond the Contract Time for the Total Project Work or Project Segments attributable solely or concurrently to (i) an act or omission of Contractor or

any of its subcontractors or suppliers, or (ii) in whole or in part, to any other event or condition within the Contractor's reasonable control (and not for reasons solely attributable to City), the Contractor shall be assessed a liquidated damage, and not as a penalty, in the amount set forth in the Special Conditions for each calendar day beyond the applicable Contract Time. Such amount shall be deducted from any amounts due Contractor under this Agreement.

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

11. PAYMENT PROCEDURE

11.1 Based upon Applications for Payment submitted to the Project Manager by the Contractor and Certificates for Payment issued by the Project Manager, the City shall make progress payments on account of the contract sum to the Contractor as provided below and elsewhere in the Contract Documents.

11.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month or on a mutually agreed date by City and Contractor.

11.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the City no later than the time of payment. The Contractor further warrants that upon submittal on the first day of each month of an Application for Payment, all Work for which payments have been received from the City shall be free and clear of liens, claims, security interest or other encumbrances in favor of the Contractor or any other person or entity whatsoever.

11.4 Each application for payment must be submitted with Contractor's waiver for period of construction covered by application. Each Application for Payment will be submitted with executed waivers from the subcontractors or sub-contractors and suppliers for the previous period of construction covered by the previous application. The final payment application must be submitted together with or preceded by final or complete waivers from every entity involved with performance of the Work covered by the payment request.

11.5 The Contractor will submit waivers on forms, and executed in a manner, acceptable to City.

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

11.7 The Project Manager will, upon receipt of a written Application for Payment from the Contractor, review the amount of Work performed during the preceding period and the value thereof at the unit prices contracted. From the amounts so ascertained, there shall be deducted ten percent (10%) to be retained until after final completion of the entire Work to the satisfaction of the City. The Project Manager will submit an estimate each month to the City for payment to the Contractor, except that no amount less than $500.00 will be submitted unless the total amount of the Contract remaining unpaid is less than $500.00.

11.8 Deductions will be made from progress payments if the Contract includes a provision for a lump sum or a percentage deduction. Lump sum deductions will be that portion of the stated lump sum computed as the ratio that the amount earned bears to the Contract Price. Percentage deductions will be computed at the stated percentage of the amount earned.

11.9 No progress payment, nor any use or occupancy of the Work by the City, shall be interpreted to constitute an acceptance of any Work not in strict accordance with this Contract.

11.10 The City may decline to make payment, may withhold funds, and, if necessary, may demand the return of some or all of the amounts previously paid to the Contractor, to protect the City from loss because of:

- Defective Work not remedied by the Contractor;
- Claims of third parties against the City or the City's property;
- Failure by the Contractor to pay Subcontractors or others in a prompt and proper fashion;
- Evidence that the balance of the Work cannot be completed in accordance with the Contract for the unpaid balance of the Contract Price;
- Evidence that the Work will not be completed in the time required for substantial or final completion;
- Persistent failure to carry out the Work in accordance with the Contract;
- Damage to the City or a third party to whom the City is, or may be, liable;
- Evidence that the Work is not progressing according to agreed upon schedule by both parties.

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

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

12. COMPLETION AND FINAL PAYMENT

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

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

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

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

13. CLAIMS BY THE CONTRACTOR

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

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

13.3 Should concealed and unknown conditions which could not, with reasonable diligence, have been discovered in the performance of the Work (a) below the surface of the ground or (b) in an existing structure differ materially with the conditions indicated by this Contract, or should unknown conditions of an unusual nature differing materially from those ordinarily encountered in the area and generally recognized as inherent in Work of the character provided by this Contract, be encountered, the Contract Price shall be equitably adjusted by the Change Order upon the written notice and claim by either party made within seven (7) days after the first observance of the condition. As a condition precedent to the City having any liability to the Contractor for concealed or unknown conditions, the Contractor must give the City written notice of, and an opportunity to observe, the condition prior to disturbing it. The failure by the Contractor to make the written notice and claim as provided in this

Subparagraph shall constitute a waiver by the Contractor of any claim arising out of or relating to such concealed or unknown condition.

13.4 If the Contractor wishes to make a claim for an increase in the Contract Price, as a condition precedent to any liability of the City therefore, the Contractor shall give the City written notice of such claim within seven (7) days after the occurrence of the event, or the first appearance of the condition, giving rise to such claim. Such notice shall be given by the Contractor before proceeding to execute any additional or changed Work. The failure by the Contractor to give such notice and to give such notice prior to executing the Work shall constitute a waiver of any claim for additional compensation.

13.5 The City reserves the right to increase or decrease quantities, and alter the details of construction including grade and alignment as the Project Manager may consider necessary or desirable, by approved Change Order. Such modifications shall not invalidate the Contract nor release the surety. Unless such alterations and increases or decreases change the total cost of the Work, based on the originally estimated quantities and the unit prices bid, by more than 25 percent, or change the total cost of any major item, based on the originally estimated quantities and the unit price bid, by more than 25 percent, the Contractor shall perform the work altered, increased or decreased, at a negotiated price or prices. (A major item shall mean any bid item, the total cost of which exceeds 12-1/2 percent of the total Contract Price based on the proposed quantity and the contract unit price).

13.6 When the alterations cause an increase or decrease in excess of the 25 percent indicated above, either the Contractor or the Project Manager may request an adjustment of the unit price to be paid for the item or items.

13.7 If a mutually agreeable adjustment cannot be obtained, the City reserves the right to terminate the Contract as it applies to the items in question and make such arrangements as may be deemed necessary to complete the Work.

13.8 In connection with any claim by the Contractor against the City for compensation in excess of the Contract Price, any liability of the City for the Contractor's costs shall be strictly limited to direct costs incurred by the Contractor and shall not include standby costs, indirect costs or consequential damages of the Contractor. The City shall not be liable to the Contractor for claims of third parties.

13.9 If the Contractor is delayed in progressing any task which at the time of the delay is then critical or which during the delay becomes critical, as the sole result of any act or neglect to act by the City or someone acting in the City's behalf, or by changes ordered in the Work, unusual delay in transportation, unusually adverse weather conditions not reasonably anticipated, fire or any causes beyond the Contractor's control 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
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, SUITE 300 (typed address)
Prairie Village, Kansas 66208	KANSAS CITY, MO 64108 (typed city, state, zip)
_____	816-301-4788 (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: August 1, 2022

COU2022-57 CONSIDER CONSTRUCTION ADMINISTRATION AGREEMENT WITH TREKK DESIGN GROUP FOR THE 2022 CONSTRUCTION PROJECTS

RECOMMENDATION

Move to approve the construction administration agreement with TREKK Design Group for 2022 construction projects for $133,203.91.

BACKGROUND

The City compliments its own construction inspection forces with consultant inspectors every year. We are moving forward with a large amount of varied construction needs this year.

TREKK has been utilized with previous construction programs and will be providing the same inspection personnel. This will allow for a seamless transition while city inspection forces are continuing with ongoing projects.

This contract will include construction administration services for the 2022 construction projects, which include the 2022 CARS Program, the 2022 Paving Program and 2022 Drainage Program.

The total construction cost for the projects will be about $4,700,000. The fee was negotiated with TREKK to be $133,203.91 or 2.8% of construction costs (equivalent to last year). This is a reasonable percent of construction as we are supplementing our staff with assistance during the height of construction season.

Inspection costs are budgeted as part of the 2022 CIP projects.

FUNDING SOURCE

Funding is available in the CIP projects

DRAIN22x	$52,126.95
Paving Program	$12,764.00
CARS Nall Avenue	$68,312.96
TOTAL	$133,203.91

ATTACHMENTS

1. Agreement with TREKK Design Group

PREPARED BY

Melissa Prenger, Senior Project Manager July 25, 2022

AGREEMENT FOR PROFESSIONAL CONSULTANT SERVICES

For

CONSTRUCTION ADMINISTRATION

For

2022 CARS AND DRAINAGE IMPROVEMENTS

THIS AGREEMENT, made at the Prairie Village, Kansas, this _____ day of _____, 2022_____, by and between the City of Prairie Village, Kansas, a municipal corporation with offices at 7700 Mission Road, Prairie Village, Kansas, 66208, hereinafter called the "**City**", and TREKK Design Group, LLC, a Kansas corporation with offices at 1411 E. 104th Street, Kansas City, MO, 64131, hereinafter called the "**Consultant".**

WITNESSED, THAT WHEREAS, City has determined a need to retain a professional engineering firm to provide civil engineering services for Construction Administration of 2021PAVING PROGRAM AND DRAINAGE IMPROVEMENTS hereinafter called the "**Project",**

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

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

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

ARTICLE I - RESPONSIBILITIES OF THE CITY

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

The CITY shall do the following in a timely manner:

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

ARTICLE II - RESPONSIBILITIES OF THE CONSULTANT

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

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

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

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

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

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

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

The Construction Manager shall have authority to disapprove or reject Contractor's work while it is in progress if, on the basis of such observations, Construction Manager believes that such work will not

produce a completed project that conforms generally to the Project Manual or that it will prejudice the integrity of the design concept of the completed project as a functioning whole as indicated in the Project Manual.

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

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

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

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

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

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

The Construction Manager shall:

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

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

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

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

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

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

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

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

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

The duties and responsibilities Construction Manager are as follows:

1 Attend meetings with Contractor, such as preconstruction conferences, progress meetings, job conferences and other project-related meetings, and prepare and circulate copies of minutes thereof.

2 Serve liaison with Contractor, working principally through Contractor’s superintendent, assist in providing information regarding the intent of the Project Manual.

3 Obtaining from CITY additional details or information, when required for proper execution of the Work.

4 Report when clarifications and interpretations of the Project Manual are needed and transmit to Contractor clarifications and interpretations.

5 Record date of receipt of Samples and approved Shop Drawings.

6 Receive and examine Samples, which are furnished at the Site by Contractor.

7 Review material test reports and inform Senior Project Manager and Contractor of results not meeting specifications. The Construction Manager shall make appropriate recommendations to address results not meeting specifications.

8 Advise the Contractor prior to the commencement of any portion of the Work requiring a Shop Drawing or Sample submittal that the submittal has not been received or approved by Construction Manager.

9 Consider and evaluate Contractor's suggestions for modifications in Drawings or Specifications and report such suggestions. Transmit to Contractor in writing decisions as issued by Construction Manager.

10 Conduct on-Site observations of Contractor's work in progress to determine if the Work is in general proceeding in accordance with the Project Manual.

11 Report any part of Contractor's work in progress will not produce a completed Project that conforms generally to the Project Manual or will imperil the integrity of the design concept of the completed Project as a functioning whole as indicated in the Project Manual, or has been damaged, or does not meet the requirements of any inspection, test or approval required to be made; and advise of that part of work in progress that the Construction Manager believes should be corrected or rejected or should be uncovered for observation, or requires special testing, inspection or approval.

12 Consult with Contractor in advance of scheduled major inspections, tests, and systems startups of important phases of the Work.

13 Verify that tests, equipment, and systems start-ups and operating and maintenance training are conducted in the presence of appropriate CITY personnel, and that Contractor maintains adequate records thereof.

14 Observe, record, and report appropriate details relative to the test procedures and systems start-ups.

15 Accompany visiting inspectors representing public or other agencies having jurisdiction over the Project, record the results of these inspections.

16 Maintain orderly files for correspondence, reports of job conferences, reproductions of original Project Manual including all Change Orders, Field Orders, Work Change Directives, Addenda, additional Drawings issued subsequent to the execution of the Contract, clarifications and interpretations of the Project Manual, progress reports, Shop Drawing and Sample submittals received from and delivered to Contractor, and other Project-related documents.

17 Prepare a daily report recording Contractor's hours on the Site, weather conditions, data relative to questions of Change Orders, Field Orders, Work Change Directives, or changed conditions, Site visitors, daily activities, decisions, observations in general, and specific observations in more detail as in the case of observing test procedures; and send copies to Senior Project Manager.

18 Record names, addresses, fax numbers, e-mail addresses, web site locations, and telephone numbers of all Contractors, subcontractors, and major suppliers of materials and equipment.

19 Maintain records for use in preparing Project documentation.

20 Upon completion of the Work, furnish original set of all Project documentation to Senior Project Manager.

21 Furnish to Senior Project Manager periodic reports as required of progress of the Work and of Contractor's compliance with the progress schedule and schedule of Shop Drawing and Sample submittals.

22 Draft and recommend to Senior Project Manager proposed Change Orders, Work Change Directives, and Field Orders. Obtain backup material from Contractor.

23 Furnish copies of all inspection, test, and system start-up reports.

24 Immediately notify Senior Project Manager of the occurrence of any Site accidents, emergencies, acts of God endangering the Work, damage to property by fire or other causes, or the discovery of any Constituent of Concern.

25 Review Applications for Payment with Contractor for compliance with the established procedure for their submission and forward with recommendations to Senior Project Manager, noting particularly the relationship of the payment requested to the schedule of values, Work completed, and materials and equipment delivered at the Site but not incorporated in the Work.

26 During the course of the Work, verify that materials and equipment certificates, operation and maintenance manuals and other data required by the Specifications to be assembled and furnished by Contractor are applicable to the items actually installed and in accordance with the Project Manual, and have these documents delivered to Senior Project Manager for review prior to payment for that part of the Work.

27 Participate in a Completion inspection, assist in the determination of Completion and the preparation of lists of items to be completed or corrected.

28 Participate in a final inspection in the company of Senior Project Manager, and Contractor and prepare a final list of items to be completed and deficiencies to be remedied.

29 Observe whether all items on the final list have been completed or corrected and make recommendations concerning acceptance and issuance of the Notice of Acceptability of the Work.

The Construction Manager shall not:

1 Exceed limitations of CONSULTANT authority as set forth in the Agreement or the Project Manual.

2 Undertake any of the responsibilities of Contractor, subcontractors, suppliers, or Contractor's superintendent.

3 Advise on, issue directions relative to, or assume control over any aspect of the means, methods, techniques, sequences or procedures of Contractor's work unless such advice or directions are specifically required by the Project Manual.

4 Advise on, issue directions regarding, or assume control over safety practices, precautions, and programs in connection with the activities or operations of CITY or Contractor.

5 Participate in specialized field or laboratory tests or inspections conducted off-site by others except as specifically authorized.

6 Accept Shop Drawing or Sample submittals from anyone other than Contractor.

7 Authorize CITY to occupy the Project in whole or in part.

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

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

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

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

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

Typical entries for general information -

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

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

Typical entries for subgrade work –

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

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

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

Typical entries for paving work –

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

Typical entries for storm drains –

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

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

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

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

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

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

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

The CITY agrees to pay the CONSULTANT, at Hourly Rates, to a Maximum Fee of $133,203.91 for the scope of services as specified herein unless modified by Change Order. CONSULTANT current Hourly Rate Schedule is attached as Exhibit A.

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

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

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

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

ARTICLE IV - GENERAL PROVISIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Non Discrimination: The Consultant 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 race, religion, color, sex, sexual orientation, gender identity, disability, age, national origin, or ancestry. If the City determines that the Consultant 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.

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

CITY:	CONSULTANT:
CITY OF PRAIRIE VILLAGE, KS	TREKK Design Group, LLC
By:	By:
Eric Mikkelson	Kimberly Robinett
Mayor	Managing Member
Address for giving notices:	Address for giving notices:
CITY of Prairie Village 7700 Mission Road Prairie Village, Kansas, 66208 913-381-6464	TREKK Design Group, LLC 1411 E. 104th Street Kansas City, MO 64131 816-874-4655
ATTEST:	APPROVED BY:
Adam Geffert, City Clerk	David Waters, City Attorney

2022 Fee Estimate Worksheet

Project Name & Number Prairie Village - 2022 Inspection Projects

	Project Manager	Construction Inspector	Administration	Mileage	Labor Sub-Total	Direct Exp Sub-Total	TOTAL
Fee Billing Rate	**$188.00**	**$120.00**	**$93.40**	**$ 0.585**			
WORK TASK DESCRIPTION							
Task 1 - CARS (Nall 79th to 83rd)	25	516	6	1,936	**$ 67,180.40**	**$ 1,132.56**	**$ 68,312.96**
Project Administration (see note 1 below)	25		6				
Construction Inspection							
July (full-time; 20 days +20% contingency)		192		720			
August (full-time; 23 days +20% contingency)		220		826			
September (half-time; 11 days +20% contingency)		104		390			
Task 2 - UBAS Overlay Program	5	96	1	360	**$ 12,553.40**	**$ 210.60**	**$ 12,764.00**
Project Administration (see note 1 below)	5		1				
Construction Inspection							
September (half-time; 10 days +20% contingency)		96		360			
Task 3 - Drainage Program	20	392	5	1,470	**$ 51,267.00**	**$ 859.95**	**$ 52,126.95**
Project Administration (see note 1 below)	20		5				
Construction Inspection							
October (full-time; 21 days +20% contingency)		200		750			
November (full-time; 20 days +20% contingency)		192		720			
TOTAL MAN-HOURS / QUANTITY	50	1004	12	3766			
UNIT RATE	$188.00	$120.00	$93.40	$ 0.585			
TREKK DESIGN GROUP FEE TOTAL	***$ 9,400.00***	***$ 120,480.00***	***$ 1,120.80***	***$ 2,203.11***	***$ 131,000.80***	***$ 2,203.11***	$ 133,203.91

Notes:

1. Project Manager time is estimated proportionally, and will be limited to total of 10 hr/month for Tasks 1-3

SUMMARY OF ANTICIPATED UTILIZATION						
	June	July	Aug.	Sept.	Oct.	Nov.
Task 1 - (2-1/2 months) CARS (Nall 79th to 83rd)		1	1	1/2		
Task 2 - (2 weeks) UBAS Overlay				1/2		
Task 3 - (2 months) Drainage Program					1	1
Task 4 - N/A						
		full-time	full-time	full-time	full-time	half-time

Use of contingency (if needed):

Full-time inspection is based on 40 hr/wk:

1. Normal Work Week:
   G.C. (and Subs) work 5 days @ 8 hr/day = 40 hr/wk
   G.C. (and Subs) work 4 days @ 10 hr/day = 40 hr/wk
   Inspector works the same 40 hr/wk

2. Varied Work Schedules:
   G.C. works 4 days @ 10 hr/day = 40 hr/wk
   Subs work 5 days @ 8 hr/day = 40 hr/wk
   Inspector works 4@10 + 1@8 = 48 hr/wk (= 120%)

3. Make-up Work Schedule:
   G.C. (and Subs) work 5 days @ 8 hr/day = 40 hr/wk
   G.C. (or Subs) work additional day 6 days @ 8 hr/day = 48 hr/wk
   Inspector works the same 40 hr/wk + make-up day = 48 hr/wk (= 120%)

PUBLIC WORKS DEPARTMENT

Committee Meeting: August 1, 2022

COU2022-xx CONSIDER APPROVAL OF PEDESTRIAN BRIDGE REPAIRS (P5003)

RECOMMENDATION

Authorize the Director of Public Works to sign the quote for the repair of pedestrian bridges at Tomahawk/Ash and Roe/75th.

BACKGROUND

All pedestrian bridges in Prairie Village are inspected along with our roadway bridges as part of the bi-ennial bridge inspections performed by GBA. The inspections of the pedestrian bridges are not mandated but are performed at the request of the City. These inspections had revealed minor repairs to be completed in a few of the pedestrian bridges. For example, all of the wood deck planks were replaced on the east bridge in Windsor Park.

The bridge at Tomahawk and Ash required repairs at the abutment which led to the contractor, Comanche Construction, to remove the wood deck planks. This revealed section loss on the top of the steel tube stringers. These stringers are not structural members of the bridge, however they do support the deck. Since these planks have been removed, the bridge has been closed.

A similar situation was found on the pedestrian bridge on Roe just north of 75th Street. The contractor performing the original repairs has provided a quote for the necessary repairs as recommended by the bridge inspection staff.

Costs for the repairs are as follows:

Tomahawk and Ash	$45,429.13
Roe, north of 75th	$53,451.21

Replacement of these bridges are estimated to be well over $150,000 per bridge. Given the costs of bridge replacement vs repair, City staff and bridge inspection staff feel that it is warranted to repair the bridges to extend their life.

Furthermore, we have seen deterioration of some of our pedestrian bridges occurring at an accelerated rate. Affinis' structural engineers are currently designing replacements for two pedestrian bridges on 67th Street, west of Prairie Elementary and east of Village Presbyterian Church. As part of their investigative efforts, they have been able to determine that the City has one of two issues at these bridges: 1) the weathering steel is not developing the patina expected to protect it from corrosion or 2) the members are thin and any corrosion that occurs causes rapid deterioration of the structure.

Current manufacturers of pedestrian bridges do not use this gauge of steel for these bridges; therefore issue #2 will not be a concern for bridge replacements or for new bridges that we have installed like the one at Tomawhawk and 71st Street. However, issue #1 will be a problem anywhere the pedestrian bridges are located close to the stream bed or the

PREPARED BY

Melissa Prenger, Senior Project Manager July 25, 2022

area has a lot of vegetation shading the deck as high humidity prevents weathering steel's protective patina from forming to prevent corrosion. Staff will work toward a replacement plan for the pedestrian bridges showing rapid deterioration and will also begin annual inspections.

FUNDING

The annual Bridge Repairs project (P5003) is not funded for this type of repair.

There are monies in Streets Unallocated fund to move forward with this project and not impact the 2022 CIP projects. The Streets Unallocated fund is a reserve fund established for the purpose of funding unexpected overages or unforeseen projects.

Authorization of this expenditure will move funds from Streets Unallocated to P5003 in the total amount of $98,880.34.

PREPARED BY

Melissa Prenger, Senior Project Manager July 25, 2022

PUBLIC WORKS DEPARTMENT

Council Meeting: August 1, 2022

COU2022-59 CONSIDER APPROVAL OF AGREEMENT WITH BBN ARCHITECTS FOR UNIVERSAL SIGNING AND PARK BRANDING

RECOMMENDATION

Move to approve the design agreement with BBN Architects, Inc. for the design of universal signing and park branding (BG04 0002) in the amount of $16,919.

BACKGROUND

In April 2022 the 2023-2027 Parks CIP was presented to the Governing Body.

Various projects were considered during the Parks and Recreation Committee planning process with focus on the following points:

1) Inclusivity
2) Signage/Universal Theme throughout the City
3) Trails
4) Lighting
5) Maintenance

The approved Parks CIP included the construction of universal signage in all of the parks in 2023 with design in 2022.

As part of the process for the universal signage, BBN Architects will present to the Park and Recreation Committee concept boards which will guide the design towards two final concepts. These concepts will be brought before the Governing Body with a recommendation from the Parks and Recreation Committee.

Included in this process will be guidelines for future park projects that will promote a universal theme while also allowing flexibility for each park to be unique.

FUNDING

There is funding in the 2022 CIP for parks design.

ATTACHMENTS

1. Agreement with BBN Architects.

PREPARED BY

Melissa Prenger, Senior Project Manager July 25, 2022

AGREEMENT FOR PROFESSIONAL ENGINEER

For

DESIGN SERVICES

Of

Park Branding – Information Signs

THIS AGREEMENT, made at the Prairie Village, Kansas, this _____ day of _____, by and between the City of Prairie Village, Kansas, a municipal corporation with offices at 7700 Mission Road, Prairie Village, Kansas, 66208, hereinafter called the "**City**", and BBN ARCHITECTS, INC. , a corporation with offices at 411 Nichols Road #246, Kansas City, MO 64112 , hereinafter called the "**Consultant**".

WITNESSED, THAT WHEREAS, the City has determined a need to retain a professional engineering firm to provide civil engineering services for the Design of the Park Branding – Information Signs, hereinafter called the "**Project**",

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

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

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

Article I City Responsibilities

A. **Project Definition** The City is preparing to study the branding of the city's parks and will be focused on developing the informational sign.

B. **City Representative** The City has designated, Melissa Prenger, Public Works Senior Project Manager, to act as the City's representative with respect to the services to be performed or furnished by the Consultant under this Agreement. Such person shall have authority to transmit instructions, receive information, interpret and define the City's policies and decisions with respect to the Consultant's services for the Project.

C. **Existing Data and Records** The City shall make available to the Consultant all existing data and records relevant to the Project such as, maps, plans, correspondence files and other information possessed by the City that is relevant to the Project. Consultant shall not be responsible for verifying or ensuring the accuracy of any information or content supplied by City or any other Project participant unless specifically defined by the scope of work, nor ensuring that such information or content does not violate or infringe any law or other third party rights. However, Consultant shall promptly advise the City, in writing, of any inaccuracies in the information provided or any other violation or infringement of any law or third party rights that Consultant observes. City shall

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

D. **Review For Approval** The City shall review all criteria, design elements and documents as to the City requirements for the Project, including objectives, constraints, performance requirements and budget limitations.

E. **Standard Details** The City shall provide copies of all existing standard details and documentation for use by the Consultant for the project.

F. **Submittal Review** The City shall diligently review all submittals presented by the Consultant in a timely manner.

G. The City has funded the Project which may include: 2023-2028 CIP Projects for Consideration

Article II Consultant Responsibilities

A. **Professional Engineering Services** The Consultant shall either perform for or furnish to the City professional engineering services and related services in all phases of the Project to which this Agreement applies as hereinafter provided.

B. **Prime Consultant** The Consultant shall serve as the prime professional Consultant for the City on this Project.

C. **Standard Care** The standard of care for all professional consulting services and related services either performed for or furnished by the Consultant under this Agreement will be the care and skill ordinarily used by members of the Consultant's profession, practicing under similar conditions at the same time and in the same locality.

D. **Consultant Representative** Designate a person to act as the Consultant's representative with respect to the services to be performed or furnished by the Consultant under this Agreement. Such person shall have authority to transmit instructions, receive information, and make decisions with respect to the Consultant's services for the Project.

Article III Scope of Services

See attachment A – SUPPLEMENT FOR PROJECT SCOPE

Article IV Time Schedule

A. **Timely Progress** The Consultant's services under this Agreement have been agreed to in anticipation of timely, orderly and continuous progress of the Project.

B. **Authorization to Proceed** If the City fails to give prompt written authorization to proceed with any phase of services after completion of the immediately preceding phase, the Consultant shall be entitled to equitable adjustment of rates and amounts of compensations to reflect reasonable costs incurred by the Consultant as a result of the delay or changes in the various elements that comprise such rates of compensation.

C. **Default** Neither City nor Consultant shall be considered in default of this Agreement for delays in performance caused by circumstances beyond the reasonable control of the nonperforming party. For purposes of this Agreement, such circumstances include, but are not limited to, abnormal weather conditions; floods; earthquakes; fire; epidemics; war, riots, and other civil disturbances; strikes, lockouts, work slowdowns, and other labor disturbances; sabotage; judicial restraint; and delay in or inability to procure permits, licenses, or authorizations from any local, state, or federal agency for any of the supplies, materials, accesses, or services required to be provided by either City or Consultant under this Agreement. Should such circumstances occur, the consultant shall

within a reasonable time of being prevented from performing, give written notice to the City describing the circumstances preventing continued performance and the efforts being made to resume performance of this Agreement.

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

Design Phase	Summer of 2022

Article V Compensation

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

Design Phase	$ 16,919.00

B. **Invoices** The compensation will be invoiced by phase, detailing the position, hours and appropriate hourly rates (which include overhead and profit) for Consultant's personnel classifications and the Direct Non-Salary Costs.

C. **Direct Non-Salary Costs** The term "Direct Non-Salary Costs" shall include the Consultant payments in connection with the Project to other consultants, transportation, and reproduction costs. Payments will be billed to the City at actual cost. Transportation, including use of survey vehicle or automobile will be charged at the IRS rate in effect during the billing period. Reproduction work and materials will be charged at actual cost for copies submitted to the City.

D. **Monthly Invoices** All invoices must be submitted monthly for all services rendered in the previous month. The Consultant will invoice the City on forms approved by the City. All properly prepared invoices shall be accompanied by a documented breakdown of expenses incurred and description of work accomplished.

E. **Fee Change** The maximum fee shall not be changed unless adjusted by Change Order mutually agreed upon by the City and the Consultant prior to incurrence of any expense. The Change Order will be for major changes in scope, time or complexity of Project.

Article VI General Provisions

A. **Opinion of Probable Cost and Schedule:** Since the Consultant has no control over the cost of labor, materials or equipment furnished by Contractors, or over competitive bidding or market conditions, the opinion of probable Project cost, construction cost or project schedules are based on the experience and best judgment of the Consultant, but the Consultant cannot and does not guarantee the costs or that actual schedules will not vary from the Consultant's projected schedules.

B. **Quantity Errors**: Negligent quantity miscalculations or omissions because of the Consultant's error shall be brought immediately to the City's attention. The Consultant shall not charge the City for the time and effort of checking and correcting the errors to the City's satisfaction.

C. **Reuse of Consultant Documents:** All documents including the plans and specifications provided or furnished by the Consultant pursuant to this Agreement are instruments of service in respect of the Project. The Consultant shall retain an ownership and property interest upon payment therefore whether or not the Project is completed. The City may make and retain copies for the use by the

City and others; however, such documents are not intended or suitable for reuse by the City or others as an extension of the Project or on any other Project. Any such reuse without written approval or adaptation by the Consultant for the specific purpose intended will be at the City's sole risk and without liability to the Consultant. The City shall indemnify and hold harmless the Consultant from all claims, damages, losses and expenses including attorney's fees arising out of or resulting reuse of the documents.

D. **Reuse of City Documents** In a similar manner, the Consultant is prohibited from reuse or disclosing any information contained in any documents, plans or specifications relative to the Project without the expressed written permission of the City.

E. **Insurance** The Consultant shall procure and maintain, at its expense, the following insurance coverage:

1. Workers' Compensation -- Statutory Limits, with Employer's Liability limits of $100,000 each employee, $500,000 policy limit;
2. Commercial General Liability for bodily injury and property damage liability claims with limits of not less than $1,000,000 per occurrence and $2,000,000 in the aggregate;
3. Commercial Automobile Liability for bodily injury and property damage with limits of not less than $1,000,000 each accident for all owned, non-owned and hired automobiles;
4. Errors and omissions coverage of not less than $1,000,000. Deductibles for any of the above coverage shall not exceed $25,000 unless approved in writing by City.
5. In addition, Consultant agrees to require all consultants and sub-consultants to obtain and provide insurance in identical type and amounts of coverage together and to require satisfaction of all other insurance requirements provided in this Agreement.

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

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

H. **Waiver of Subrogation** Coverage shall contain a waiver of subrogation in favor of the City, and its subdivisions, departments, officials, officers and employees.

I. **Consultant Negligent Act** If due to the Consultant's negligent act, error or omission, any required item or component of the project is omitted from the Construction documents produced by the Consultant, the Consultant's liability shall be limited to the difference between the cost of adding the item at the time of discovery of the omission and the cost had the item or component been included in the construction documents. The Consultant will be responsible for any retrofit expense, waste, any intervening increase in the cost of the component, and a presumed premium of 10% of the cost

of the component furnished through a change order from a contractor to the extent caused by the negligence or breach of contract of the Consultant or its subconsultants.

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

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

L. **Indemnity** To the fullest extent permitted by law, with respect to the performance of its obligations in this Agreement or implied by law, and whether performed by Consultant or any sub-consultants hired by Consultant, the Consultant agrees to indemnify City, and its agents, servants, and employees against all claims, damages, and losses, including reasonable attorneys' fees and defense costs, caused by the negligent acts, errors, or omissions of the Consultant or its sub-consultants, to the extent and in proportion to the comparative degree of fault of the Consultant and its sub-consultants.

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

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

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

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

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

R. **Non Discrimination** The Consultant 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 race, religion, color, sex, sexual orientation, gender identity, disability, age, national origin, or ancestry. If the City determines that the Consultant 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.

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

City:	**Consultant:**
City of Prairie Village, Kansas	Consultant Firm
By: _____ Eric Mikkelson, Mayor	By _____
Address for giving notices:	Address for giving notices:
City of Prairie Village Department of Public Works 3535 Somerset Drive Prairie Village, Kansas 66208	BBN Architects, Inc. 411 Nichols Road, #246 Kansas City, MO 64112 _____
Telephone: 913-385-4640 Email: publicworks@pvkansas.com	Telephone: 816-753-2550 Email: sbingham@bbnarchitects.com
ATTEST:	APPROVED AS TO FORM BY:
_____ Adam Geffert, City Clerk	_____ David Waters, City Attorney

Prairie Village – 2022 Park Projects
ATTACHMENT A – SUPPLEMENT FOR PROJECT SCOPE
May 25, 2022

This supplemental section further defines the project scope of services and fee proposal for the branding of the city's parks. This branding will be focused on developing the informational sign system that is identified in the 2023-2028 CIP Projects for Consideration.

Please find the following description of our proposed scope of services and proposed fee for your consideration.

Scope of Services

1) **Image Preferencing:** BBN will produce a series of image boards to solicit the Parks and Recreation Committee's initial input on the direction for the branding. These boards will cover visual cues that provide context for the proposed direction, such as the city's logo, existing park signs, recent park color schemes. The boards will also cover examples of similar sign systems with the anticipated content.

2) **Concept Development:** The design team will develop and present (2) concepts for the proposed informational signs indicating the scale, materials, colors, fonts and the owner-provided text. BBN will work with a local sign fabricator to confirm the costs of the proposed concepts fall within the projected budget. At the conclusion of this step, BBN will present the concepts to the Parks and Recreation Committee to identify the preferred concept, and then share the preferred concept with City Council for comment.

3) **Common Features:** To encourage visual continuity between the city's parks, BBN will develop a document with written descriptions with supporting images to identify particular features that should be considered for future park improvements. This may include color schemes, site furnishings, architectural features and materials.

4) **Large Park Illustrative Maps:** An illustrative map, similar to the example shown at the end of this attachment, will be produced for each of the (4) large parks identified in the 2023-2028 CIP Projects for Consideration. These will be reviewed by the City in the following task.

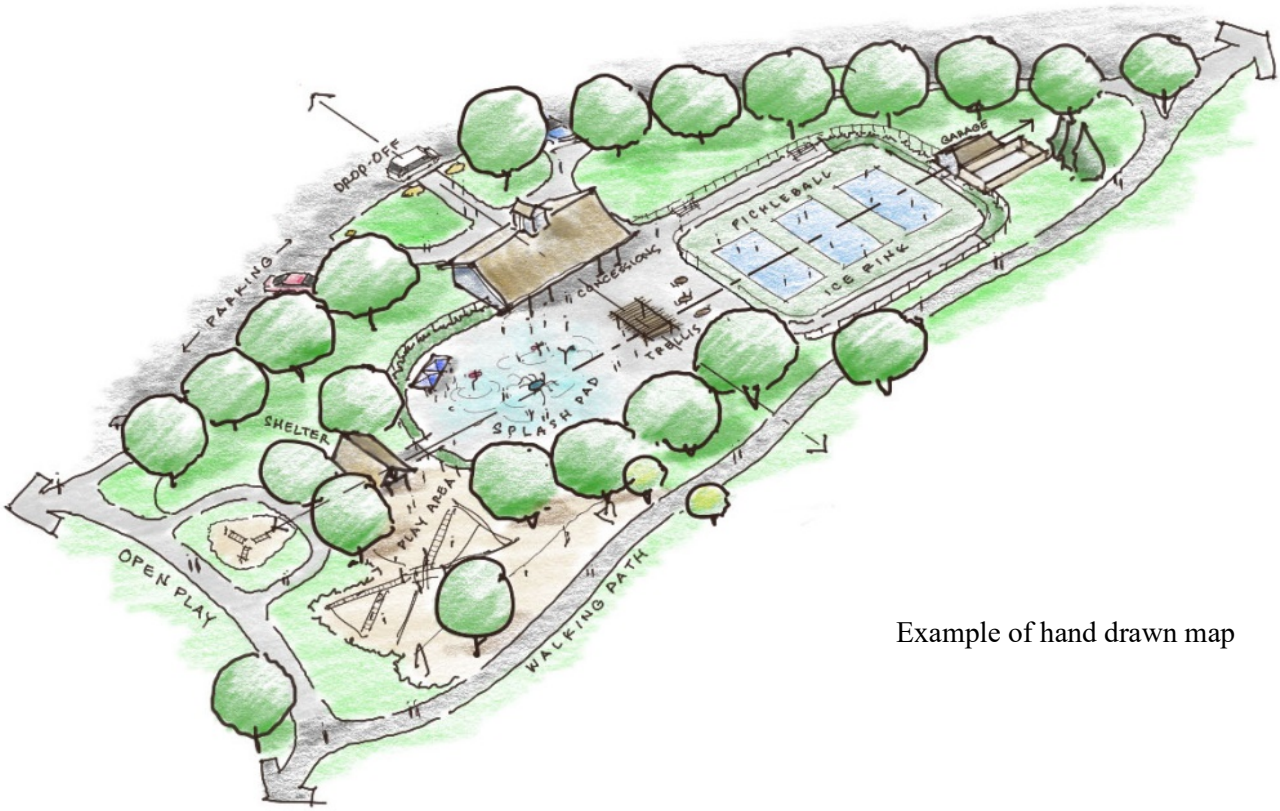
5) **Preferred Concept Refinements:** BBN will refine the preferred concept based on the given feedback and prepare the final deliverables for the signs' designs. This will be provided in Adobe Illustrator, (a vector format for fabricators), and in a PDF format for the City's use. The PDF will also include a short report identifying universal themes, such as a color palette, fonts, etc. to clearly define the design intent.

<u>Assumptions</u>

1. This work will be performed by the architects and landscape architects at BBN; no subconsultants are included in this scope of work.
2. The branding exercise will be limited to the informational signs planned. Logo design is not

included, but variations of the city's current logo may be incorporated.

3. The signs themselves are expected to be painted aluminum panels. No electrical amenities are anticipated.
4. All text associated with the informational signs, (park rules, etc.), shall be provided by the City.
5. Any engineering, construction documents, bidding services, or construction administration services are not included in this scope of work.
6. Assumes signs will be bid as part of the individual park or adjacent one



Example of hand drawn map

Approved Date

BRANDING FEE

Task	Principal Arch Hrs	Principal Arch Fee	Principal LA Hrs	Principal LA Fee	Cost Estimator Hrs	Cost Estimator Fee	Project Arch Hrs	Project Arch Fee	Arch Intern Hrs	Arch Intern Fee	BBN Hours	BBN Fee	
Rate		$ 245		$ 170		$ 160		$ 135		$ 78			Team Fee
IMAGE PREFERENCING	0	$ -	8	$ 1,360	0	$ -	4	$ 540	16	$ 1,248	28.0	$ 3,148	$ 3,148.00
(4) MAP ILLUSTRATIONS	0	$ -	16	$ 2,720	0	$ -	0	$ -	8	$ 624	24.0	$ 3,344	$ 3,344.00
CONCEPT DEVELOPMENT	2	$ 490	20	$ 3,400	0	$ -	8	$ 1,080	20	$ 1,560	50.0	$ 6,530	$ 6,530.00
COMMON FEATURES	0	$ -	4	$ 680	0	$ -	0	$ -	8	$ 624	12.0	$ 1,304	$ 1,304.00
PREFERRED CONCEPT	0	$ -	4	$ 680	0	$ -	4	$ 540	16	$ 1,248	24.0	$ 2,468	$ 2,468.00
EXPENSES												125	$ 125
Total Project	2	$ 490	52	$ 8,840	0	$ -	16	$ 2,160	68	$ 5,304	138.0	$ 16,919	**$ 16,919.00**

ADMINISTRATION

Council Committee of the Whole Meeting Date: August 1, 2022

COU2022-60 Consider approval of the debris management agreement with AshBritt

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RECOMMENDATION:

Staff recommends the approval of the debris management agreement with AshBritt.

BACKGROUND

As part of the City's Emergency Management planning, staff has been working with Johnson County Emergency Management on disaster planning and response. In the event of a disaster that exceeds the capabilities of Public Works and our local contractors, the City would need the assistance of an outside organization to assist with debris management.

After an RFP process, Johnson County chose AshBritt as the company to provide these services for the County. As part of local emergency management planning, it is best practice and the County is encouraging municipalities to have their own agreements for debris management. This additional agreement allows Prairie Village to adopt the County's agreement and provide for local services through AshBritt, giving the community a more coordinated level of response. The agreement with Prairie Village would automatically renew contingent on the renewal at the County level.

AshBritt is a national leader in emergency management and disaster response. They have provided services for major disaster incidents such as Hurricane Katrina, Hurricane Sandy, and other severe storm related events in the U.S.

The City Attorney has reviewed the agreement as to form.

ATTACHMENTS – AshBritt agreement with Prairie Village
AshBritt contract with Johnson County
AshBritt pricing sheet

PREPARED BY
Tim Schwartzkopf
Assistant City Administrator
Date: July 21, 2022

DEBRIS REMOVAL AGREEMENT

THIS DEBRIS REMOVAL AGREEMENT ("Agreement") is made on the date of execution by and between the **City of Prairie Village, Kansas** (the "City"), and **AshBritt, Inc.** ("Contractor") with a principal place of business at 565 E. Hillsboro Blvd. Deerfield, FL 33441. The City and the Contractor agree as follows:

1. **CONTRACT DOCUMENTS**

The Contract Documents consist of this Agreement, and that certain contract number #2019-020 – Debris Removal by and between Contractor and Johnson County, Kansas (the "County"), together with any amendments issued (collectively, "Contract Documents" or "Contract"), the terms of which are incorporated herein by this reference. This Agreement is established to adopt the use of the County's agreement by the Contractor to the City on the same terms and conditions as the Contractor's Contract with the County, and substituting the phrases "City of Prairie Village, Kansas", for the phrases "County of Johnson, Kansas" wherever those phrases appear in the Contract Documents. Where the terms of this Agreement vary from the terms and conditions of the other Contract Documents, the terms and conditions of this Agreement shall prevail. The Contract Documents set forth the entire contract between the City and the Contractor.

2. **CONTRACT TERM**

The Agreement shall commence upon execution of this Agreement by the City and Contractor and shall continue until April 1, 2023, subject to any modifications as provided for in the Contract. This Agreement may be extended for additional terms, contingent upon renewal of the Contract Documents by the County.

3. **SCOPE OF WORK**

The services will include: Removal, transport, process and lawfully dispose of disaster-generated debris (other than hazardous materials and household putrescible solid wastes) from public property and public rights-of-way, and to setup and operate Temporary Debris Management (TDM) sites in the City of Prairie Village Kansas or other sites located in another approved jurisdiction immediately after any natural and/or man-made disaster. The setup and operation of TDM sites are authorized in order to facilitate processing for the purpose of volume reduction, transfer and disposal. Temporary homeowner drop-off sites may be established. Services will also include removal of all debris from those sites daily.

4. **CONTRACT AMOUNT**

The City will pay the Contractor in accordance with the terms of the Contract pricing as described in the Contract Documents (see Pricing Schedule).

5. **NON-APPROPRIATION**

All funds for payments by the City under this Contract are subject to the availability of an annual appropriation for this purpose by the City Council. In the event of non-appropriation of funds by the City Council for goods and services provided under the Contract or substitutes for such goods or services which are more advanced or more advanced in technology, the City will terminate the Contract, without termination charge or other liability to the City, on the last day of the then

current fiscal year or when the appropriation made for the then current year for the services covered by the Contract is spent, whichever event occurs first. If funds are not appropriated at any time for the continuation of the Contract, cancellation will be accepted by the Contractor on sixty (60) days prior written notice, but failure to give such notice shall be of no effect and the City shall not be obligated under the Contract beyond the date of termination specified in the City's written notice.

6. **ORDERING TERMS**

These terms and conditions are incorporated by reference in any purchase order made by City under the Contract Documents. These terms and conditions apply to purchases between the City of Prairie Village and the Contractor, unless otherwise modified in writing on the face of the purchase order.

a. Services delivered must be strictly in accordance with the Contract and shall not deviate in any way.

b. Purchase Order number shall be shown by Contractor/vendor on all related invoices, delivery memoranda, bills of lading, packages and/or correspondence.

c. If discount for prompt payment is allowed, the discount period will begin on the date of receipt of proper invoice, or material, whichever is the later. All prices unless otherwise specified are net F.O.B. Destination with transportation charges prepaid.

7. **METHOD OF ORDERING**

The City may use two different methods of placing orders, either purchase order and City procurement cards. A purchase order will become part of the resulting Contract and indicates that sufficient funds have been obligated as required by the Kansas law. Performance is not to begin until receipt of the purchase order or other notification to proceed.

8. **INVOICES**

City of Prairie Village – Finance
7700 Mission Rd.
Prairie Village, Kansas 66208

9. **NO SUBSTITUTIONS**

No substitution, change or deviation shall be made without written authority from the City by Purchase Order Change. The Purchase Order/Contract shall be governed in all respects, whether as to validity, construction, capacity, performance or otherwise by the laws of the State of Kansas.

10. **FAIR EMPLOYMENT**

Vendors and contractors providing goods to the City under the Contract Documents herewith assure the City that they are conforming to the provision of the Civil Rights Act of 1964 as amended.

11. **IMMIGRATION REFORM AND CONTROL ACT**

The Contractor does not, and shall not during the performance of the Contract in the City, knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986.

12. **LICENSE REQUIREMENT**

Contractor, and any subcontractors engaged under the Contract, shall be authorized to transact business in the State of Kansas.

13. **DRUG FREE WORKPLACE**

During the performance of the Contract, the Contractor agrees to (i) provide a drug-free workplace for the Contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the Contractor that the Contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over $10,000, so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, "drug-free workplace" means a site for the performance of work done in connection with a specific contract awarded to a contractor or subcontractor in accordance with the Contract, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the Contract.

14. **NON DISCRIMINATION CLAUSE**

The Contractor 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 Contract because of race, religion, color, sex, sexual orientation, gender identity, disability, age, national origin, or ancestry. 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.

15. **TERMINATION FOR CAUSE**

If, through any cause, the Contractor fails to fulfill in a timely and proper manner its obligations under the Contract, or if the Contractor violates any of the terms and conditions, the City shall have the right to terminate the Contract. The Contractor shall be entitled to receive equitable compensation for any satisfactory work completed under the Contract.

16. **TERMINATION FOR CONVENIENCE**

This Agreement may be terminated in whole or in part by the City in accordance with this clause whenever the City determines that such a termination is in the best interest of the City. An equitable adjustment in the contract price shall be made for completed service, but no amount for anticipated profit or unperformed services.

17. **DISPUTES**

Disputes shall be resolved in accordance with the laws of the State of Kansas.

18. **INDEMNIFICATION**

The Contractor covenants for itself, its employees, and subcontractors to save, defend, hold harmless and indemnify the City, and all of its elected and appointed officials, officers, current and former employees, agents, departments, agencies, boards and commissions (collectively the "City" for purposes of this section) from and against any and all claims made by third parties or by the City for any and all losses, damages, injuries, fines, penalties, costs (including court costs and attorney's fees), charges, liability, demands or exposure, however caused, resulting from, arising out of, or in any way connected with the Contractor's acts or omissions of its employees and/or subcontractors, in performance or nonperformance of the Work called for by the Contract Documents.

19. **CHOICE OF LAW**

The Contract and its terms, including, but not limited to, the parties' obligations under it, the performance due from each party under it, and the remedies available to each party for breach of it, shall be governed by, construed and interpreted in accordance with the laws of the State of Kansas. Any jurisdiction's choice of law, conflict of laws, rules, or provisions, including those of the State of Kansas that would cause the application of any laws other than those of the State of Kansas shall not apply. Any and all disputes, claims and causes of action arising out of or in connection with this contract or any performance hereunder, shall be brought in the applicable court of Johnson County, Kansas, or in the United States District Court.

20. **LEGAL ACTION**

The Contractor shall not institute any legal action until all statutory requirements have been met.

21. **INSURANCE**

Contractors performing work on City owned or leased facilities or property shall, during the entire term of the Contract, maintain at a minimum, the insurance coverages listed below. The Contractor and any subcontractors will maintain these insurance coverage during the entire term of the Contract and that all insurance coverage will be provided by insurance companies authorized to sell insurance in Kansas by the Kansas State Corporation Commission.

1. Workers' Compensation - Statutory requirements and benefits. Coverage is compulsory for employers of three or more employees, to include the employer. Contractors who fail

to notify the City of increases in the number of employees that change their workers' compensation requirements under Kansas law during the course of the Contract shall be in noncompliance with the Contract.

2. Employer's Liability - $100,000.

3. Commercial General Liability - $1,000,000 per occurrence and $2,000,000 in the aggregate. Commercial General Liability is to include bodily injury and property damage, personal injury and advertising injury, products and completed operations coverage. The City of Prairie Village shall be added as an additional insured to the policy by an endorsement.

4. Automobile Liability - $1,000,000 combined single limit.

ACCEPTANCE:

CITY OF PRAIRIE VILLAGE, KANSAS	**ASHBRITT, INC.**
By (Sign):_____	By (Sign):_____
Printed Name:_____	Printed Name:_____
Title:_____	Title:_____
Date:_____	Date:_____

PRICING SCHEDULE

HURRICANE / DISASTER DEBRIS REMOVAL, TRANSPORTATION, PROCESSING, AND DISPOSAL

See attached Johnson County contract

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Emergency Debris Removal and Reduction Services
Pre-Event Contract for Disaster Recovery Services

THIS PRE-EVENT CONTRACT FOR DISASTER RECOVERY SERVICES ("Contract") is entered into and effective as of this 5th day of November, 2020 ("Effective Date"), by and between **AshBritt, Inc.**, a Florida corporation, whose address is 565 E. Hillsboro Boulevard, Deerfield Beach, Florida 33441 (hereinafter referred to as "**Contractor**") and **Board of County Commissioners** (hereinafter referred to as **"BOCC") of Johnson County, Kansas**, a a quasi-municipal corporation of the State of Kansas, whose address is Johnson County Administration Building, 111 South Cherry Street, Suite 3300, Olathe, Kansas 66061-3486 (hereinafter referred to as "**County**").

RECITALS

WHEREAS, it is foreseen that it is in the public interest to provide for the expedient removal and disposal of storm and other disaster related debris within the corporate limits of the **County** and to provide disaster recovery technical assistance to the appointed and elected officials of the **County** resulting from a future natural or manmade disaster; and

WHEREAS, the **County** has in the past suffered the full force and effect of major storms or manmade disasters and the resulting destruction brought upon the **County** by such storms or manmade events; and

WHEREAS, the public health and safety of all the **County's** citizens will be at serious risk in the event of a storm or other disaster; and

WHEREAS, the immediate clean-up and economic recovery of the **County** and its citizens is a major concern and the primary priority for recovery; and

WHEREAS, the availability of experienced prime disaster response contractors may be severely limited in the event of a storm or other disaster; and

WHEREAS, to prepare for any such storm or disaster, the **County** issued its Request for Proposal for Emergency Debris Removal and Reduction Services, RFP No. 2019-020, dated October 7, 2019, as subsequently amended by Addendum No. 1 (collectively, the "RFP"), a true and correct copy of which is attached hereto as Exhibit "A;" and

WHEREAS, **Contractor** has the experience, equipment, manpower, resources, permits and licenses to perform all storm or disaster related debris removal, remediation and disposal services; and recovery services; and

WHEREAS, **Contractor** submitted its proposal in response to the RFP, a true and correct copy of which is attached hereto as Exhibit "B," and its Form 6 – Pricing Matrix, a true and correct copy of which is attached hereto as Exhibit "C."

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WHEREAS, the **County** evaluated all proposals received in response to the RFP and the BOCC authorized an award of this contract to the Contractor for emergency debris removal and reduction services;

WHEREAS, the **County** and the **Contractor** have agreed to the scope of services, pricing schedule, terms, conditions and technical specifications as fully set out in this Contract, including the Exhibits attached hereto which are incorporated herein by reference; and

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in consideration for the mutual covenants and agreements hereinafter set forth, **Contractor** and **County** agree as follows:

1.0 SERVICES

1.1 Scope of Contracted Services:

The recitals above are true and correct and are incorporated herein by reference. The **Contractor** shall provide all expertise, personnel, tools, materials, equipment, transportation, labor, supervision and all other services and facilities of any nature necessary to execute, complete and deliver the timely removal and lawful disposal of all *eligible storm-generated or other disaster related debris (hereinafter referred to as "Debris")*, including hazardous and industrial waste materials, and within the time specified in Section 3.3 of this Contract. Emergency Debris push, Debris removal and disposal, demolition of structures and hazard mitigation actions shall be limited to:
1) That which is necessary and determined to eliminate immediate threats to life, public health, and safety;
2) That which has been determined to eliminate immediate threats of significant additional damage to improved public or private property; and
3) That which is considered essential to ensure the economic recovery of the affected areas of the **County** to the benefit of the **County** at large.

Without limiting the foregoing, the work under this Contract shall consist of removing and reducing (vegetative only) any and all "eligible" debris as defined by the Federal Emergency Management Agency (FEMA) Public Assistance Program and Policy Guide (FP 104-009-2), all applicable State and Federal Disaster Specific Guidelines and policies, and as directed by the County. Work will include 1) loading the debris; 2) hauling the debris to designated Temporary Debris Management Sites (TDMS), landfills, or other sites in the **County** designated by the **County**; 3) removal of hazardous stumps, limbs, and trees as directed by the **County**; 4) reducing vegetative debris through grinding. debris not defined as eligible by FEMA FP 104-009-2, all applicable State and Federal Disaster Specific Guidelines and policies will not be loaded, hauled, or dumped unless the **County** gives written instructions to the **Contractor.** The **County** will view the debris removal (loading, hauling, dumping) and debris reducing operations as separate operations and reserves the right to call up and dismiss each operation independently. All **Contractor** requests should be routed through Johnson County Emergency Management or the Johnson

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County Emergency Operations Center when activated. The **Contractor** will report to the site manager directly or an assigned liaison.

Contractor shall provide for the cost-effective and efficient removal and lawful disposal of Debris accumulated on all public properties, streets, roads, other rights-of-way, public school properties, and any other locally owned facility or site as may be directed by the **County**. Contracted services will only be performed after the delivery to the **Contractor** of an Approved Work Authorization and a Notice-to-Proceed by the **County**. The **Contractor** shall load and haul the debris collected from within the legal boundaries of the **County** to a site(s) specified by the **County** as set out in Section 4.8 of this Contract.

The **County** will issue task orders based on requests from the municipalities identified as authorized agencies and for the unincorporated areas of the **County**. The task orders will apply only within the jurisdictional boundary of the initiated authorized agency or unincorporated areas of the **County**. "TDMS" sites and landfills within neighboring jurisdictions shall not be presumed to be available for the contractor's use unless so specified within the task order.

At the making of this Contract, the **Contractor** acknowlwdges and agrees that the RFP identified and named those public bodies who participated under this RFP and for which this Contract is made available to for use. It is the **County's** responsibility to notify public bodies of the availability of this Contract. Such public bodies desiring to use this Contract shall make their own legal determination as to whether the use of this Contract is consistent with their laws, regulations, and other policies. Such public bodies if mutually agreed may add terms and conditions required by their statute, ordinances, and regulations, to the extent that they do not conflict with the Contract's terms and conditions, and will enter into a separate contract with the **Contractor** for such emergency debris removal and reduction services.

Description of Designated Area: The designated area for debris removal is the unincorporated areas of Johnson County and includes all public Right-Of-Ways (ROW), easements, parks, and TDMS. All debris identified by the County shall be removed. The **County** will provide the contractor with designated work areas each morning during a briefing and the contractor will not move from one designated work area to another without approval from the **County. The Contractor** shall not enter onto private property during the performance of this contract unless authorized by the **County** in writing. The **Contractor** shall deliver all debris to designated disposal sites as designated by the **County.** Debris shall be reasonably compacted into the hauling vehicle.

Exclusions: No limbs or other debris shall be allowed to protrude more than six inches beyond the sides of the truck bed. Any debris extending above the bed will be properly secured. Any oversized loads as defined by Johnson County Public Works must be approved by the loading site manager. Hand loaded vehicles are prohibited unless pre authorized in writing by the **County.** All hand loaded vehicles will receive

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an automatic 50% deduction for lack of compaction in accordance with **FEMA Publication 327.** The **Contractor** shall conduct debris operations so as not to interfere with the disaster operations of any city, county, regional, state, and federal agency and/or organization.

Equipment: All vehicles and other equipment must be in compliance with all applicable Federal, State, and local rules and regulations. Any truck used to haul debris must be capable of rapidly dumping its load without the assistance of other equipment. All trucks must be able to be filled to capacity safely. Side boards or other extensions to the bed are allowable provided they meet all applicable rules and regulations, cover the front and both sides, and are constructed in a manner to withstand severe operating conditions. Any oversized loads as defined by Johnson County Public Works must be approved by the loading site manager.

The **County** will assign the proper location in the TDMS Temporary Debris Storage and Reduction Site (TDSRS) for the **Contractor** to set up tub grinding operations. The contractor will set up and mark off a safety perimeter around the tub grinder. The **County** will provide a physical barrier if deemed necessary. When not in use, the tub grinder will be turned off and left with in accordance with manufacture instructions.

All chemicals used during debris operations must be state and federally certified. The use and disposal of all chemicals shall be in compliance with instructions provided by Johnson County Public Works as well as all applicable Federal and State regulations.

Documentation and Measurement: Prior to the beginning of any work, the **County** shall clearly number each truck hauling debris or piece of equipment loading debris. All vehicles will have their capacity certified prior to the **Contractor** commencing debris operations. The **County** will provide the standardized load ticket. Load tickets will be completed by an authorized **County** employee, or other representative designated by the **County,** at each load site. Detailed load ticket process information will be provided to the contractor by Johnson County Public Works prior to the beginning of contractor operations. Trucks with less than full capacities will be adjusted down based on visual inspection at TDMS by the tower monitor in accordance with **FEMA Publication 327.** An authorized **County** employee, or other representative designated by the **County,** will validate, enter the estimated debris quantity, and sign the ticket. A validated copy will be returned to the vehicle operator for the **Contractor's** records.

Tub grinder reduction volumes will be determined by the combined totals of vegetative debris compiled from contractor and **County** load tickets.

The **County** will utilize a number of other methods of documentation including, but not limited to: Loading Site Monitor Logs, Daily Issue Logs, Tower Monitor Logs, Collection Summary Spreadsheets, and Timesheets. All **Contractor** work must be in-line with the most current version of the **County's** Debris Management Plan. http://www.jocoem.org/filesidocs/DebrisMgmtPlan.pdf

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1.2 Emergency Push / Road Clearance:

The **Contractor** shall accomplish the cutting, tossing, stacking and/or pushing of Debris from the primary transportation routes including hazardous hanging limbs and/or hazardous leaning trees as identified by and directed by the **County** or the Government's applicable representatives (the "Monitoring Team"). This operational aspect of the scope of contracted services shall be for the first 70 hours (plus or minus) after a disaster event and issuance of the **County's** Notice-to-Proceed, unless extended by the **County in accordance with FEMA FP 104-009-2.** Once this Debris push task is accomplished, the following additional tasks will begin as requested by the **County**.

1.3 Right-of-Way (ROW) Removal and Reduction:

Debris, vegetative or otherwise, existing in the ROW is defined as resulting from a natural or manmade disaster in the designated area. The **Contractor** may be called upon to haul vegetative debris (including hazardous trees, hazardous limbs, and hazardous tree stumps), construction and demolition debris, hazardous waste, household hazardous waste, white goods, electronic waste, soil and mud, vehicles, putrescent materials, infectious waste, household waste, as well as other eligible debris streams as defined in **FEMA FP 104-009-2.**

Any eligible debris, such as fallen trees, which extends onto the ROW from private property, shall be cut, by the contractor at the point where it enters the ROW, and the part that extends onto the ROW shall be removed. Entry onto private property for the removal of vegetative or other hazards will only be permitted when directed by the **County** in writing. The **County** will provide specific Right-of-Entry legal and operational procedures when necessary. The **Contractor** is responsible for all damage, injury, or loss to any property.

All hazardous/eligible stumps/tress/limbs identified by the **County** will be pulled and hauled off in accordance with **FEMA FP 104-009-2** and other applicable guidance. Units will be viewed uniformly to prevent work on one piece of debris on multiple occasions (ex: removing a leaning portion and the cutting the stump to the ground cannot be two separate unit costs).

Grinding shall be the **County's** preferred method of vegetative debris reduction. The contractor shall be responsible for moving debris from adjacent vegetative debris pile and the grinding of all eligible vegetative debris via tub grinder or similar grinding method.

The **Contractor** shall mechanically remove, load and/or haul all Debris from the local ROW when directed to do so by the **County.** The Debris shall be delivered to a **County** designated **TDMS** or TDSRS for processing. The **Contractor** shall use reasonable care to prevent damage to **County** or private property not already damaged by the disaster event in the process of ROW Debris removal. The **Contractor** shall only be liable for any damage caused by its negligence or intentional wrongdoing.

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1.4 Right-of-Entry (ROE) Removal (*if implemented)*:

The **Contractor** will remove ROE Debris from private property with due diligence, as directed by the **County** or the Monitoring Team. The **Contractor** agrees to make reasonable efforts to save from destruction items that the property owners wish to save, (i.e., trees, small buildings, etc.) The **Contractor** will exercise reasonable care when working around public utilities (i.e., gas, water, electric, sewer, etc.). Every effort will be made by the **County** to mark these utilities. **Contractor** does not warrant that utility damages will not occur as a result of conducting the services provided under this Contract and shall be liable only for those damages caused by its negligence, omission, or intentional wrongdoing.

1.5 Demolition of Structures *(if implemented)*:

The **Contractor** will demolish any unsafe structures designated for removal only at the direction of the **County** or the Monitoring Team. The **Contractor** agrees to demolish and remove in a timely manner all unsafe structures as determined and directed by the **County** as set out in Section 1.1 of this Contact

1.6 Private Property Waivers:

The **County** will secure all necessary permissions, waivers and right-of-entry agreements from property owners for the removal of Debris and/or demolition of structures from private residential and/or commercial properties, as set out in Sections 1.4 and 1.5 above.

1.7 Management of TDMS/TDSRS:

The **Contractor** shall operate and manage all TDMS or TDSRS as the **County** may require and authorize. In doing so, the **Contractor** will perform all of the following actions and services:

A. Prepare a layout plan for each TDMS or TDSRS;

B. Provide the **County** with a pre-use condition report of the TDMS or TDSRS, to include soil test, photos and other evidence of prior use and conditions;

C. Provide site security, traffic control, fire safety, tower construction and any environmental safe guard requirements in compliance with applicable law;

D. Process all Debris as directed by the **County**, to include grinding, incineration, and/or compaction with as much separation as may be practical;

E. Separate white goods for specialized disposal as directed by the **County**; and

F. Restore any TDMS or TDSRS to as near pre-storm conditions as possible using the pre-use condition report as a basis.

1.8 Disaster Recovery Technical Assistance:

The **Contractor** will provide, upon request of the **County**, Disaster Recovery Technical Assistance to elected and appointed officials within the **County**. This service shall include reasonable support guidance on all aspects of the recovery process. Emphasis will be on Debris management and disaster grants. The **Contractor** will provide compliance and documentation support through the use of experienced specialists. These specialists will be supervised by a senior **Contractor** team member

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with the goal of assisting the **County** to receive the maximum reimbursement available from external sources.

1.9 Other Disaster Services:

The **County** may require, request and direct the **Contractor** to supply and/or perform other/additional services not set out in Section 1.0 of this Contract, provided reasonably related to the disaster recovery and remediation. The scope of these additional tasks, and the compensation to be paid therefore, including reasonable **Contractor** profit, as agreed by the parties, shall be conveyed in writing to the **Contractor** and any such writing shall become an amendment to this Contract upon approval and execution by the parties.

1.9.1 Additional Support Services:

The **Contractor** can/will provide *Additional Support Services* as requested by the **County**. The **Contractor** maintains an inventory of professional storm and disaster recovery service providers, which include but are not limited to: emergency power and generators, potable water, emergency ice, feeding facilities, disaster worker support (housing, laundry, and security), waterway clearing, preservation of historical sites, vessel recovery, hazardous waste remediation, and bio-terrorism remediation. In the event the **County** requests the **Contractor** to provide *Additional Support Services*, the **Contractor** will deliver in writing a price or cost for each service requested for consideration and negotiation with the **County**.

The multiple variables attending such services (i.e., timing, distance, units required, duration of service, etc.), makes the listing or pricing of each such *Additional Support Services* as an attachment to this Contract impractical. **Contractor** will provide such services at the lowest possible unit, hourly or lump sum price possible with a reasonable profit to **Contractor**. The provision of any such *Additional Support Services* shall be set forth in writing and signed by the parties, and shall become an amendment to this Contract.

2.0 PERFORMANCE OF SERVICES

2.1 Description of Service:

The **Contractor** agrees to perform the contracted services described in Section 1.0 in a professional and workmanlike manner and in compliance with all applicable laws, ordinances, rules, regulations and permits. Services, equipment and workmanship not conforming to this Contract and all applicable laws may be rejected. Replacement, repair and/or rework, as may be required, will be accomplished at no additional cost to the **County**.

2.2 Cost of Services:

The **Contractor** shall bear the costs of performing all contracted services hereunder, as directed by the **County**, including but not limited to that which is set out in Section 1.0. Such costs include applicable permits and license fees as well as all maintenance costs required to maintain its vehicles and other operating equipment in a condition adequate to accomplish the contracted services as set out in this Contract.

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2.3 Matters Related to Performance:

2.3.1 Subcontractor(s):

The **Contractor** may utilize the service of subcontractors and shall be responsible for the acts or omissions of its subcontractors to the same extent the **Contractor** is responsible for the acts and omissions of its employees. The **Contractor** shall ensure that all its subcontracts have and carry the same major provisions as this Contract and that the work of its subcontractors is subject to said provisions. Nothing contained in this Contract shall create any contractual relationship between any subcontractor and the **County**. The **Contractor** shall supply the names and addresses of subcontractors and materials suppliers when requested to do so by the **County**.

2.3.2 Indemnification:

The **Contractor** agrees to indemnify, hold harmless and defend the **County** from and against any and all liabilities, suits, actions, legal proceedings, claims, demands, damages, costs and expenses (including reasonable attorney's fees) arising out of any negligent or intentional act or omission of the **Contractor**, its agents, subcontractors or employees in the performance of this Contract and the contracted services required hereunder. **Contractor** shall not be liable to indemnify the **County** from any claim arising out of the **County's** breach of this Contract or negligent or intentional act or omission. If any claim or demand is made against the **County** for any matter indemnified herein, **County** shall give notice thereof to the **Contractor** within seven (7) days, and **Contractor** shall assume the defense of such claim through counsel reasonably acceptable to the **County**. As separate consideration for this indemnification, defense and hold harmless obligation provided by **Contractor** hereunder, the parties acknowledge and agree that the first one hundred dollars ($100.00) of the Contract sum to be paid to **Contractor** is paid as separate consideration for these indemnification obligations of **Contractor**.

2.3.3 Insurance(s):

The **Contractor** agrees to keep the insurance specified below in full force and effect during the term of this Contract. Except for workers' compensation, the **Contractor** must also name the **County** as an additional insured while working within the boundaries of the **County**.

2.3.4 Worker's Compensation and Employer's Liability:

1. Statutory Workers' Compensation including an all states endorsement
2. Employer's Liability (E.L. and Disease):
   a. Bodily Injury by Accident — $500,000 Each Accident
   b. Bodily Injury by Disease — $500,000 Policy Limit
   c. Bodily Injury by Disease — $500,000 Each Employee

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2.3.5 Commercial Automobile Liability:

$1,000,000 Combined Single Limit for bodily injury and property damage per accident, covering all owned, non-owned, and hired vehicles used in the course of business

2.3.6 Commercial General Liability:

1. $1,000,000 Combined Single Limit, for bodily injury, personal injury, and property damage per occurrence
2. $2,000,000 annual aggregate

Coverage must include Premises and Operations; Contractual Liability; Products and Completed Operations Liability and Independent Contractor's Protection.

2.3.7 Umbrella Liability:

$5,000,000 per occurrence and aggregate
Following form of the Commercial General Liability Policy

The **Contractor** shall furnish to the Johnson County Risk Manager a Certificate of Insurance verifying such coverage and identifying the Board of County Commissioners, Johnson County, Kansas, its' officers, commissions, agents, and employees as Additional Insured as pertains to this Contract. This inclusion shall not make the **County** a partner or joint venture with the contractor in its operations hereunder, nor does it apply to the Professional Liability coverage.

"The Board of County Commissioners, Johnson County, Kansas, its' officers, commissions, agents and employees" shall be named as Additional Insured as respects: Liability arising out of acts performed by or on behalf of the **Contractor;** products and completed operations of the **Contractor;** premises owned, leased or used by the **Contractor;** or automobiles owned, leased, hired, or borrowed by the **Contractor.**

The certificate holder on the Certificate of Insurance shall be as follows:

Board of County Commissioners
Johnson County, Kansas
c/o Risk Manager
111 South Cherry Street, Suite 2400 Olathe, Kansas
66061-3486

County RFP No. 2019-020 — **Exhibit A** shall be referenced on the Certificate of Insurance.

It is the **Contractor's** sole responsibility to provide the BOCC notice should any required insurance be cancelled or nonrenewed. Failure of the **Contractor** to provide all insurance required or to provide notice of cancellation or nonrenewal shall not relieve **Contractor** of its obligation under this Contract.

In the event of an occurrence, it is further agreed that any insurance maintained by the Board of County Commissioners, Johnson County, Kansas, its officers, commissions, agents and

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employees shall apply in excess of and not contribute with insurance provided by policies named in this Contract.

2.3.8 Insurance Cancellation / Renewal:

The **Contractor** will notify the **County** at least thirty (30) days in advance of cancellation, non-renewal or adverse change to the required insurance. New certificates of insurance are to be provided to the **County** at least ten (10) days following coverage renewals or changes.

2.3.9 Work under 2 CFR 200

The **Contractor** shall follow all of the requirements of 2 C.F.R. §200.321 in the execution of this Contract, and shall require and enforce similar compliance with all sub-contractors for contracts awarded by non-Federal Entities under Federal Awards which are incorporated herein by reference as if enumerated herein in their entirety.

FHWA-ER Program and 2 CFR Part 200 Contract Requirements

The **County** intends to seek reimbursement from FHWA for the eligible debris removal performed on federal aid roads. Consequently, the **County** mandates compliance from the successful Contractor regarding the following:

FHWA Form 1273, titled Standard Federal-ail Provisions. FHWA Form 1273 will be included in the final contract.

Buy America Requirements

49CFR Part 26, Disadvantage Business Enterprise Program

American with Disabilities Act of 1990 (ADA)

All work must be properly grouped according to FEMA damage categories as specified in the contract.

FHWA-ER and 200 C.F.R. Program contract requirements are subject to any changes provided by FEMA or FHWA during the term of the contract. Based on the current guidance, FHWA will only reimburse the **County** for the initial collection, hauling and tipping fee, if applicable, of eligible debris. Debris reduction operations are not eligible for reimbursement unless the debris is being reduced as part of a rolling pickup operation. As a result, the FHWA-ER eligible debris that is collected during the first pass shall be hauled to the nearest Final Disposal Site unless otherwise directed by the **County**.

200 C.F.R. regulations may be found at

https://www.ecfr.gov/cgi-bin/text-idx?SID=f3018884ed09ad415758cf064c3aac75&mc=true&tpl=/ecfrbrowse/Title02/2

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FHWA-ER and 200 C.F.R. Program contract requirements are subject to any changes provided by FEMA or FHWA during the term of the contract. Based on the current guidance, FHWA will only reimburse the **County** for the initial collection, hauling and tipping fee, if applicable, of eligible debris. Debris reduction operations are not eligible for reimbursement unless the debris is being reduced as part of a rolling pickup operation. As a result, the FHWA-ER eligible debris that is collected during the first pass shall be hauled to the nearest Final Disposal Site unless otherwise directed by the County.

MINORITY / WOMEN'S / LABOR SURPLUS FIRMS PARTICIPATION: The **County** in accordance with the requirements as stated in C.F.R. 200.321 encourages the active participation of minority businesses, women's business enterprises and labor surplus area firms as a part of any subsequent agreement whenever possible. If subcontracts are to be let, through a prime contractor, that contractor is required to take the affirmative steps listed in items (1) through (5) below.

(1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;

(2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;

(3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;

(4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;

(5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

3.0 STANDARDS OF PERFORMANCE

3.1 Contractor Representative:

The **Contractor** shall have a knowledgeable and responsible Manager/Supervisor report to the **County's** designated Contract Representative within twenty-four (24) hours following delivery of a Notice-to-Proceed by the **County**. The **Contractor's** Manager/Supervisor shall have the authority to implement all actions and commitments required to begin the performance of contracted services as set out in this Contract and the Contractor's General Operations Plan.

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3.2 Mobilization:

When the written Notice to Proceed has been received by the Contractor and/or the on-site Contractor Manager/Supervisor, he/she will make all necessary arrangements to mobilize sufficient resources to begin work within forty-eight (48) hours. The balance of the maximum required resources will be mobilized as needed to support the most efficient workforce augmentation as possible.

3.3 Time to Complete:

The **Contractor** shall complete all directed work as set out in Section 1.0 of this Contract within 180 working days from delivery of the Notice to Proceed and in accordance with Section 5.8 of this Contract, unless extended by the **County**.

3.4 Completion of Work:

The **Contractor** shall be responsible for removal of all Debris up to the point where remaining debris can only be described as storm litter and additional collection can only be accomplished by the use of hand labor.

3.5 Extensions:

In as much as this is a "time is of the essence" based Contract, the commencement of contracted services will be as set out in Section 3.2. If the completion of this Contract is delayed by actions of the **County** or force majeure events, then the time to complete specified in Section 3.3 shall be extended for such time as caused by the delay to allow the **Contractor** to complete the performance of the Contract. This Contract may also be extended by mutual consent of both the **County** and the **Contractor** for reasons of additional time, additional services and/or additional areas of work. Force majeure events shall include, but not be limited to, Acts of God, strikes, labor shortages, or other events beyond the reasonable control of **Contractor** or **County**.

3.6 Term of Contract:

The term of the Contract shall be for twelve (12) months beginning on the Effective Date, with the **County** having the option to renew the term of this Contract for four (4) additional twelve (12) month periods upon written notice delivered to the **Contractor** at least sixty (60) days prior to the expiration of the term or any extended term.

3.7 Contract Renewal:

This Contract may be renewed for additional one year terms after a written acceptance of both parties on any negotiated changes to the terms and specifications contained in this Contract. Section 7.0 and Exhibit-C (*Form 6 - Pricing Matrix*) of this Contract may be reviewed on an annual basis, at which time amended unit costs and rates may be submitted by the **Contractor** to the **County** to reflect the current disaster recovery market value of all contracted services in this Contract. Such amendments shall become part of this Contract after both parties sign any such written amendment(s).

3.8 Contract Termination:

This Contract shall terminate upon ninety (90) days written notice from either party and delivered to the other party as set out in Section 8.1 of this Contract.

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Notwithstanding the foregoing, this Contract may be terminated by the **County** for its convenience upon thirty (30) days written notice to the **Contractor**.

4 GENERAL RESPONSIBILITIES

4.1 Other Agreements:

The **County** may be required to enter into agreements with federal and/or state agencies for disaster relief. The **Contractor** shall be bound by the terms and conditions of such agreements. A copy of any such agreements or instructions shall be delivered to the **Contractor**, in writing, within seven (7) days of execution.

4.2 County Obligations:

The **County** shall furnish all information and documents necessary for the commencement of contracted services, to include a valid written Notice to Proceed delivered to Contractor. A representative will be designated by the **County** (**County** Representative) to be the primary point of contact for inspecting the work and answering any on site questions prior to and after the activation of this Contract via a written Notice to Proceed. The **County** Representative shall have full authority to act on behalf of the **County** on all matters required under this Contract. The **County** is responsible for issuing all Public Service Announcements (PSA) to advise citizens and agencies of the available storm Debris services. The **Contractor** may assist the **County** with the development of Debris-based PSA(s), if requested.

4.3 Conduct of Work:

The **Contractor** shall be responsible for planning and conducting all operations in a satisfactory workmanship manner. The **Contractor** shall exhibit respect for the citizens and their individual private properties. All operations shall be conducted under the review of the **County** Representative. The **Contractor** shall have and require strict compliance with accepted ethical practices.

4.4 Supervision:

The **Contractor** will supervise and/or direct all contracted services. The **Contractor** is solely responsible for the means, methods, techniques, safety program and procedures utilized to perform the contracted services. The **Contractor** will employ and maintain on the work site a qualified Manager/Supervisor who shall have full authority to act on behalf of the Contractor on all communications given by the **County**, as further provided in Section 3.1.

4.5 Damages:

The **Contractor** shall be responsible for conducting operations in such a manner as to cause the minimum damage possible to existing public, private and commercial property and/or infrastructure. **Contractor** shall be responsible for any damages owing to the negligence, omission, or intentional wrongdoing of its employees and subcontractors as set out in Sections 1.2 through 1.5 of this Contract.

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4.6 Other Contractor(s):

The **Contractor** shall acknowledge the presence of other contractors involved in disaster response and recovery activities by the federal, state and local government and of any private utility, and shall not interfere with their work.

4.7 Ownership of Debris:

All debris shall become the property of the Contractor for removal and lawful disposal. The Debris will consist of, but not be limited to vegetative, construction and demolition, white goods and household solid waste.

4.8 Disposal of Debris:

Unless otherwise directed by the **County**, the **Contractor** shall be responsible for determining and executing the method and manner for lawful disposal of all eligible Debris, including regulated hazardous waste. The location of the TDMS(s) and final disposal site(s) shall be determined by the **County**. Other additional sites may be utilized as directed and/or approved by the **County**.

5 GENERAL TERMS and CONDITIONS

5.1 Geographic Assignment:

The geographic boundary for work by the **Contractor** hereunder shall be as directed by the **County** and will be limited to properties located within the **County's** legal boundaries.

5.2 Multiple, Scheduled Passes:

The **Contractor** shall make no fewer than two (2) scheduled and/or unscheduled passes of each area impacted by the storm or disaster event. The **County** shall direct the interval timing of all passes. Sufficient time shall be permitted between subsequent passes to accommodate reasonable recovery and additional Debris placement at the ROW by the citizens and the **County**. Upon agreement between the **County** and the **Contractor** the number of passes may be increased based on mutual agreement regarding the amount of additional Debris brought to the ROW.

5.3 Operation of Equipment:

The **Contractor** shall operate all trucks, trailers and all other equipment in compliance with any/all applicable federal, state and local laws, rules and regulations. Equipment shall be in good working condition. All loading equipment shall be operated from the road, street or ROW using buckets and/or boom and grapple devices to collect and load Debris. No equipment shall be allowed behind the curb or outside of the public ROW unless otherwise directed by the **County**. Should operation of equipment be required outside of the public ROW, the **County** will provide a Right-of-Entry Agreement, as set out in Section 1.6 of this Contract.

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5.4 Certification of Load Carrying Capacity:

The **Contractor** shall submit to the **County** a certified report indicating the type of vehicle, make and model, license plate number, assigned Debris hauling number and measured maximum volume, in cubic yards, of the load bed of each piece of equipment to be utilized to haul Debris.

The measured volume of each piece of equipment shall be calculated from the actual physical measurement performed by the **County** or Monitoring Team and **Contractor** Representative(s). A standard measurement form certifying actual physical measurements of each piece of hauling equipment shall be an attachment to the certified report(s) submitted to the **County** by the **Contractor**.

5.5 Vehicle Information:

The maximum load capacity of each hauling vehicle will be rounded to the nearest whole cubic yard (CY). (Decimal values of .1 through .4 will be rounded down and decimal values of .5 through .9 will be rounded up.) The measured maximum load capacity (as adjusted) of any vehicle load bed will be the same as shown on the trailer measurement form and placarded on each numbered vehicle or piece of equipment used to haul Debris. All vehicles or equipment used for hauling will have and use a **Contractor** approved tailgate and sideboards will be limited to those that protect the load area of the trailer.

5.6 Security of Debris During Hauling:

The **Contractor** shall be responsible for the security of Debris on/in each vehicle or piece of equipment used to haul Debris. Prior to leaving the loading site(s), the **Contractor** shall ensure that each load is secure and trimmed so that the Debris does not extend horizontally beyond the bed of the hauler. All loose Debris shall be reasonably compacted and secured during transport.

5.7 Traffic Control:

The **Contractor** shall mitigate the impact on local traffic conditions to all extents possible. The **Contractor** is responsible for establishing and maintaining appropriate traffic control in accordance with the latest Manual of Uniform Traffic Control Devices and applicable law. The **Contractor** shall provide sufficient signing, flagging and barricading to ensure the safety of vehicular and pedestrian traffic at all Debris removal, reduction and/or disposal site(s).

5.8 Monitoring of Debris Operations

The Government may require that the **County** conduct a Debris monitoring program. The **Contractor** will assist the monitoring team, if this activity is by force account or contracted. The **Contractor** will cooperate and coordinate with the Debris monitoring team in all aspects of the team activity. If the **County** elects to conduct the Debris monitoring by force account, the **Contractor** will conduct detailed Debris monitoring training at the request of the **County**. Debris eligibility determinations, by the monitoring team, shall be made at the point of vehicle loading. Determinations of the vehicle percentage full, by the monitoring team, shall be made at the entrance to the

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TDMS(s) or TDSRS. Logistical support and reports to the **County** on Debris monitoring activities are the responsibility of the team manager or monitoring contractor.

5.9 Work Days/Hours:

The **Contractor** may conduct Debris loading and hauling operations from sunup to sundown, seven days per week. Any mechanical, Debris reduction operations at the TDMS or TDSRS may be conducted twenty-four (24) hours per day, seven days per week. The work week is from the start of operations on Sunday am, thru the end of operations on Saturday pm. Adjustments to work days and/or work hours shall be as directed by the **County** following consultation with and notification to the **Contractor**.

5.10 Hazardous and Industrial Wastes:

The **Contractor** shall set aside and reasonably protect all hazardous or industrial materials encountered during Debris removal operations for collection and disposal in accordance with applicable local, state and federal guidelines governing the transportation and disposal of said hazardous or industrial materials. The **Contractor** will provide, operate and maintain a Hazardous Waste and Industrial Material Storage and Containment area until proper disposal of such waste is feasible. The **Contractor** may use the services of a subcontractor specializing in the management and disposal of such materials and waste, if the **Contractor** is directed to conduct such operations by the **County**.

5.11 Stumps:

All hazardous/eligible stumps identified by the **County** will be extracted, loaded, transported, stored, reduced and disposed in accordance with the standards of this Contract. Stump voids will be filled with clean fill material native to the geographical area. All stumps that are removed and the stump voids that are filled will be documented, and invoiced by the contractor for payment in accordance with the rates contained on Exhibit C (Pricing Schedule).

5.12 Utilizing Local Resources:

The **Contractor** shall, to the extent practicable, give priority to utilizing resources within the **County**. This local preferences priority will include, but not be limited to, Debris hauling, procurement of services, supplies and equipment, and awarding other recovery service subcontracts and employment to the local work force.

5.13 Work Safety:

The **Contractor** shall provide and enforce a safe work environment, in compliance with applicable federal, state and local law, in all activities under this Contract. The **Contractor** will provide such safety equipment, training and supervision as may be required by the **County** and/or Government. The **Contractor** shall ensure that its subcontracts contain a similar safety provision.

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5.14 Inspection and Testing:

All Debris shall be subject to adequate inspection by the **County** or any public authority in accordance with generally accepted standards to ensure compliance with the Contract and applicable federal, state and local laws. The **County** will, at all times, have access to all work sites and disposal areas. In addition, authorized representatives and agents of the Government shall be permitted to inspect all work activities, equipment, materials, invoices plus other relevant records and documentation of the **County** and **Contractor**.

5.15 Other Agencies:

The term "Government" as used in this Contract refers to those governmental agencies federal, state or local, which may have a regulatory or funding interest in this Contract and the contracted services provided hereunder.

6 REPORTS CERTIFICATIONS and DOCUMENTATION

6.1 Accountable Debris Load Forms:

The **County** shall accept the serialized copy of the **Contractor's** Debris reporting ticket(s) as the certified, original source documents to account for the measurement and accumulation of the volume of Debris delivered and processed at the TDMS or TDSRS. The serialized ticketing system will also be used in the event of additional Debris handling for volume reduction and/or the possible requirement for a Debris transfer station(s). These tickets will also be utilized for Debris haul out for final disposal. These tickets will be the basis of any electronic generated billing and/or report(s).

6.2 Reports:

The **Contractor** shall submit periodic, written reports to the **County** as requested or required, detailing the progress of Debris removal, processing and disposal. These reports may include, but not are limited to:

6.2.1 Daily Reports:

The daily reports will detail the location where passes for Debris removal were conducted, the quantity of Debris (by type) removed or disposed, the total number of crews engaged in Debris management operations, the crew assignments by zone, the number of burners, grinders, chippers and mulching machines in operation, and their daily production. The **Contractor** will also report damages to private property caused by the Debris operation or damage claims made by citizens and such other information as may be required to completely describe the daily conduct of the Contractor's operations. This report will reflect close of business at 6 pm for the prior twenty-four (24) hours.

6.2.2 Weekly Summaries:

A weekly summary of all information contained in the daily reports as set out in Section 6.2.1 will be provided to the **County**. The **Contractor** will provide this report within two (2) business days after the end of the week. The **Contractor** will provide both reports in written and electronic format if requested.

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6.2.3 Report(s) Delivery:

The scheduled time and point of delivery for the Debris and other recovery operations reports will be directed by the **County** in consultation with the **Contractor**.

6.2.4 Final Project Closeout Report:

Upon final inspection and/or closeout of the project by the **County**, the **Contractor** shall prepare and submit a detailed description of all Debris management activities to include, but not limited to the total volume, by type of Debris hauled, reduced and/or disposed, plus the total cost of the project invoiced to the **County**. If requested, the **Contractor** will provide additional information to adequately document the conduct of the Debris management operations for the **County** and/or Government, to include electronic spread sheets.

6.3 Additional Supporting Documentation:

The **Contractor** shall submit reports and/or other documentation on Debris loading, hauling, disposal and load capcity measurements as may be required by the **County** and/or Government to support requests for Debris project reimbursement from external funding sources.

6.4 Report Maintenance:

Contractor may be subject to audit by federal, state and local agencies pursuant to this Contract. The **Contractor** will maintain all reports, records, and Debris reporting tickets and contract correspondence for a period of not less than three (3) years after final project closeout. These maintained reports may include electronic scanned copies of the daily load tickets and tower determination of percent full.

6.5 Contract File Maintenance:

The **Contractor** will maintain this Contract and the invoices that are generated for the contracted services for a period of not less than five (5) years.

7 UNIT PRICES and PAYMENTS

7.1 Unit Price for Emergency Push / Road Clearance:

The **Contractor** will invoice the **County** and be paid for this contracted service in accordance with the rates as set out in Exhibit-C (Form 6 – Pricing Matrix).

7.2 Unit Price for Debris:

The unit price per cubic yard or ton includes all costs for mobilization, loading, transportation, storage, reduction, disposal, overall project management and de-mobilization as may be directed by the **County**. All eligible contracted Debris shall be invoiced in accordance with the rates set out in Exhibit C Form 6 –Pricing Matrix).

7.3 Unit Prices for Stumps:

The **County** will determine the necessity and eligibility for ALL stump removal. The unit price of compensation for stump pulling, loading, transportation, storage, reduction

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and/or disposal shall be based on the stump size and corresponding rate as set out in Exhibit C (Form 6 – Pricing Matrix).

7.4 Billing Cycle:

The **Contractor** shall invoice the **County** on a bi-weekly basis as of the close of business on the last working day of the billing period. Serialized Debris reporting tickets and disposal site verification of the actual cubic yardage for each load of Debris or itemized stumps will support all invoices.

7.5 Payment Responsibility:

The **County** agrees to accept the **Contractor's** invoice(s) and supporting documentation as set out in Section 6.3 of this Contract and process said invoices for payment within 30 days of receipt of the **Contractor's** invoice. The **County** will advise the **Contractor** within five (5) working days of receiving any invoice that requires additional information for approval to process for payment. The **County** will make payment of any undisputed amounts within thirty (30) days of receipt of **Contractor's** invoice, and the balance within thirty (30) days of the requested additional information.

7.6 Ineligible Work:

The **Contractor** will not be paid for the removal, transportation, storage, reduction and/or disposal of any material that may be determined by the **County** and/or Government as ineligible Debris, or for stumps or other services that have not been requested or approved by County.

7.6.1 Eligibility Inspections:

The **Contractor** and **County** or the Monitoring Team will inspect each load to verify that the contents are in accordance with the accepted definition of eligible Debris, as set out in Section 1.1 of this Contract.

7.6.2 Eligibility Determinations:

If any load is suspected to contain material that does not conform to the definition of eligible Debris, the load will be ordered to be deposited at another landfill, receiving facility or at a special location at the TDMS or TDSRS. The **Contractor** will not invoice the **County** for such load(s) until the issue of eligibility is resolved.

7.7 Unit Price/Service Negotiations:

Unknown and/or unforeseen events or conditions may require an adjustment to the pricing provided in Sections 7.1, 7.2 and 7.3 or Exhibit B or Exhibit C hereto. Any amendments, extensions or changes to the scope of contracted services or unit prices are subject to full negotiations between the **County** and the **Contractor**, and shall be set forth in writing.

7.8 Specialized Services:

The **Contractor** may invoice the **County** for costs incurred to mobilize and demobilize specialized equipment required to perform services in addition to those specified under

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Section 1.0 of this Contract. Additional specialized services or equipment will only be performed or provided if/when directed by the **County**. The rate for specialized mobilization and demobilization shall be fair and reasonable and in accordance with Exhibit C.

7.9 Amended Pricing

The pricing of services in this Contract reflects the anticipated severity and magnitude of a major disaster event. The **County** may choose to activate the **Contractor** in response to a disaster event of less magnitude. Upon **Contractor** activation by Notice-to-Proceed for a lesser event, the **Contractor** reserves the right to submit to the **County** an amended and reduced pricing schedule. Any such amended pricing schedule will be submitted within three (3) business days of activation or upon the completion of the **Contractor's** damage assessment survey, whichever occurs first.

The **County** will indicate acceptance within twenty-four (24) hours of the delivery of the proposed amended pricing schedule and the logic for such action. Any amendment to the contract pricing for a current activation does not amend the pricing for any future disaster event.

5.11

8 MISCELLANEOUS

8.1 Notice:

Whenever in this Contract it is necessary to give notice or demand by either party to the other, such notice or demand shall be given in writing and forwarded by facsimile, recognized overnight delivery service or certified or registered mail, return receipt requested, and addressed as follows:

To **Contractor** at:
Dow Knight, Sr. Vice President
AshBritt, Inc.
565 E. Hillsboro Boulevard
Deerfield Beach, FL 33441
Telephone: (954) 725-6992
Facsimile: (954) 725-6991

To **County** at:
Dan Robeson, Deputy Director
Johnson County Emergency Management
111 S. Cherry Street, Suite 100
Olathe, KS 66061
Telephone: (913) 715-1001
Facsimile: (913) 791-5002

Notice by facsimile shall be deemed delivered on the date of transmission provided a receipt evidences same, and otherwise on the date of the signed receipt of delivery.

8.2 Litigation:

No party may commence litigation against the other party without providing written notice and demand to the other party setting forth the matters in dispute including the amounts in dispute and no party may commence litigation against the other party without first mediating the dispute before a certified mediator in Johnson County, Kansas. In the event, the mediation results in an impasse, the parties may commence

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litigation. With respect to any litigation, this Contract shall be construed and governed by the laws of the State of Kansas, without giving effect to any choice or conflict of law provision or rule. The sole and exclusive venue for any suit, action or proceeding arising out of, relating to, to interpret or for breach of this Contract, or with respect to the Contract work (a "Related Proceeding") shall be in the courts of Johnson County, Kansas, federal or state. Each of the parties irrevocably consents and submits to the exclusive subject matter and personal jurisdiction of the courts of the State of Kansas located in Johnson County, and of the United States District Court for the District of Kansas located therein for the purposes of a Related Proceeding, and irrevocably waives, to the fullest extent it may effectively do so, (i) any objection it may have to the laying of venue of any Related Proceeding in the Courts of Johnson County, Kansas, federal or state, and (ii) the defense of any inconvenient forum to the maintenance of any Related Proceeding in such court.

8.3 Entire Contract:

This Contract (including the terms, conditions, and representations of any schedules or exhibits attached hereto and not otherwise modified by, or made inconsistent with, the provisions herein) constitutes the entire Contract and understanding between the parties with respect to the matters contained herein. This Contract supersedes any prior contracts and/or understandings relating to the subject matter hereof. This Contract may only be modified, amended or extended by a written instrument executed by both parties.

8.4 Waiver:

In the event one of the parties waives a default by the other, such a waiver shall not be construed or deemed to be a continuing waiver of any subsequent breach or default of the other provisions of this Contract, by either party.

8.5 Severability:

If any provision of this Contract is deemed or becomes invalid, illegal or unenforceable under the applicable laws or regulations of any jurisdiction, such provision will be deemed amended to the extent necessary to conform to applicable laws or regulations. If it cannot be so amended without materially altering the intention of the parties, it will be stricken and the remainder of this Contract will remain in full force and effect.

8.6 Binding Effect

This Contract shall be binding on and inure to the benefit of the heirs, successors and permitted assigns of the parties hereto.

8.7 Headings

All sections and headings are used for convenience only and do not affect the construction or interpretation of this Contract.

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8.8 Counterparts

This Contract may be executed in any number of counterparts, each of which shall be deemed to be an original but all of which shall constitute one and the same Contract. Electronic, facsimile or scanned signatures on this Contract shall be deemed to be authentic and valid counterparts of such original document for all purposes, including the filing of any claim, action or suit in the appropriate court of law.

8.9 Good Standing

Contractor shall be authorized to do business in the State of Kansas and must maintain good standing pursuant to the laws of this State and any other applicable law.

8.10 Funding Clause

This Contract and any renewal thereof, is subject to the provisions of the Kansas Cash Basis Law, *K.S.A. 10-1101 et seq.,* and amendments thereto (the "Act"). By virtue of this Act, the **County** is obligated only to pay periodic payments as contemplated herein as may lawfully be made from funds budgeted and appropriated for that purpose during the **County's** current budget year (i.e., January 1 to December 31) or from funds made available from any lawfully operated revenue producing source.

8.11 Change in Laws; Adverse Determination

The parties recognize that this Contract is subject, at all times, to applicable state, local and federal laws, rules and regulations. The parties further recognize that this Contract is subject to amendments to such laws, rules and regulations, new legislation, and rulings by courts of competent jurisdiction. Any provisions of law that invalidate, or otherwise are inconsistent with, the terms of this Contract or that would cause one or both of the parties to be in violation of any law, rule or regulation, will be deemed to have superseded the terms of this Contract; provided, however, that the parties agree to exercise their best reasonable efforts to accommodate the terms and intent of this Contract by amendment to this Contract, to the greatest extent possible consistent with the requirements of law. Notwithstanding the foregoing, in the event of any judicial, legislative, regulatory or administrative change or determination, whether federal, state or local, which has or would have a significant adverse impact on either party hereto in connection with the performance of this Contract, or in the event that continued performance by either party of any term, covenant, condition or provision of this Contract would for any reason be in violation of any statute, regulation, or otherwise be deemed illegal or subject either party to sanctions or penalties under any federal, state or local law, notwithstanding any other provision of this Contract, either party may terminate this Contract immediately upon prior written notice to the other party.

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IN WITNESS WHEREOF, the **Contractor** has caused this Contract to be signed in its corporate name by its authorized representative and the **County** has caused this Contract to be signed in its legal corporate name by persons authorized to execute said Contract as of the Effective Date.

AshBritt, Inc.	County
By: DocuSigned by: Dow Knight AE5F7B6BCA63484...	By: DocuSigned by: Robin Lynes A114921743854FD...
Dow Knight	
Title: Sr. Vice President	Title: Purchasing Manager
Chief Operating Officer	
ATTEST:	ATTEST:
DocuSigned by: Jackie Ryan 78BC4645673B4A1... Contract Manager	
Name – Title	Name – Title

Attachments: Exhibit-A (*County RFP No. 2019-020*)
Exhibit-B (*Ashbritt Proposal*)
Exhibit-C (*Ashbritt Form 6 – Pricing Matrix*)

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- COPYRIGHT WARNING -

FEDERAL LAW PROVIDES FOR SEVERE CIVIL AND CRIMINAL PENALTIES FOR THE UNAUTHORIZED REPRODUCTION AND DISTRIBUTION OF COPYRIGHTED DOCUMENTS AND PRODUCTS.

THIS DOCUMENT IS LICENSED TO **ASHBRITT, INC.** FOR PROPOSAL AND CONTRACTING PURPOSES ONLY. ANY COPYING, DISTRIBUTION OR USE BY OTHERS IS STRICTLY PROHIBITED. ALL OTHER RIGHTS RESERVED.

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EXHIBIT A – JOHNSON COUNTY RFP NO. 2019-020

DocuSign Envelope ID: 8A038814-0AB9-4AA9-9CA1-F02892A78ED8

EXHIBIT B – ASHBRITT PROPOSAL

DocuSign Envelope ID: 8A038814-0AB9-4AA9-9CA1-F02892A78ED8

EXHIBIT C – ASHBRITT FORM 6 – PRICING MATRIX

JOHNSON COUNTY
KANSAS
111 S. Cherry, Suite 2400
Olathe, Kansas 66061
Ph. 913 715 0525

MODIFICATION OF CONTRACT
JOHNSON COUNTY, KANSAS

1. Modification No.: 1

Effective Date: 11/5/2021

2. Contract No.: 2019-020

Effective Date: 11/5/2020

3. Purchasing Administrator:
Kyra Blatchford
Telephone Number: 913-715-0595
E-Mail: kyra.blatchford@jocogov.org

4. Issued By:
Johnson County, Kansas
Treasury and Financial Management,
Purchasing Division
County Administration Building
111 South Cherry Street, Suite 2400
Olathe, KS 66061-3486
913-715-0525

5. Contractor-Name and address:

AshBritt, Inc
565 E Hillsboro Blvd.
Deerfield Beach, FL 33441

6. SPECIAL INSTRUCTIONS: Contractor is required to sign Block 8 showing acceptance of the below written modification and return this form to address shown in Block 4 within ten (10) days after receipt. Retain a photocopy of the signed copy of this modification and attach to original of contract, which was previously provided.

***This office must have the original of this form: no copied, faxed or emailed versions can be accepted.**

7. DESCRIPTION OF MODIFICATION:

Per the term and supply agreement for Emergency Debris Removal and Reduction, Johnson County would like to exercise the option to renew 2019-020 for one (1) additional twelve (12) month period, through 11/5/2022. There are three (3) remaining renewals. All other prices and terms and conditions remain in effect.

8. Contractor's Signature

C. Knight
C. Knight (Nov 19, 2021 12:27 EST)

Name

Sr. Vice President

Title

11/19/2021

Date

9. Johnson County, Kansas

By:

Robin Lynes
Robin Lynes (Nov 22, 2021 09:24 CST)

Purchasing Manager

10. Distribution:

Original - Bid File
Copies - Departments as applicable
Surety Company

Date Signed: 11/22/2021

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FORM 6

RFP# 2019-020 Emergency Debris Removal and Reduction Services

PROPOSED COST

Pricing Matrix

The contractor will provide all services and expenses necessary to debris pickup and hauling, processing of debris for a fixed price as a cost per cubic yard, for the debris types noted below. Tipping fees will be negotiated at the time of the event and will be charged to the county at no mark up.

Tipping fee should not be considered with your unit prices.

Schedule 1 - UNIT RATE PRICE SCHEDULE				
Description		**Per Cubic-Yard**		**$Per Cubic-Yard**
Vegetative Debris Removal (Collect, Tub Grinder & Haul) to designated area		0 to 30 miles		$ 12.10
1 Assumes Debris Collection haul to designated area and tub grind only		31 to 50 miles		$ 13.25
C&D Debris, including white goods, e-waste and mud, soil, sand) to designated area		0 to 30 miles		$ 14.95
2 Assumes Debris Collection and haul only		31 to 50 miles		$ 17.25
Hazardous Waste (Collect & Haul) to designated area		0 to 30 miles		$ 1980.00
		31 to 50 miles		$1980.00
Reduced vegetative debris hauled from county designated reduction site to county approved final disposal site/recycling center (radius)		0 to 30 miles		$ 4.95
		31 to 50 miles		$ 6.95
		51 to 100 miles		$ 13.95

Schedule 1 - UNIT RATE PRICE SCHEDULE		
Description		**$ Per Item**
Hazardous Stump Removal		$ 495.00
Hazardous Tree		$ 489.00
Hazardous Limbs (Hangers)		$ 125.00

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Schedule 2 - UNIT RATE PRICE SCHEDULE				
Description				**$Per Cubic-Yard**
Tub Grinder Operations with no hauling operation		Per Cubic-Yard		$ 2.60
Hauling Operations (as needed) radius		0 to 30 miles		$ 12.10
		31 to 50 miles		$ 14.30
		51 to 100 miles		$ 16.50
Additional Pricing Item Site Management		Per Cubic Yard		$ 2.15
Reduction of vegetative debris to a size of 1 inch in at least two (2) directions		Per Cubic Yard		$ 2.60

Schedule 3 - UNIT RATE PRICE SCHEDULE				
Description		**Equipment**		**$ Hourly**
Emergency Debris Push (requires a 12-hour response time and 70 hour max total time)		Small Loader or Large Skid Steer, (push machine, wheeled or rubber tracked)		$ 110.00
Description		**Operation**		**$ Hourly**
Emergency Debris Push (requires a 12-hour response time and 70 hour max total time)		Small Loader or Large Skid Steer, (push machine, wheeled or rubber tracked)		$ 110.00

Note: See additional pricing below.

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Service Description **Personnel & Equipment** (Operator, fuel, maintenance included)	**Unit**	**Unit Price_/c**
Knuckleboom Loader Truck (Self-Loading-25-35 CY)	Hour	$ 175.00
Knuckleboom Loader Truck (Self-Loading-36-59 CY)	Hour	$ 195.00
Knuckleboom Loader Truck (Self-Loading-60-75 CY)	Hour	$ 265.00
Dump Truck/Trailer (16 to 24 CY)	Hour	$ 110.00
Supervisor with Truck (1 man, will assist push operations)	Hour	$ 85.00
Operators with Chainsaw (2 man crew)	Hour	$ 120.00
Laborer with Tools (1 man)	Hour	$ 45.00
Traffic Control/Safety Personnel (2 man crew, as needed)	Hour	$ 105.00

Project Assumption (Used only Schedule 1, stumps will not be assumed):

Ice Storm:

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The Chairman of the Board of County Commissioners has declared a state of emergency and your firm has been notified to begin contracted work.

The ice storm hit late in the evening on a Tuesday late in January. The ice storm cut a swath through the southwest and west side of Johnson County with a minimum of two inches of ice accumulated in the affected area, while some locations reported as much as 3-5 inches of ice. The storm took down not only power lines, but also the poles that held up the lines. Trees splintered under the weight of the ice as did telephone poles, cell phone towers and roofs. By Wednesday, more than 170,000 households and businesses were without power.

It quickly became an issue of communication and intrastate highway closures. "Communication towers and power lines have gone down, and roads are difficult to clear", said one state official, which made it difficult to assess conditions and target relief efforts.

Johnson County Public Works (PKW) crews have been working to have the Emergency Push Operation and prepping of the Temporary Debris Management Site in Southwest portion of the county ready for your firm to assist hauling and reduce debris (tub grinder being the preferred method of vegetative debris reduction).

Your firm has arrived; and you will be working in parallel with PWK operations and will report directly to the site manager. It is requested that your firm be fully operational by morning briefing in 72 hours.

It is estimated that there is some amount of damage throughout all the 197.1 square miles of Johnson County. All debris is assumed to be vegetative. The current estimate for total cubic yards of vegetative debris is 54,000CY.

For this scenario, assume that you (the contractor) will be conducting **all hauling operations. In a real event, PWK will likely be conducting simultaneous hauling operations.*

Based on your proposed fees provided in *FORM 6, Schedule 1 Proposed Cost* provide a detailed cost figure (include a total) by using Schedule 1 Detail Lines:

a. **Vegetative Debris Removal (Collect, Haul to TDMS, Tub Grinder) - $ 54,000 cy X $ 12.10 = $ 653,400.00**

b. **Reduced vegetative debris hauled from county designated reduction site to county approved final disposal site/recycling center radius (0 to 30miles) (assume a 4:1 reduction ratio of collected debris) $ 13,500 cy X 4.95 = $ 660,825.00**

TOTAL COST of a. and b.: $ 720,225.00

This proposed total cost will be the Cost Proposal factor for the Maximum Points (page 11).

See attached map.

Square Feet	Square Miles	Acres
5495471589.77239	197.123115472295	126158.793902269

Schedule 4 is All-Inclusive:

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Temporary Debris Management Site (TDMS) Operations (All-Inclusive):

Under this optional provision, the contractor would set up, manage (in coordination with the county), vegetative debris reduction operations at the TDMS.

The County understands that there may be some instances that for an unknown reason and/or unforeseen circumstances, the County would be unable to manage TDMS operations and there for also requests that contractor also complete the following expense table. The following is not required for consideration to be a selected contractor.

This cost is inclusive of all related expenses including technical assistance to the County, hauling operations, TDMS management (in coordination with the County), and services for security, traffic management, data and documentation, audit assistance. Fees Eligible Vegetative debris hauled from/to County designated area.

Schedule 4 - UNIT RATE PRICE SCHEDULE				
Description		**Straight-Line Miles (radius from pickup site)**		**$Per Cubic-Yard**
Vegetative Debris Removal (Collect, Haul to TDMS, Tub Grind) 1 Assumes Debris Collection Haul to designated area, Tub Grinding, and Site Management				$ 18.65
C&D Debris: (including white goods, e-waste and mud, soil, sand) to designated area (radius)		0 to 30 miles		$ 14.95
		31 to 50 miles		$ 16.95
		50 to 100 miles		$ 19.25
Hazardous Waste (Collect & Haul) to designated area				$ 1980.00
Reduced vegetative debris hauled from county designated reduction site to county approved final disposal site/recycling center (radius)		0 to 30 miles		$ 5.78
		31 to 50 miles		$ 7.25

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		50 to 100 miles		$ 14.95

Eligible Hazardous Stump removal

Schedule 4 - UNIT RATE PRICE SCHEDULE		
Description		**$ Per Item**
Hazardous Stump Removal		$ 495.00
Hazardous Tree		$ 489.00
Hazardous Limbs (Hangers)		$125.00

Schedule 4 - UNIT RATE PRICE SCHEDULE				
Description				**$Per Cubic-Yard**
Reduction of vegetative debris to a size of 1 inch in at least two (2) directions		Assumes it includes site management cost.		$ 4.75

NOTE:

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Include with your submission:

1. FORM 6 with Complete Project Assumption based on your Schedule 1 proposed fees. This proposed cost will be the Cost Proposal factor for the Maximum Points (Page 11 of RFP 2019-020).

2. Letter of Commitment from a qualified surety confirming its intention to provide Performance and Payment bonds as set forth below for RFP 2019-020.

3. Are you able to attend trainings or exercises? YES or ~~NO~~
   a. Describe associated costs: $0.00

4. Sample Certificate of Insurance or a statement letter from your insurance provider showing your company can meet insurance requirements as set forth in RFP 2019-020.

5. Proof that your company would be able to obtain Performance and Payment bonds as set forth below:

   a. AT TASKING: Additional bonds, as described below would be required equaling the projected scope of work.

      The successful Contractor must have capacity to furnish Performance and Payment Bonds, acceptable to Johnson County, Kansas, in an amount equal to *5 million dollars* or $40,000.00, whichever is higher, within 24 hours of mobilization under any subsequent contract. The Contractor shall be able to cover expenses associated with a major recovery operation prior to the initial payment and between subsequent payments as well as the aforementioned bonds and insurance. Contractor mobilization costs will not be paid if the Contractor is unable to obtain bonding.

      The form required for both the Bonds are provided below, along with instructions and signature requirements.

      The successful Proposer shall provide Bonds, executed by a Company included in the U. S. Department of the Treasury's Listing of Approved Sureties (Circular 570), and is a company licensed by the Kansas Insurance Department to issue such bonds in this State.

      The successful Proposer shall provide Bonds executed by a company licensed by the Kansas Insurance Department to issue such bonds in this State."

      The Bonds will be required at *within 24 hours of mobilization under any subsequent contract.* The County does not intend to execute the Contract until the proper and approved form of the Bonds has been accepted by the County.

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With Form 6 Response, Contractors shall submit a Letter of Commitment from qualified surety. This Letter of Commitment is a letter that confirms the intention of a qualified surety to provide bonds should the company receive an award. This letter does not actually supply the bonds but expresses that the surety can provide qualified bonds should an award be given.

- This Letter of Commitment shall be from a qualified Bond Agency as specified above and shall confirm the willingness of the Bond Agency to provide bonds at 100% of the contract value ($40,000) and up to $5,000,000 within 24 hours of Tasking that meets the requirements of the County.

SUBMITTED

Signature

Senior Vice President

Title

Authorized Representative of

AshBritt Inc.

Firm Name

565 E Hillsboro Blvd.

Address

Deerfield Beach, FL 33441

City and State

(954) 725-6992

Telephone No.

1/15/2020

Date

PUBLIC WORKS DEPARTMENT

Council Committee Date: August 1, 2022
Council Meeting Date: August 15, 2022

CONSIDER MEMORANDUM OF UNDERSTANDING EXTENSION WITH BIRD RIDES INC.

RECOMMENDATION

Move to authorize the Mayor to sign the Memorandum of Understanding Extension with Bird Rides, Inc.

BACKGROUND

On September 6, 2021 the City of Prairie Village entered a Memorandum of Understanding for a one year pilot program allowing Bird Scooters to be deployed in Prairie Village. Bird Rides Inc. is requesting to extend this agreement into the future now that the pilot program is nearing completion. This agreement will continue until August 31, 2023 and will automatically renew for 6 month terms. There is a 30 day out by either party if necessary.

Bird Rides Inc. will have a representative present via zoom so they can describe how they think the last year has gone and why they want to continue to provide their service in Prairie Village.

Staff has compiled data related to the scooter concerns and there have been less than 15 complaints that have been received to date. These are typically complaints notifying the City that a scooter was left in an inappropriate location. It is safe to say that most all of these complainants also do not want the scooters to operate in Prairie Village. The local Bird Rides Inc. staff that manages the scooters has been very responsive to our requests when we have had to contact them. The overall impact of Bird Scooters Inc. being in Prairie Village has been minimal to both Public Works and the Codes Department.

FUNDING SOURCE

N/A

ATTACHMENTS

MOU Extension with Bird Rides, Inc.

BIRD Report of scooter usage

PREPARED BY

Keith Bredehoeft, Public Works Director July 26, 2022

EXTENSION OF AND AMENDMENT TO
MEMORANDUM OF UNDERSTANDING

THIS EXTENSTION OF AND AMENDMENT TO MEMORANDUM OF UNDERSTANDING (this "Amendment") dated as of _____, 2022, is entered into by and between **Bird Rides, Inc.**, located at 406 Broadway, #369, Santa Monica, CA 90401 ("Bird"), and the **City of Prairie Village, Kansas** (the "City"), and amends that certain Memorandum of Understanding dated as of September 8, 2021, by and between Bird and City (as further amended, restated, supplemented or modified from time to time prior to the date hereof, the "Agreement").

The Agreement is amended as follows:

1. Term. The term of the Agreement shall hereby continue through August 31, 2023 and shall automatically renew for successive six-month terms thereafter unless notice of non-renewal is given by either party to the other prior to the expiration of the then-current term. Notwithstanding the foregoing, and in accordance with Section 11 of the Agreement, either party may terminate the Agreement at any time and without cause upon (30) days prior written notice. In the event of termination, Bird shall promptly remove any and all Scooters from within the City, and take such other steps as may be necessary to reasonably prevent operation of Bird Scooters within the City.

2. Except as set forth in this Amendment, the Agreement is unaffected and shall continue in full force and effect in accordance with its terms. If there is conflict between this Amendment and the Agreement or any earlier amendment, the terms of this Amendment will prevail.

3. Unless otherwise stated in this Amendment, defined terms shall be given the meanings attributed to them in the Agreement.

Bird:

Bird Rides, Inc.

By: _____
Name:
Title:

City:

City of Prairie Village, Kansas

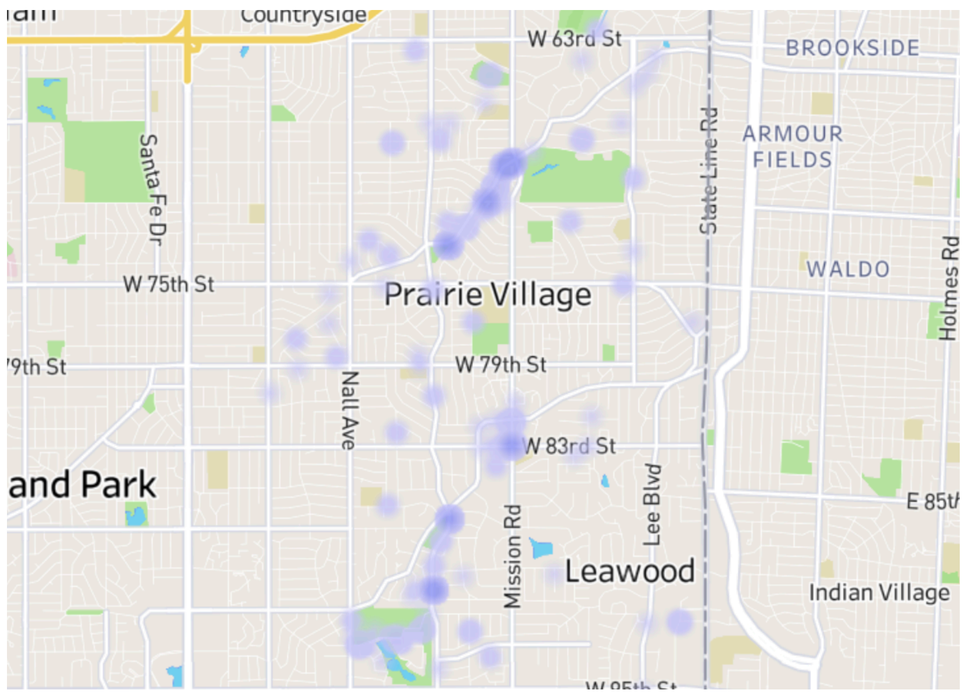
By: _____
Name:
Title:

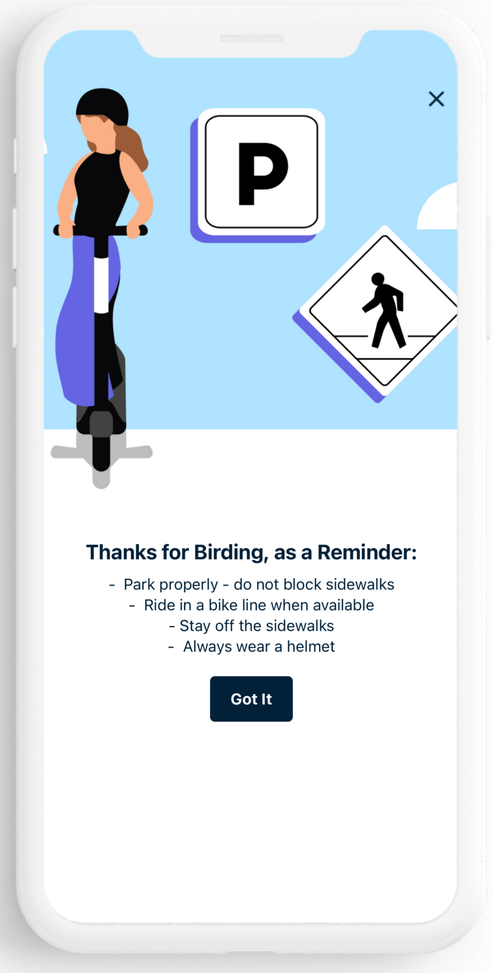
Hey Praire Village!

A Year in Bird 2021-2022 (thus far):

09/17/2021	35	0.33	1,310	2,358
Birds Landed	Number of Birds	Metric Tonnes of CO2 saved	Total Rides	Total Miles Traveled

1 **Bird takes you where you want to go. Here's where the Bird community is riding Birds to!**





2 **This year, we reminded Prairie Village riders to...**

- Follow the rules of the road
- Stay off the sidewalk - use a bike lane when available
- Abide by Prairie Village and Bird regulations

3 A Bird's Eye View:

So far this year, globally, Bird has:

- Integrated with **Google Maps** to increase access to Birds worldwide
- Launched **"Safe Start"** an in-app program designed to stop drinking and riding.
- Launched **electric bike-sharing** in select cities, with more to come.
- Announced that we **offset ALL GHG emissions** associated with our scooters in 2020
- Became official supporters of the **Vision Zero Network,** a global movement dedicated to ending traffic fatalities

Due to COVID-19 restrictions, some meetings will be held virtually. Please continue to check http://pvkansas.com for access details.

MAYOR'S ANNOUNCEMENTS
Monday, August 1, 2022

National Night Out	08/02/2022	5:00 p.m.
Planning Commission	08/02/2022	7:00 p.m.
Tree Board	08/03/2022	6:00 p.m.
Diversity Committee	08/09/2022	5:30 p.m.
Arts Council	08/10/2022	5:30 p.m.
JazzFest Committee	08/10/2022	5:30 p.m.
KU Kickoff	08/12/2022	5:00 p.m.
City Council	08/15/2022	6:00 p.m.

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INFORMATIONAL ITEMS
August 1, 2022

1. Diversity Committee meeting minutes – June 14, 2022
2. JazzFest Committee meeting minutes – July 13, 2022
3. August plan of action

Prairie Village Diversity Committee Agenda
June, 14th, 2022
5:30 p.m.
In-Person

Call to Order

Attendance – Chair Inga Selders, Cole Robinson, David Magariel, George Williams, Chief Roberson, Jameelah Lang, Chi Nguyen, Karen Heath, Dennis Solis, Tim Schwartzkopf

Approval of Agenda

Motion to approve passed unanimously

Opening Remarks/Welcome – Inga Selders

Not a lot to report, Juneteeth is trucking along. Everything is on track.

Approval of Meeting Minutes (05/10/22)

Motion to approve passed unanimously

Presentations

Liaison Updates

* Citizen Advisory Board – George Williams/Chief Roberson

Have not met for complaints because there haven't been any complaints

* Civil Service Board – George Williams/Chief Roberson

Project Updates

* PVC Playdate – Etienne Clatinoff Orozco/ Jameelah Lang

Need to pause for now. Look to renew at some time in the future

* Interpretive Panel Update – David Magariel

Went to Redlining exhibit at Arts and Heritage

Will look to set a timeline for the next meeting

Hopeful to have a draft ahead of the next meeting

Nine topics that need to be broken down into separate historical events

Jameelah may reach out to help

* Juneteenth Celebration Update – George Williams

103 people registered to date - Please continue to push registrations

PV Arts festival was nicely attended – Diversity Committee had a tent, poster committee submissions. 30+ submitted at show, another 30+ handed out

Band is ready to go. Seem to have found a solution for the power for the band. Using a generator may work.

Tim S chiming in: Power that is existing at skate pad is too much for just a band. Need to source a different solution – "should be OK." Generator would be the best bet.

Sharice Davids has COVID – almost 100% will be unable to attend and travel from DC

Strong, diverse line up of speakers. Teachers, students, elected officials

Dennis – we could definitely use more help. Please reach out.

* Social Media/Village Voice Planning – Melissa Brown/Jameelah Lang

Village Voice – next article will probably be a recap of Juneteeth event

Dennis – "Try to get into Village Voice as much as we can"

* Committee Team Building Activity – Cole Robinson/Inga Selders

Send out a Doodle to find a good day

* JazzFest Update

Try to move in the same direction as last year. 18th and Vine Jazz Experience brought to Prairie Village. Students performing, pop-up exhibits. More to come. Saturday, Sept 10.

Old Business

*Continue discussion long and short term goals of the committee - Top priorities for each member

Long term goals – George – Want to see more town halls (voting rights)

Dennis – Also wants to have town halls

- What is the right size for this group? Need enough hands to do all of the work. Should we invite more?

George – Perhaps we handle that extra help through sub-committees.

WIDE – Welcoming Inclusivity Diversity and Equity – having WIDE tables where you highlight different groups. Promote exposure and learning

Some sort of initiative that would highlight through the year different diverse groups across our community and society

Melissa – long term look ahead for 2023 in Q4 of 2022. Perhaps try to find an online tool where we can collaborate and organize the work and goals of the committee

Inga – Running event calendar like Arts Council – could have standing volunteers

Jameelah – have done a good job at meeting most of the goals from January. Need to create more spaces and opportunities for dialogue in the community. Perhaps a "Coffee with the Community"

Melissa -Coffee with the Community – a designated time every month where it's a place where people who are interested can come and chat and get to know one another offline.

Karen – Coffees could also educate around why we have monthly focuses on subcultures, such as Pride Month or Juneteeth

Dennis – two different groups we need to focus on – 1) folks that are "the choir" that already are familiar with what we're doing in this committee and are very supportive 2) folks that are not sure about how they feel or understand the initiatives, role and goals of the diversity committee

Melissa – Hope that we are also attracting folks that might want to be in "the choir" but just haven't taken the step or are still unsure. Perhaps having separate things or actions for those folks to help them take next steps

Dennis – find ways to get to know each other on the community to where we share our differences but are able to work together as a committee to achieve our goals

George – Need a retreat as a group where we can all get to know one another more deeply. Also need to more focus on the strategic planning to lay out priorities and steps more clearly. We can spend less time as a group laying out the plan if we already have it developed and instead focus on executing the plan

Chi – Get together in pairs across the committee to get to know each other. Or spend time outside of the group building relationships. Talk about what you want to bring to the committee and what you want for Prairie Village. What does Prairie Village mean to each person on the committee? Once we have that understanding of each person on the committee then we can work even better together

David – should we consider a town hall on environmental issues and make sure we can set a portion of the agenda.

Short term goals -

Karen – need to be communicating more often. Send out minutes immediately after meeting so that committee has them so that folks that miss the meeting can stay plugged in.

Tim – Committee could absolutely do more on the city website.

Jameelah – Could absolutely use the website more and should consider it.

Doodle Poll for a committee happy hour. Plan to go to Happy Hour after our next meeting

George - Contact list for all members on the committee. Also, how to we get other groups like the REIC training folks or perhaps the Roeland Park Racial Equity committee

Tim – Roeland Park – had virtual conversations led by individuals on the committee about different topics

New Business

* Vote to add an additional funding for to the Juneteenth Celebration budget to cover the cost of t-shirts for volunteers and possibly a generator

Inga – Took in an order for volunteer T-shirts – doesn't feel right to charge them for fees. Would like to cover the costs of those T-shirts. Also need to rent a generator – so with a bit a padding, looking for a motion for an additional $1000.

Tim – Have $800-$1200 in wiggle room

Inga – would like to have enough space so that we come in under budget. Juneteenth next year will come out a separate budget next year per a finance committee recommendation.

Jameelah motion, second Melissa -motion to ask for $1000 passes unanimously

* Volunteers needed to work with Cole for the next panel discussion

Early childhood education panel around back to school

Agenda Items for July

Melissa - Zone in our agenda around ideas

Space in agenda where we talk about different community events

Create a new strategic plan that we can all refer to

Information Items or Announcements

Adjournment

Prairie Village Jazz Fest 2022
Committee Meeting
Wednesday July 13, 2022, 5:30 p.m.
City Council Chambers

Attendees

Dave Hassett	Food and Beverage Chair
Amanda Hassett	VIP Services 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
Jim Barnes	Stage and Technical Chair
John Wilinski	Backstage and Artist Hospitality Chair
Kyle Vanlanduyt	Master of Ceremonies
Ryan Freels	Volunteer

Not attending

Alex Toepfer	Talent Chair
Elissa Andre	Marketing Chair
Trudy Williams	Prairie Village Arts Council Liaison

Committee Chair's Report

No update

Fundraising and Sponsorships

Humana has opted out for 2022.
Received a call from Jefferson's/Wing Stand, returned call, waiting for more information
Brooke Morehead has made several attempts to contact Dial Senior Living.

Volunteers

T-shirts for Jazz Fest volunteers in the same style as those recently produced for VillageFest was discussed and approved. Design, cost, and quantity TBD.

Talent

Are there any riders/requirements that are not part of the contracts that we need to know about for the staging of any of the acts?

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. Suggestion was made to use a QR code but we lose visibility on the number of paid entrances versus beer sales if the money flows directly into the account.

Dave to update on social media info for the food trucks and forward information to Elissa for inclusion in online marketing and Village Voice insert.
Proposed to put Water Wagon on the hill along sponsors row to gain easy access to the hydrant by the pool.

VIP Services

Butterfluff Popcorn and other packaged, non-perishable snacks will be provided to guests in the VIP area. Two guests from Inn at Meadowbrook will receive VIP lanyards via the hotel. Inn at Meadowbrook to determine who receives the lanyards.
It was decided not to provide food truck vouchers to VIP tent guests

Stage, Lighting and Technical Services

Jim, JD, Shawn from SECT and James Carney from PW walked the stage site Thursday July 14 to discuss electrical access and other concerns.

Rented Infrastructure

Deposit made to AAA Rental to secure equipment and move in/move out dates
Madden Rental confirmed for Port a Potties and handwash stations.
Letter of understanding for rented ATM signed and executed.
Public Works to provide as many tents, tables and chairs as possible to reduce rental costs. Site needs grid based on VillageFest in progress

Marketing

Shawnee Mission/Blue Valley Post announcement of Jazz Fest 2022 lineup completed?
Fans received and distributed at VillageFest on July 4 and at Village Shops Quixotica 7/7
The Bridge FM listeners Guide secured and materials submission status.
KC Studio barter arrangement?
Yard signs production schedule TBD Map of key PV intersections from 2019 ready.
Village Voice materials deadline August 1. Elissa to handle or hand over to Ashley, PIO at PV?

Backstage/Artist Hospitality

Have not received receipt from Terell Stafford for his airfare. Reached out to his management 7/14.

Artist Hospitality tent, space for JazzFest artist volunteers and master of ceremonies proposed to be Public Works 20x20. Need additional sidewall.

Prairie Village City Committees at Jazz Fest

Diversity	Large scale Jazz Museum participation is unlikely. Activity TBD
Arts Council	Requested tent table and chairs, 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 August 10, 2022, at 5:30 pm. In the Multipurpose Room The meeting concluded at 6:25 p.m. Respectfully submitted: JD Kinney

DATE: July 25, 2022

TO: Mayor Mikkelson
City Council

FROM: Wes Jordan

SUBJECT: AUGUST PLAN OF ACTION

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

- Teen Council Recruitment - Piper/Meghan/Ashley (08/22)
- Sept/Oct Village Voice - Ashley (08/22)
- Back to School with a Firefighter - Meghan/PV Foundation (08/22)
- Consider Bird Scooter Renewal - Keith (08/22)
- Crime Stats - 6 month Review - Chief (08/22)
- Race to Zero Reporting - Ashley (08/22)
- Lap Pool Repair Project - Keith (08/22)

In Progress

- Recycle Right Initiative - Adam (07/22)
- 2023 MH Budget & Contract - Chief (07/22)
- Health-related Benefits Review w/Insurance Committee - Nickie/Jason/Cindy (07/22)
- 2nd Quarter Financial Report - Jason (07/22)
- Review Council Policy Concerning Remote Meetings - David/Staff (07/22)
- Attainable Housing Strategies - Nickie/Chris (07/22)
- Civic Center
  - MOU w/YMCA - Wes (07/22)
  - Prepare Second Survey for Council Consideration - Wes (07/22)
- Education Initiative re Revenue Neutral Rate - Jason/Ashley (06/22)
- Diversity Training - Tim/Cindy (06/22)
- Ward Boundaries - Nickie/Chris (06/22)
- Global Ties/Ukrainian Art Auction - Meghan (06/22)
- Council Chamber Projector Replacement - IS (05/22)
- Council Photos - Ashley (04/22)
- Subdivision Regulations Amendments/Easement Vacation - Nickie/Chris (04/22)
- Next Steps UCS Racial Equities - Tim (04/22)
- City Hall/PD Feasibility Study - Keith/Melissa (04/22)

- Business Continuity Plan - Tim/Dan/Nickie (03/22)
- Civic Center Ad-Hoc Committee - Staff (03/22)
- Disaster Recovery Plan - Dan/Tim (03/22)
- Special Event Planning - JD/Meghan (03/22)
    - JazzFest
- Compensation and Benefits Study - Cindy/Staff (02/22)
- Diversity Recruitment Review - Cindy/Staff (01/22)
- Agenda Management Software Evaluation - Adam (12/21)
- New Permit & Licensing Software Implementation - Nickie/Staff (12/21)
- Phone System Replacement - IS (11/21)
- Researching Department of Energy Solar App+ Program - Nickie (10/21)
- PW New Building Open House/Social Media - Keith/Melissa/Ashley (07/21)
- American Rescue Plan Act Fund Uses & Expiration - Staff (04/21)
- Pool Mural Project - Meghan (04/21)
- 2021 International Energy Conservation Code - Nickie/Mitch (03/21)
- E/V Charging Station Installation - PW (10/20)
- Memorial Plaques in Parks Criteria Review - Staff (08/19)
- Research Viability of Interior Rental Inspections - Nickie (06/19)

Completed

- Standard PW Contract Language Review - Keith (03/22)
- PV Foundation Marketing Initiative - Meghan/Ashley (06/22)
- Opioid Settlement Process/Funds Allocation - Tim (02/22)
- KU Kickoff Event Permitting - Adam (07/22)
- 2021 Annual Report - Ashley/Staff (02/22)
- Receptionist Hiring Process - Meghan/Adam (12/21) [note receptionist was promoted to court clerk]
- Special Event Planning - JD/Meghan (03/22)
    - VillageFest
- 2023 Budget
    - Resolution to Exceed Revenue Neutral Rate Nickie (07/22)
    - Permission to Publish Budget (07/22)
- Onboarding New Finance Director - Nickie (07/22)
- 2nd Quarter Pension Board Meeting - Cindy (07/22)

Tabled Initiatives

- Review & update the City Code/Ordinances
- Review & Update City Policies
- Review of Smoking Ordinance/e-cigs
- Single Use Plastic Bag Discussion - Staff (02/20) [pending Council direction]