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, November 21, 2022
6:00 PM

I. CALL TO ORDER

II. ROLL CALL

III. PLEDGE OF ALLEGIANCE

IV. APPROVAL OF THE AGENDA

V. INTRODUCTION OF STUDENTS AND SCOUTS

VI. PRESENTATIONS

Small Business Saturday proclamation

Citizens Police Academy graduation

Legislative update from Senator Ethan Corson and Representatives Jerry Stogsdill, Rui Xu and Stephanie Clayton

VII. PUBLIC PARTICIPATION

Participants may speak for up to three minutes. To submit written comment to the Council regarding current agenda items, please email cityclerk@pvkansas.com prior to 3 p.m. on November 21. 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. Consider approval of regular City Council meeting minutes – November 7, 2022
2. Consider approval of expenditure ordinance #3020
3. Consider appointment of City Engineer

IX. COMMITTEE REPORTS

X. MAYOR'S REPORT

XI. STAFF REPORTS

XII. **OLD BUSINESS**

XIII. **NEW BUSINESS**

COU2022-72 Consider approval of the agreement with Swartz Consulting, LLC for telecommunications systems consulting and project management for the new telecommunications project
Tim Schwartzkopf

COU2022-73 Consider construction manager contract for pool repairs to the adult and lap pools (Project ARPABG85)
Keith Bredehoeft

COU2022-74 Consider small cell facility deployment and master right-of-way license agreement (ExteNet)

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

Discuss the 2023 legislative platform
Nickie Lee

COU2022-75 Consider potential adjustments to property tax rebate program
Adam Geffert

XV. **ANNOUNCEMENTS**

XVI. **ADJOURNMENT**

CITY OF PRAIRIE VILLAGE
Proclamation

Small Business Saturday – November 26, 2022

WHEREAS, the government of Prairie Village, Kansas celebrates our local small businesses and the contributions they make to our local economy and community;

WHEREAS, according to the United States Small Business Administration, there are 32.5 million small businesses in the United States; they represent 99.7% of firms with paid employees, are responsible for 62% of net new jobs created since 1995, and employ 46.8% of the employees in the private sector in the United States; and

WHEREAS, 79% of consumers understand the importance of supporting the small businesses in their community on Small Business Saturday; 70% report that the day makes them want to encourage others to shop small, independently owned retailers, and 66% report that the day makes them want to "Shop Small" all year long; and

WHEREAS, 58% of shoppers reported they shopped online with a small business and 54% reported they dined or ordered takeout from a small restaurant, bar, or café on Small Business Saturday in 2021; and

WHEREAS, advocacy groups, as well as public and private organizations across the country have endorsed the Saturday after Thanksgiving as Small Business Saturday.

Now, therefore, I, Eric Mikkelson, Mayor of the City of Prairie Village, do hereby proclaim November 26, 2022, as Small Business Saturday in the City of Prairie Village, Kansas, and urge the residents of our community, and communities across the country, to support small businesses and merchants on Small Business Saturday and throughout the year.

_____

Mayor Eric Mikkelson

_____

Adam Geffert, City Clerk

PRAIRIE VILLAGE
KANSAS

CITY COUNCIL
CITY OF PRAIRIE VILLAGE
NOVEMBER 7, 2022

The City Council of Prairie Village, Kansas, met in regular session on Monday, November 7, 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, Dave Robinson, Piper Reimer, Greg Shelton, Courtney McFadden (via Zoom), Ian Graves (via Zoom) and Terrence Gallagher. 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; Tim Schwartzkopf, Assistant City Administrator; Meghan Buum, Assistant City Administrator; Jason Hannaman, Finance Director; Adam Geffert, City Clerk.

Teen Council members Ainsley Pyle, David Allegri, Abigail Swanson, Sneha Thomas, and Ava Van Alstyne were also present.

PLEDGE OF ALLEGIANCE

APPROVAL OF AGENDA

Mr. Herring made a motion to approve the agenda for November 7, 2022, with an amendment that the consent agenda be considered after presentations. Mr. Cole Robinson seconded the motion, which passed unanimously.

INTRODUCTION OF STUDENTS AND SCOUTS

There were no students or scouts present at the meeting.

PRESENTATIONS

- Mayor Mikkelson read a proclamation recognizing November as Native American Heritage Month.

- Gregg Zike with First Washington Realty provided an update on the Prairie Village and Corinth shopping centers, highlighting improvements made and significant events that had taken place throughout the year.

PRAIRIE VILLAGE
KANSAS

CONSENT AGENDA

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

1. Consider approval of regular City Council meeting minutes – October 17, 2022
2. Consider memorandum of agreement with Little Government Relations for government relations and lobbying services in 2022
3. Consider renewal of Blue Valley Public Safety contract for the City's outdoor warning siren system maintenance for 2023
4. Consider renewal of information technology services between Johnson County DTI and the City of Prairie Village
5. Consider purchase of new secondary storage server and backup software for City data
6. Consider appointment of Arts Council youth representative
7. Consider appointment of City Prosecutor
8. Consider appointment of City Engineer

The Mayor noted that the recommended appointee to the City Engineer position was unable to attend the meeting, so the appointment would be removed from the consent agenda and instead take place at an upcoming Council meeting.

Mr. Gallagher made a motion to approve the consent agenda with item #8 removed. 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, Gallagher. The motion passed unanimously.

PUBLIC PARTICIPATION

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

- Pam Justus, 7627 Chadwick Street
- Ted Odell, 7916 Aberdeen Street
- Mark Johnson, 4905 Somerset Drive
- Tom Clough, 8510 Delmar Lane
- Jori Nelson, 4802 W. 69th Street
- Karen Gibbons, 2904 W. 71st Street
- Beth Brown, 5201 W. 84th Street
- Lauren Fisher, 2504 W. 78th Street
- Mike Levin, 4927 W. 88th Street
- Julianna Lagerstrom, 4603 Homestead Drive
- Bob Gibbons, 2904 W. 71st Street
- Susie Sallee, 2501 W. 79th Terrace
- Brooke Morehead, 7921 Fontana Street

- Brad Downs, 4841 W. 76th Street
- Christine Adams, 4910 W. 69th Street
- Kate Sullinger, 7908 El Monte Street
- Jim McGrath, 7178 Buena Vista Street
- Michelle Vianello, 5209 W. 83rd Terrace
- Nikki McCray, 2401 W. 71st Street
- Joan Shields, 3629 Somerset Drive
- Barb Wheeler, 5204 W. 81st Street
- Lindsey Stewart, 3400 W. 71st Street
- John Cantrell, 8236 Nall Avenue

PUBLIC HEARING

COU2022-71 Consider approval of Ordinance 2477, approving vacation of the right-of-way adjacent to 4401 Somerset Drive

Mr. Bredehoeft said that the owners of the property at 4401 Somerset Drive had requested that the excess right-of-way located adjacent to their property be vacated by the City. The owners recently became aware that they did not own this specific area of land; after review, it was determined that this situation had existed since the property was originally platted in the 1950s. Property owners of the residence had always maintained the area, even though it technically belonged to the City.

Mr. Bredehoeft added that the City's current subdivision regulations did not address the process by which public property could be vacated. After consulting with City Attorney David Waters, vacating the easement would require the City to follow state statute requirements absent its own regulations. In order to vacate the easement, the City must take the following steps:

1. The Governing Body must adopt a resolution to set the date for a public hearing in consideration of the easement vacation. **Resolution 2022-15 was approved by the City Council on September 6, 2022.**
2. Staff must issue public notice to the Legal Record and notify all public utilities of the date of the public hearing at least 20 days in advance. **Public notice was made on October 11, 2022, and all public utilities were contacted.**
3. The Governing Body must hold a public hearing and adopt an ordinance authorizing the vacation of the easement.
4. Staff must publish the ordinance summary and send copies of the ordinance to the County for recording.

Staff sent out notices to all utilities on October 3, 2022 and received responses from each company indicating that they had no concerns with the vacation.

Mayor Mikkelson opened the public hearing at 7:29 p.m. With no one present to speak, the Mayor closed the public hearing at 7:30 p.m.

Mr. Shelton made a motion to approve Ordinance 2477, vacating the right-of-way adjacent to 4401 Somerset Drive. The motion was seconded by Mr. Dave Robinson. 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, Gallagher. The motion passed unanimously.

COMMITTEE REPORTS

- Ms. Reimer stated that three Teen Council members would be attending the National League of Cities "City Summit" conference as youth delegates later in the month in Kansas City, MO. She also noted that the Environmental Committee met on October 26 to establish its 2023 goals and priorities.

- Ms. Limbird shared that the Arts Council currently had a glass and photography exhibits at City Hall, along with a second photography exhibit at the Meadowbrook Park clubhouse. She added that the committee would meet on November 10 to finalize its 2023 exhibit schedule. Ms. Limbird also stated that the First Suburbs Coalition recently met to hear presentations on the "Communities for All Ages" program, which had successfully been implemented in Grandview, MO.

- Mr. Shelton said that the Tree Board met the prior week to complete its "Tree Canopy Vision and Plan", a document laying out the goals of the committee, specifically its efforts to sustain and replace the City's aging tree canopy over time. He also stated the Planning Commission would next meet on December 6 to handle regular business as well as continue discussions on the Ad Hoc Housing Committee's recommendations.

- Mr. Gallagher said that the Parks and Recreation Committee's November meeting had been postponed until December.

MAYOR'S REPORT

- Mayor Mikkelson reported that he had continued to meet with individuals and small groups of residents to discuss housing initiatives.
- The Mayor stated that he had attended the following events since the previous Council meeting:
    - The Mainstream Coalition's gala on October 19
    - The League of Kansas Municipalities' legislative lunch on November 3
    - A United Community Services board meeting
    - A Johnson County/ Wyandotte County Mayors meeting in Overland Park

- The Mayor recognized the Shawnee Mission East boys cross country team for winning the state championship, and the girls team for placing second.
- The Mayor shared a letter noting the death of the son of a Ukrainian sister-city representative.
- The Mayor reported that he would be attending the following events:
    - The National League of Cities conference November 17 – 19
    - The Northeast Johnson County Chamber of Commerce annual gala on November 19

STAFF REPORTS

- Chief Roberson discussed the third quarter crime statistics report that was included in the meeting packet. He noted that crime rates were relatively normal compared to previous years, though thefts from vehicles had increased. He urged residents to ensure their car doors were locked and garage doors closed every evening. He also stated that four new officers were currently in training to help fill vacancies in the department, and that the next "Coffee with a Cop" would be held on November 16 at Panera.

- Mr. Bredehoeft reported that no bids had been received for the planned project to repair leaks in the lap and adult pools at the pool complex. He noted that Public Works had begun discussing a more limited version of the project with two contractors that did not submit bids and stated that more information would be shared at the November 21 Council meeting.

- Mr. Geffert said that City staff and the Mayor had met with management from Republic Services on October 27 to discuss issues with trash, recycling and yard waste collection. Like many companies, Republic stated that they were short on drivers and limited in the number of overtime hours their current drivers could work due to federal regulations. Company management reported that they had begun offering more lucrative pay and benefit options, had new drivers in training, and were hopeful that pickup issues would be resolved once they became fully staffed.

  Mr. Geffert advised residents to contact the City directly when they experienced delays in service. Additionally, he noted that the City could fine Republic for continued missed pickups, and would do so when necessary.

OLD BUSINESS

There was no old business to come before the Council.

NEW BUSINESS

There was no new business to come before the Council.

Ms. Limbird made a motion for the City Council to move to the Council Committee of the Whole portion of the meeting. The motion was seconded by Mr. Shelton and passed unanimously.

COUNCIL COMMITTEE OF THE WHOLE

Discussion of possible changes to public comment period at Council meetings

Mr. Jordan asked the Council Committee of the Whole to consider whether modifications should be made to the public comment period to ensure City business was performed in a timely fashion. He noted that staff had experienced challenges with timing when speakers were present to discuss items not on the agenda, and that it had been difficult coordinating outside parties who needed to be present for agenda items with respect to their time.

Mr. Jordan noted that consideration had been given to dividing the public comment period into multiple sessions. One option would be for the first public participation session to be held as normally scheduled, prior to most City business, for a period not to exceed one hour, if needed. If all participants had a chance to speak during that period, public participation would conclude, and the City would then handle remaining City business items. If one or more speakers who were signed up and present at the first session did not have a chance to speak, a second public comment session would be opened after other City business concluded to give an opportunity to those individuals to speak.

The goals of the proposed changes included the following:

a. To allow all who want to speak to be able to do so
b. To better anticipate when business items (and third-party presenters for those business items) would be brought forward for consideration and discussion
c. To allow City business to conclude timely

Ms. Wolf proposed giving speakers interested in sharing their thoughts on items that were on the agenda the opportunity to speak first to ensure that their comments were heard before Council considered specific items.

Ms. Limbird stated that she was not supportive of making changes at the present time due to the amount of public comment regarding the Ad Hoc Housing Committee's recommendations. Mr. Dave Robinson, Ms. Reimer, Mr. Cole Robinson, Mrs. McFadden, Mr. Gallagher, and Mr. Herring shared similar thoughts.

After further discussion, Councilmembers determined that no action should be taken, and that future agendas could be modified to ensure that City business gets completed and that external parties are able to give presentations to the Council in a timely fashion.

PRAIRIE VILLAGE
KANSAS

Mr. Shelton moved that the City Council end the Council Committee of the Whole portion of the meeting. The motion was seconded by Ms. Reimer and passed unanimously.

ANNOUNCEMENTS

Announcements were included in the Council meeting packet.

ADJOURNMENT

Mayor Mikkelson declared the meeting adjourned at 8:15 p.m.

Adam Geffert
City Clerk

CITY TREASURER'S WARRANT REGISTER

DATE WARRANTS ISSUED: November 21, 2022

Warrant Register Page No. 1

Copy of Ordinance 3020

Ordinance Page No. ____

An Ordinance Making Appropriate for the Payment of Certain Claims.

Be it ordained by the governing body of the City of Prairie Village, Kansas.

Section 1. That in order to pay the claims hereinafter stated which have been properly audited and approved, there is hereby appropriated out of funds in the City treasury the sum required for each claim.

NAME	DATE	AMOUNT	TOTAL
EXPENDITURES:			
Accounts Payable			
27152-27163	10/7/2022	273,142.92	
27164-27226	10/14/2022	760,559.43	
27227-27231	10/21/2022	18,802.19	
27232-27311	10/28/2022	1,130,255.46	
Payroll Expenditures			
10/7/2022		360,777.01	
10/21/2022		345,077.41	
Electronic Payments			
Electronic Pmnts	10/5/2022	46.22	
	10/6/2022	11,765.11	
	10/7/2022	305.84	
	10/10/2022	2,301.33	
	10/13/2022	4,214.18	
	10/14/2022	152.92	
	10/19/2022	19.07	
TOTAL EXPENDITURES:			2,907,419.09
Voided Checks	Check #	(Amount)	
Jacob Cheek	27256	(16.00)	
TOTAL VOIDED CHECKS:			(16.00)
GRAND TOTAL CLAIMS ORDINANCE			**2,907,403.09**

Section 2. That this ordinance shall take effect and be in force from and after its passage.

Passed this 21st day of November 2022.

Signed or Approved this 21st day of November 2022.

ATTEST: _____ *City Treasurer*

ATTEST: _____ *Finance Director*

MAYOR

City Council Meeting Date: November 21, 2022

Consider appointment of City Engineer

RECOMMENDATION

Mayor Mikkelson requests the City Council ratify the appointment of Melissa Prenger to serve as the City Engineer.

MOTION

Move to ratify Mayor Mikkelson's appointment of Melissa Prenger as City Engineer.

BACKGROUND

Under the terms of the Municipal Code, the following positions within the City are appointive positions with four-year terms: City Attorney, Assistant City Attorney, Municipal Judges, City Prosecutor, City Clerk, City Treasurer, City Administrator, Deputy City Administrator, City Engineer, Director of Public Works, City Architect and Chief of Police.

ATTACHMENTS

PREPARED BY

Adam Geffert
City Clerk
Date: November 2, 2022

ADMINISTRATION

Council Meeting Date: November 21, 2022

COU2022-72 **Consider approval of the agreement with Swartz Consulting, LLC for telecommunications systems consulting and project management for the new telecommunications project**

RECOMMENDATION

Staff recommends approval of the agreement with Swartz Consulting for no more than $41,141.25 including 15% contingency if needed.

COUNCIL ACTION REQUESTED ON: November 21, 2022

SUGGESTED MOTION

Motion to approve the agreement with Swartz Consulting for no more than $41,141.25.

BACKGROUND

The current phone system which was installed over ten years ago is at end of life with our current hardware being no longer supported. Due to the complexity of telecommunications systems, the City submitted an RFP for consulting and project management services. City Staff and one elected official evaluated five responses to the RFP and Swartz Consulting finished at the top of the rankings. In addition, they were the most competitive in pricing for the requested services. City Staff then met with Melissa Swartz virtually to discuss their proposal and ask additional questions. City Staff feels that Swartz Consulting would be a good fit for our project.

Swartz Consulting is a local company that has completed many similar projects in the region. A check of local government references was conducted and each highly recommended Swartz Consulting.

The City Attorney has approved the agreement as to form.

FUNDING SOURCE

American Rescue Plan Act Funds

ATTACHMENTS

Agreement and scope of work with Swartz Consulting

PREPARED BY

Tim Schwartzkopf
Assistant City Administrator
November 9, 2022

CONSULTING AGREEMENT

1. Parties

CONSULTING AGREEMENT made this ____day of _____, 2022 between Swartz Consulting, LLC a Kansas Limited Liability Company ("SC"), having its principal place of business at 8820 Monrovia St., #19459, Lenexa, KS and the City of Prairie Village, Kansas, a Kansas municipal corporation ("Client"), having its principal place of business at 7700 Mission Road, Prairie Village, Kansas 66208(hereinafter referred to as "Client").

2. Statement of Services

(a) Scope of Agreement. This Agreement contains the entire agreement and understanding with respect to the subject matter hereof and supersedes all prior agreements, proposals, negotiations, or other correspondence, whether written or oral relating to the provision of services by SC to Client. In the event of any conflict between the provisions of Appendix A and the provisions of this Agreement, the provisions of the Appendix A shall prevail.
(b) Scope of Work. Subject to the following terms and conditions, SC shall provide consulting services in accordance with Appendix A, agreed to between the parties (the "Work"). The Appendix shall be executed on behalf of each of the parties.
(c) Client Responsibility. Client shall appoint a Technical Representative for the Work to be performed under each Task Order to provide the technical direction and approval of the Work. Client agrees to provide suitable work space, computers, equipment, and all technical or other information required by SC to perform its services as described in such Task Order.

3. Payment

(a) Time and Material. All Work performed by SC shall be rendered on a time and materials basis, unless otherwise specified in the Scope of Work (Appendix A). Client will pay SC for the services performed under this Agreement in the amounts specified in the payment provision(s) contained in Appendix A.
(b) Invoices. Invoices shall be rendered on a semi-monthly basis to Client after the performance of the Work. Payment shall be made by Client to SC within thirty (30) days from the date of each Invoice.
(c) Applicable Taxes. Charges by SC do not include any state or federal sales, use, excise, personal property, or other similar taxes, all of which shall be charges to and paid by Client.
(d) Out-of-Pocket Expenses. Reasonable out-of-pocket expenditures incurred by SC shall be paid by Client. Such expenditures shall be approved in advance by Client.
(e) Accounting Records. SC will maintain complete and accurate accounting records, in a form in accordance with its standard practices, and shall retain such records for a period of one (1) year from date of final payment for work performed.

4. Confidentiality

(a) Definition of "Confidential Information." The term "Confidential Information" shall mean matters relating to Client's business activities that are in a written form clearly marked "Confidential", except such information which: (i) was previously known to SC, (ii) is generally available to the public, or (iii) is subsequently disclosed to SC by a third party who is not under any obligation to Client.
(b) Standard of Care. SC shall use its best efforts to hold all Confidential Information in confidence for Client. Upon termination of this Agreement, SC will deliver to Client all Client materials containing Confidential Information or make such other reasonable disposition of such materials as Client may direct.

5. Proprietary Rights

(a) Client Property. Any programs, data, or other materials furnished by Client for use by SC in connection with the services performed under this Agreement shall remain the sole property of Client. All such materials shall be returned to Client upon receipt by SC of the final payment for all Work performed under the Task Order(s).
(b) SC Property. Any ideas, concepts, know-how, techniques, or sequences, developed during the course of this Agreement by SC, or jointly by SC and Client, shall be the exclusive property of SC.

6. Warranty of Performance

(a) Standard of Performance. SC shall exercise reasonable efforts to perform the Work in accordance with the scope set forth in Appendix A.
(b) Disclaimer of Implied Warranties. THE FOREGOING WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES EXPRESS OF IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

7. Term, Termination

(a) Commencement Date. This Agreement becomes effective on the date accepted by SC.
(b) Termination. Unless otherwise provided in a Task Order, either party may terminate this Agreement upon not less than thirty (30) days prior written notice to the other. Termination of this Agreement shall constitute termination of all subsequent Task Orders.

8. Independent Contractors

In the performance of this Agreement, SC is acting as an independent contractor and not as an employee or agent of Client.

9. Liability

(a) Limitation of Liability. IN NO EVENT WILL SC BE LIABLE TO CLIENT OR TO ANY THIRD PARTY FOR ANY LOST PROFITS, LOST SAVINGS, OR OTHER CONSEQUENTIAL OR INCIDENTAL DAMAGES ARISING OUT OF CLIENT'S USE OR INABILITY TO USE THE RESULTS OF THE WORK RENDERED HEREUNDER, EVEN IF SC HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
(b) Time Limitation. NO ACTION, REGARDLESS OF FORM, ARISING OUT OF THE TRANSACTIONS UNDER THIS AGREEMENT, MAY BE BROUGHT BY EITHER PARTY MORE THAN TWO (2) YEARS AFTER THE CAUSE OF ACTION HAS OCCURRED, EXCEPT THAT AN ACTION FOR NON-PAYMENT MAY BE BROUGHT WITHIN TWO (2) YEARS OF THE DATE OF LAST PAYMENT.

10. General Provisions

(a) Exclusive Remedies. Client's remedies in this Agreement are exclusive.
(b) Entire Agreement/Assignment. This Agreement: (i) is the complete and exclusive statement of the agreement between the parties and supersedes all oral, written, and other communications between the parties relating to the subject of this Agreement; and (ii) may not be assigned, sublicensed, or otherwise transferred by Client without the prior written consent of SC.
(c) Governing Law. This Agreement shall be governed by the laws of the State of Kansas.
(d) Severability. The failure by either party at any time to require performance of the other party of any provision of this Agreement shall in no way affect the right of such party thereafter to enforce the

same or any other provision, nor shall the waiver by either party of any breach of any provision hereof be taken or held to be a waiver of any succeeding breach, or as a waiver of the provision itself.

(e) Titles. The section headings in this Agreement are for convenient reference only and shall be given no substantive or interpretive effect.

(f) Notices. All notices, requests, demands, and other communications hereunder shall be in writing and shall be deemed to have been duly given if delivered or mailed, postage prepaid, certified mail, return receipt requested:

(1) To SC:
Mrs. Melissa Swartz, Managing Member
Swartz Consulting, LLC
8820 Monrovia St.
Suite #19459
Lenexa, KS 66215

(2) To CLIENT:
City of Prairie Village, Kansas
7700 Mission Road, Prairie Village, Kansas 66208
Attn: Tim Schwartzkopf – Assistant City Administrator

and/or to such other person(s) and address(es) as either party shall have specified in writing to the other.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by their duly authorized representatives.

SWARTZ CONSULTING, LLC	CLIENT
By:_____ Melissa Swartz	By:_____
___Managing Member_____ Title	_____ Title
_____ Date	_____ Date

Appendix A
Scope of Work

Swartz Consulting strives to provide the best possible recommendations to our clients. To do this, we need to understand your goals and challenges to ensure that our recommendations meet both the short and long-term goals of your organization. We also look at ways to use technology to meet your business goals, using our technical expertise and experience to solve any existing problems in the design of the system and the network that supports the applications. We proceed in a four-phase process to accomplish this.

Phase 1: Needs Analysis/ Requirements Gathering

In this phase, we will determine the current needs of your users, and explore anticipated future needs. We will use our findings as the basis for creating an RFP to align with City of Prairie Villages goals and objectives. The steps in this process are:

1. Gather information on your current system, users, call flows, reports, and network configuration to establish a baseline. Perform an in-depth analysis and document the current environment. This information will be gathered through discussions with your personnel, existing records, and information from your current system provider.
2. Conduct interviews with key staff representatives for up to 3 groups. During these interviews, we will be looking for information regarding the communications needs of your business. We want to know what the staff likes about the current system, what pain points they are currently experiencing, and what they would like to be able to do in a perfect world. We will specifically be looking for ways to improve customer service, speed information transfer, and increase productivity cost effectively. Our focus will be on business needs, including both present needs and your future vision. We expect to obtain most of the information needed about the daily operation of the systems, and the required functionality, from your current solution provider and technical support staff. After we have established the business needs, we can then determine which requirements should be included in the RFP, in order to improve ease of use and communication across the organization.
3. Facilitate a technical discussion regarding the preferred architecture for the new solution to determine if a cloud or premise approach is best for City of Prairie Village. This critical decision will provide the foundation for the solution. We will assist your team by providing the pros and cons for each option as part of the discussion.

4. Look for opportunities to leverage existing infrastructure to maximize value and minimize unnecessary expenses to City of Prairie Village.
5. Review the present network topography. When the current system was installed, the Police Department had a separate network from the rest of the City government. If this is still the case, it must be taken into account in the final solution.
6. Document our findings with a written list of the needs assessed during the interviews, as well as anticipated challenges relating to cabling and infrastructure (if any). Present and confirm our findings with your team.

Assumptions:

1. There will be up to 3 interviews/meetings with the various departments
2. Cabling is out of scope
3. Contact Center is out of scope
4. Replacement of PSTN access, such as PRIs, is out of scope
5. The City will ensure timely access to key departmental personnel

Deliverables:

- Requirements and Recommendation Report, including:
    - A cost/benefit summary for optional features.
    - Identify capabilities currently in use and those desired for the future
    - Recommendations for eliminating current pain points by aligning future technology with user needs
    - Additional recommendations based on expertise and experience
    - Identifying organizational needs and current gaps that can be rectified with new technology

Phase 2: RFP Development

Based on the findings of the needs assessment, we will create a Request for Proposal (RFP) that specifies a solution to meet the requirements of your organization. We will take the information gathered in the Needs Assessment and translate it into technical requirements.
Our RFP will be built not only to convey your requirements, but also structured to make it easier to evaluate and compare responses. We also include a pricing form so that proposals are submitted in a uniform fashion that saves time in the proposal evaluation phase.
After the RFP is approved and issued, an optional bidders' conference may be held to ensure that initial questions are answered. The steps in this phase include:

- Meet with Purchasing/Procurement (if appropriate) to clarify what parts of the final RFP document will be prepared by our Team, and in what format it should be provided. Depending upon guidance from Purchasing/Procurement, we will

provide the technical requirements to them, or we will integrate City of Prairie Village terms and conditions, required vendor forms, etc. into the document.

- Develop technical specifications for your requirements that will define the solution requirements and optional functionality If there are any requirements for integration with specific applications, these will be included. In addition, we will include expectations for installation quality, time frames, service response levels, testing requirements, system acceptance criteria, training (user and technical), and ongoing support. Our goal is to create a document that clearly states your unique needs, and which is comprehensive enough to protect your interests.
- Submit the RFP/technical requirements to your team for approval and modify as needed.
- Finalize RFP Document
- Provide list of recommended vendors to receive RFP, if a list is not already in place.
- Assist your team as needed in issuing the RFP to prospective bidders via email, prior to the optional Bidder's conference, allowing vendors to examine the specifications and bring their questions to the meeting.
- Optional: Conduct Bidders' Conference that goes over bid specifications and answers vendor questions. This Conference allows all vendors to hear the same explanations and answers to questions, keeping the process as fair as possible.
- Issue (in conjunction with your Procurement department) addendums or clarifications to RFP as needed.
- Answer bidder questions regarding RFP, as necessary.

Assumptions:

1. There will be a single RFP for *either* a premise or a cloud phone system
2. The City will issue the RFP
3. The City will notify all bidders in writing of all questions and answers.

Deliverables:

- RFP document
- Addendums and/or Q&A documents as needed

Phase 3: Proposal Evaluation

Once the bidders submit their proposals, they must be evaluated. Our RFP is built to make it easier to evaluate and compare responses. We have a structured RFP format making is easy to compare and evaluate. With our format, we also require pricing to be submitted in a uniform fashion that saves time in the proposal evaluation phase.

Even so, the evaluation process can be complex and time consuming, and the amount of information that must be evaluated can be overwhelming. In addition, it can be difficult to tell if each proposal is compliant with the RFP, and if the proposals are truly comparable. This is where our technical expertise will benefit your team; we will evaluate the proposals and present a written comparison of our findings.
During the evaluation process we understand that the final decision rests with the City of Prairie Village staff. We will never insist on a specific outcome
NOTE: Our proposal includes evaluation of up to 5 proposals. Additional proposal evaluation will be $1,500 per proposal.
This phase includes the following activities:

- Evaluation of the RFP responses received. We will evaluate each proposal to ensure that the solution proposed will meet all requirements specified. We will note differences in capabilities and features available.
- Vendor responses will be adjusted as necessary to allow for equal comparison of each proposal. For example, if licenses are left out of one proposal, the cost will be added back in so that no vendor's price is artificially low. We will compare exact configurations to ensure that all vendors are providing comparable solutions.
- We will ask follow-up questions to the vendors to clarify information provided and obtain further information as needed.
- We will work with your team to narrow down the proposals to three finalists, and attend the vendor presentations that demonstrate the solution and the vendor's capabilities.
- Develop Presentation score sheet
- We will provide a recommendation on the vendor/system that best meets your requirements, based on your evaluation criteria. A written comparison of all proposals will be provided, with information regarding the technical aspects of the proposals, as well as a complete pricing comparison for anticipated costs for a five-year period.

Assumptions:

1. Pricing includes evaluation of up to 5 proposals. Additional proposal evaluation will be $1,500 per proposal.
2. Total Cost analysis will be for a 5-year period.

Deliverables:

- Vendor proposal evaluation document
- Total cost analysis for 5 years
- Presentation scoresheet
- Technical analysis and recommendations

Contract Assistance (Optional - not included in our pricing)

Assist you in negotiating an acceptable contract with the selected vendor. This is a particularly important, but often overlooked, part of the process. We are not a substitute for proper legal counsel; however, we are experienced in contract negotiations and will provide assistance from a technical perspective. We have reviewed many vendor contracts, and know which terms and conditions are slanted to give the vendor the upper hand in the final contract. We can assist with our knowledge of common language in vendor contracts, and with which items are negotiable, and what to ask for.

Deliverables:

- Markup of vendor contract
- Markup of vendor Scope of Work
- Vendor questions and negotiations

Phase 4: Project Management

Swartz Consulting, LLC offers a complete project management service which will ensure that your new system is installed so that it meets your needs and expectations, as well as the terms and conditions of your contract with the vendor.
Telecommunications solution implementations can be complex and time consuming, and require time and attention from the client as well as the vendor. Our staff has managed the installation of hundreds of systems, and knows what is needed to get a system installed correctly and on time.
During this phase, we will ensure that the selected vendor installs the systems and services as contracted for and specified in the RFP. In our experience, we have found that once the sale is made, the people who were involved in that process are replaced by the installation crew who knows nothing about the negotiations or special agreements that were part of the initial process. This often causes issues with the installation, which we will work to prevent.

Our services include all aspects of the installation, such as the solution itself, user training, help desk support, and problem resolution. We will ensure that the implementation is done properly, and on time.

Our role is one of oversight and management, rather than one of actually doing all of the work associated with such a complex project. Existing staff will still have an enormous amount of work to do in support of the project, especially in terms of interfacing with the users and approving the configuration information. We do not plan, for example, to sit in on every configuration meeting; rather, we will ensure that the meetings are set up and are taking place. If there are any problems with the meetings, we would take steps to correct them.

Our process includes the steps listed below.

- Creation of a time line for the project, listing all of the steps necessary, and assigning responsibility and completion dates for each step.

- Hold project kick off meeting with the client and vendor to determine milestone dates for project(s), review the installation plan and time line, communicate responsibilities and expectations.

- Ongoing status meetings to verify the progress of the installation, and handle delays and unexpected issues as they arise.

- Utilize milestone chart, modified as necessary, to track projects.

- Provide regular project status reports and meeting notes.

- Providing advice and support for system software configuration.

- Participate in meetings to determine key configuration parameters (phone templates, trunking and routing configurations, etc.).

- Coordination with local, long distance, data, and other providers as needed to ensure a coordinated installation of all necessary services. Number porting can be an issue and we will work to mitigate these risks.

- Order tracking and coordination.

- Work with your team and the selected vendor to structure the user training classes in a way that ensures that the proper information is conveyed accurately and effectively, and that handouts and training reflect the particular needs of each client. This may include a preview of the training class where specific items are addressed, when necessary.

- Availability during the go live, as well as the following workday(s), as needed, to oversee quality of the installation, and to ensure that the system is installed properly and that adequate testing has been performed.

- Supervision and monitoring of the completion of post cutover punch list items.

- Verification that system acceptance criteria have been met.

- Verification of first bill from vendor

Deliverables
The documentation provided during this phase varies according to the individual needs of the project, but typically includes:

- Project Plan/Timeline
- Meeting Notes
- Status reports
- Copies of all orders placed with various vendors

Timing

The chart below provides a tentative time line for the tasks detailed above. We will work at a pace that is comfortable for the City.

	November				December				January				February				March				April				May			
Analysis and Requirements																												
Kickoff																												
Data Gathering																												
User Meetings																												
Premise vs. Cloud Discussion/Decision																												
Research and Follow Up																												
Report Development and Review																												
RFP Development																												
Meet with Procurement/Purchasing																												
Develop RFP specifications																												
Review Meeting																												
Finalize RFP document																												
Bidder's Conference																												
Vendor Questions and Answers																												
Proposal Evaluation/ Vendor Selection																												
Evaluate proposals																												
Evaluation Writeup																												
Vendor questions/clarifications																												
Present to committee & select finalists																												
Vendor Presentations																												
Final Recommendations																												

Project Deliverables and Fees

Need Analysis

- Kick off meeting to discuss the project, time lines, general requirements, key stakeholders, cloud vs. premise options
- Needs analysis meeting with key staff members (up to 3 meetings)
- Premise vs. Cloud discussion and decision

Deliverable: Need Analysis Report
Written summary of findings, including:

- Results of needs assessment interviews with staff representatives.
- Discussion and recommendations on system architecture(s) and cloud vs. premise considerations.
- Requirements for new solution, including required capabilities and desired capabilities, including contact center, analog, and fax considerations.

RFP (Request For Proposal)

An RFP document that defines the needs of City of Prairie Village, including:

- System operation and features, including phones, attendant consoles, features and software, voice mail, system administration and management, call accounting, redundancy and survivability, etc.
- Installation and Acceptance, including implementation plans, general requirements, database and training requirements, testing, documentation, and acceptance criteria.
- Ongoing Support, including warranty and maintenance requirements.

Addendums, issued as necessary to answer questions from bidders.

Proposal Evaluation/Vendor Selection Report

Evaluation of the submitted proposals (up to 5), including:

- A report evaluating the proposals that were submitted, with pros and cons of each.
- A 5-year cost analysis.
- A recommendation concerning the best proposal for City of Prairie Village's needs.
- Attendance at vendor presentations (up to 3)

Pricing Options:

1. **$19,275 Fixed Fees for All Services Above**

This is based on an hourly rate of $150/hour. We anticipate the tasks above to take 128.5 hours. With a fixed fee, if additional hours are required, they will not be billed to the City.

2. **$22,000 Not to exceed cost**

Billed at $150/hour rate with a not-to-exceed cost of $22,000.

Contract Negotiations (Optional, not included in the price)

Assistance with contract negotiations, including a list of suggested changes to the selected vendor's standard contract which will make the agreement fairer to both parties.

- One red-lined version of the contract document(s) will be provided that details our concerns with the document(s).
- To be billed at hourly rate of $150/hour

Installation Project Management $16,500 Fixed Fee

(This could also be billed at the hourly rate of $150/hour)
The documentation provided during this phase varies according to the individual needs of the project, but typically includes:

- Project Plan/Timeline
- Meeting Notes
- Status reports
- Copies of all orders placed with various vendors

Additional work outside of the Scope of Work will be billed hourly at $150/hour.

City of Prairie Village Responsibilities
We require the assistance of your staff for the following activities:

1. Identify who to meet with, and scheduling the user/stakeholder interviews. We may need to ask a staff member for more detail about issues that are raised in the interviews. A conference room will also be needed for any interviews conducted on site.
2. Provide information on how to contact the existing system vendor and/or manufacturer, if needed.
3. Provide information on existing procedures, policies, system design.
4. Provide copies of existing phone bills.
5. Provide a Letter of Agency, if required, that will allow us to obtain additional information from phone carriers.
6. Show us the existing data center, equipment rooms, telephone closets, etc.
7. Provide a diagram of the existing data network.
8. Review and comment on the Needs Assessment Report.
9. Review and comment on the RFP.
10. Review and comment on the vendor comparison and recommendation.

Payment Schedule

Fees will be invoiced on the following schedule:

- Fees for Needs Analysis, RFP, Evaluation, and Negotiations will be invoiced in as follows:
  - 50% up front
  - 50% at upon submission of final recommendation/comparison document

- Fees for project management will be invoiced in as follows:
  - 50% up front
  - 50% at Go Live

We agree to the scope of work described above, and agree to pay for the services described at the rate stated above.

SWARTZ CONSULTING, LLC	CLIENT
By:_____ Melissa Swartz	By:_____
_____ Title	_____ Title
_____ Date	_____ Date

PUBLIC WORKS DEPARTMENT

Council Meeting Date: November 21, 2022

COU2022-73 CONSIDER CONSTRUCTION MANAGER CONTRACT FOR POOL REPAIRS TO THE ADULT AND LAP POOLS (PROJECT ARPABG85)

RECOMMENDATION

Move to authorize the Mayor to sign the Construction Manager contract with KC Gunite, Inc. for the Pool Repairs to the Adult and Lap Pools, Project ARPABG85.

BACKGROUND

The Adult and Lap Pools function as one pool and are over 60 years old. Significant upgrades were made about 30 years ago. Repairs were made in each of the last two years and it was determined that the ductile iron piping that was installed 30 years ago was rusting from the outside rendering investigatory videos in the pipe to show only complete failures. Large leaks were fixed but the pool continued to leak thus causing the need to replace all the piping for these two pools. All of the supply and return water pipes need to be completely replaced with new lines to and from the filter house.

Several options were considered during design and the selected option was to change how the water was supplied to the pools and abandon the piping under the bottom of the pools. Two options were looked at including wall inlets as well as a stainless steel gutter option. The wall inlet option was selected and the project was designed.

Bids for that project were opened on Friday, October 21, 2022 and no bids were received. After discussions with a couple of contractors it was felt the job was just too labor intensive to complete on time for the 2023 pool season. Since then we have been working with two contractors. One bid the project as designed and the other bid a stainless steel gutter option with a scaled down scope.

Bids received

Dodlinger- Original Design Option - $2.1 Million

KC Gunite- Stainless Steel Gutter Option- A rough bid of $1,550,000 was received as final details for this option are not finalized.

These two bids are not directly comparable as the scopes of work are different.

Construction Manager Contract

Public Works is proposing following a Construction Manager Contract similar to the contract we followed for the new Public Works Building. This would allow us to execute a contract with KC Gunite now while design for the stainless steel gutter option continues. The initial contract also includes Amendment 1 that includes the purchasing of the stainless steel gutter and Amendment 2 that allows the demolition to begin now. Time is of the essence as the stainless steel gutter has a long lead time for it to be manufactured. Demolition can take place while the stainless steel gutter is being manufactured. Amendment 3 for the remainder of the project costs will be completed and executed by the Public Works Director as long as the costs remain consistent with the project budget outlined in this memo.

KC Gunite will serve as a Construction Manager for this project. The Preconstruction Services fee will be $2,000 and will allow KC Gunite to serve as a design assist during the value engineering of this project. They will assist our engineer, Lamp Rynearson and the City in the development of the final design and cost estimating of the 2022 pool repairs.

As the Value Engineering part of the project is completed, the contractor, architect, and City will agree on final construction cost for this project. This cost will be approved as Amendment 3 to this agreement and then the remainder of the construction will start.

The Budget for this project is $1,200,000 which includes design as well as construction. With an approximate cost of the construction being $1,600,000 it is proposed to add $650,000 in additional APRA Funds for a total project budget of $1,850,000. This will allow for about $150,000 for design and contingencies.

FUNDING SOURCE

Funding for this project is under Project ARPABG85.

Revised project budget including design, construction, and contingencies is $1,850,000.

Current Funding	$1,200,000
Additional Funds from ARPA	$ 650,000
Total Funds	$1,850,000

ATTACHMENTS

1. CMR Agreement with KC Gunite.
2. Amendment 1 – Stainless Steel Gutter
3. Amendment 2 - Demolition

PREPARED BY

Keith Bredehoeft, Public Works Director November 16, 2022

CITY OF PRAIRIE VILLAGE, KANSAS CONTRACT BETWEEN

CITY OF PRAIRIE VILLAGE, KANSAS AND CONSTRUCTION MANAGER

KC Gunite

Prairie Village 2022 Pool Repairs

ARPABG85

City of Prairie Village, Kansas
7700 Mission Road
Prairie Village, Kansas 66208

Construction Manager:

KC Gunite
16207 Kentucky
Belton, Missouri 64012

TABLE OF CONTENTS

Prairie Village 2022 Pool Repairs

ARPABG85

		Page
AGREEMENT	CITY AND CONSTRUCTION MANAGER	A-1 to A-3
EXHIBIT A	PROGRAM REQUIREMENTS	PR-1
EXHIBIT B	GENERAL CONDITIONS	GC-i to GC-54
EXHIBIT C	AFFIDAVIT OF PARTIAL PAYMENT	1 to 2
EXHIBIT D	BILL OF SALE	1
EXHIBIT E	BAILMENT AGREEMENT	1
EXHIBIT F	AFFIDAVIT OF FINAL PAYMENT	1 to 2
EXHIBIT G	INSURANCE REQUIREMENTS	1 to 4
EXHIBIT H	PERFORMANCE BOND	1 to 2
EXHIBIT I	STATUTORY LABOR AND MATERIALS BOND	1 to 2
EXHIBIT J	MAINTENANCE BOND	1

CITY OF PRAIRIE VILLAGE, KANSAS

AGREEMENT BETWEEN
CITY OF PRAIRIE VILLAGE, KANSAS
AND CONSTRUCTION MANAGER

Prairie Village 2022 Pool Repairs

THIS AGREEMENT is made and entered into this _____ day of _____, 2022, by and between the **City of Prairie Village, Kansas**, (the "City"), and **KC Gunite** (the "Construction Manager").

WITNESSETH:

WHEREAS, the City has caused to be prepared, in accordance with the law, this Agreement, General Conditions, Project Special Provisions, and other Contract Documents, as defined in the General Conditions, for the Work herein described, and has approved and adopted these said Contract Documents and has considered proposals for preconstruction and construction services, furnishing construction materials, labor, tools, equipment and transportation necessary for, and in connection with, the construction of public improvements in accordance with the terms of this Agreement; and

WHEREAS, the Construction Manager, in response to the Request for Proposals, has submitted to the City, in the manner and at the time specified, a Proposal in accordance with the terms of this Agreement; and

WHEREAS, the City, in the manner prescribed by law, has evaluated proposals received, and as a result of this process has, in accordance with the law, determined and declared the Construction Manager to be the best offeror for the construction of the public improvements, and has duly awarded to the Construction Manager a contract therefor upon the terms and conditions set forth in this Agreement and for the consideration named in this Agreement.

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

ARTICLE I. The Construction Manager will furnish at its own cost and expense all labor, tools, equipment, materials and transportation required to construct and complete the work as designated, described and required by the Contract Documents, to wit: **Prairie Village 2022 Pool Repairs**; all in accordance with the Contract Documents, on file with the City Clerk of Prairie Village, Kansas, all of which Contract Documents together with this Agreement form the Contract, and are as fully a part hereof as if repeated verbatim herein; all work to be done in a good, substantial and workmanlike manner to the entire satisfaction of the City, and in accordance with the laws of the City, the State of Kansas and the United States of America. All terms used herein shall have the meanings ascribed to them in the General Conditions unless otherwise specified.

ARTICLE II. The City shall compensate and make payments to the Construction Manager: as follows:

1. For the Preconstruction Phase Services described in Section 2.1 of the General Conditions, the Construction Manager's compensation shall be calculated as follows:

1.1 Lump sum of **TWO THOUSAND AND NO/100 Dollars ($2000.00)** payable upon execution of GMP Change Order No. 1.

2. For the Construction Manager's performance of the Work as described in Article 2 of the General Conditions, excluding Section 2.1 of the General Conditions which is addressed above, the City shall pay the Construction Manager in current funds the amount stated in the Agreement.

2.1 Construction Manager's Fee shall be 0.00**%** of the total Cost of Work and will be included within the GMP. Construction Manager's Fee shall not be reduced on account of savings returned to the City.

2.2 Construction Manager's Fee of 0.00**%** shall apply to any increases in the GMP mutually agreed to by the Parties.

3. **Savings.** All savings shall be for the total benefit of the City.

ARTICLE III. The Construction Manager shall commence work upon the date stated in the Notice to Proceed, and will complete all work covered by this Contract within the time set forth in the GMP Change Order No. 1. Time is of the essence. Accordingly, liquidated damages shall be assessed against Construction Manager, as stipulated liquidated damages and not as a penalty, in the amount of $1,000.00, for each and every calendar day the work remains incomplete over the specified completion time(s) stated above. If the City elects to accept any part of the Work as Substantially Complete in advance of the remainder of the Work, this daily rate shall be equitably adjusted by the City.

ARTICLE IV. 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**.

ARTICLE V. The following documents are made part of this Agreement by reference:

Exhibit A	The City's Program Requirements
Exhibit B	General Conditions of the Contract
Exhibit C	Form of Affidavit of Partial Payment and Release of Claims/Affidavit of Partial Payment and Waiver of Liens and Release of Claims
Exhibit D	Form of Bill of Sale
Exhibit E	Form of Bailment Agreement
Exhibit F	Form of Affidavit of Partial Payment and Release of Claims/Affidavit of Final Payment and Waiver of Liens and Release of Claims
Exhibit G	Insurance Requirements
Exhibit H	Form of Performance Bond
Exhibit I	Form of Statutory Payment Bond
Exhibit J	Form of Maintenance Bond

IN WITNESS WHEREOF, the City has caused this Agreement to be executed on its behalf, thereunto duly authorized, and the said Construction Manager has executed _____ counterparts of this Agreement in the prescribed form and manner, the day and year first above written.

CITY:

CITY OF PRAIRIE VILLAGE, KANSAS

By:_____
Eric Mikkelson
Mayor

ATTEST:

By:_____
Adam Geffert
City Clerk

APPROVED AS TO LEGAL FORM:

By:_____
David E. Waters
City Attorney

CONSTRUCTION MANAGER:

KC GUNITE

By:_____

Name:_____

Title:_____

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

*[Add appropriate **Acknowledgment** form here.]*

EXHIBIT A

PROGRAM REQUIREMENTS

The project consists of pool repairs to the Adult and Lap Pools. The supply and return water systems for both pools will be completely reconstructed back to the filter house.

EXHIBIT B

GENERAL CONDITIONS TO CONSTRUCTION MANAGER AGREEMENT

TABLE OF CONTENTS

	Description	Page Number
ARTICLE 1	GENERAL PROVISIONS	1
1.1	Definitions	1
1.2	Relationship of Parties	4
ARTICLE 2	CONSTRUCTION MANAGER'S RESPONSIBILITIES	4
2.1	Preconstruction Phase Services	5
2.2	Guaranteed Maximum Price Proposal and Contract Time	6
2.3	Basis of GMP	7
2.4	Construction Phase	8
ARTICLE 3	CITY'S RESPONSIBILITIES	12
3.1	Information and Services	12
3.2	Structural and Environmental Tests, Surveys, and Reports	12
3.3	City's Designated Representative	13
3.4	Designer	13
ARTICLE 4	COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES	13
4.1	Payments	13
4.2	City's Right to Withhold Payment	14
4.3	Completion Date	14
ARTICLE 5	COMPENSATION FOR CONSTRUCTION PHASE SERVICES	14
5.1	Compensation	14
5.2	GMP	14
5.3	Savings	14
5.4	Liquidated Damages	14
5.5	Change Orders	15
ARTICLE 6	COST OF THE WORK FOR CONSTRUCTION PHASE	17
6.1	Cost of Work Items	17
6.2	Costs Not To Be Reimbursed	19
6.3	Discounts, Rebates, and Refunds	20
6.4	Accounting Records	20
ARTICLE 7	PAYMENT APPLICATIONS FOR CONSTRUCTION PHASE SERVICES	20
7.1	Payments	20
7.2	Payments Withheld	22
7.3	Substantial Completion	22
7.4	Final Completion and Final Payment	23

ARTICLE 8 GENERAL CONDITIONS 24

8.1 Extent of Contract 24
8.2 Assignment 25
8.3 Appointment of Service Agent 25
8.4 Non-Discrimination, Affirmative Action, and Sexual Harassment 25
8.5 Insurance 26
8.6 Bonds and Other Performance Security 26
8.7 Indemnity 26
8.8 Contract Documents/Contract for Construction 27
8.9 Defects in the Contract Documents 27
8.10 Copies of the Agreement 28
8.11 Scope, Nature and Intent of Drawings and Specifications 28
8.12 Shop Drawings 29
8.13 Construction Manager's Responsibilities as to Ambiguities 30
8.14 Concealed Conditions 30
8.15 Permits, Fees, and Notices 31
8.16 General Administration of the Contract 31
8.17 Construction Manager's Employees 32
8.18 Samples 33
8.19 Protection of Work and City Property 33
8.20 Protection of Property/Liability 33
8.21 Tests and Inspections 33
8.22 Superintendence and Supervision 34
8.23 Construction Manager's Office at Site of Work 35
8.24 Work Stoppages 35
8.25 Patent Liability Clause 35
8.26 Independent Contractor 35
8.27 Separate Contracts 36
8.28 Relations with Other Contractors 36
8.29 Provision for Emergencies 37
8.30 Assignment and Subletting of Contract 37
8.31 Authority and Duty of the Designer 38
8.32 Liquidated Damages 38
8.33 Partial Occupancy or Use 39
8.34 Correction of Work 39
8.35 Dispute Resolution 40
8.36 Delays and Extensions of Time 41
8.37 Remedies for Default by Construction Manager 41
8.38 Termination of the Agreement for the Convenience of the City 42
8.39 Termination by Contractor 43
8.40 Waiver of Consequential Damages and Anticipatory Profit 43
8.41 Ownership and Use of Design and Design Documents 43
8.42 Use of Premises 44
8.43 Allowances 44
8.44 Cutting, Patching, and Digging 44
8.45 Cleaning Up 44
8.46 Temporary Facilities 44
8.47 Sanitary Regulations and Water 45
8.48 Unfavorable Construction Conditions 45
8.49 Safety Precautions and Programs 45

8.50 Safety of Persons and Property 46
8.51 Safety Program 47
8.52 Handling of Emergencies, Emergency Plan 48
8.53 Weekends, Holiday, and Night Work 48
8.54 Approval of Equals 48
8.55 Test of Materials Offered by Construction Manager 49
8.56 Testing of Completed Work 49
8.57 Borrow and Waste Areas 49
8.58 Street Signs and Traffic Aids 49
8.59 Federal Lobbying Activities 49
8.60 Titles, Subheads, and Capitalization 50
8.61 Severability 50
8.62 Taxes 50
8.63 Governing Law 50
8.64 Venue 50
8.65 Warranty 50
8.66 Access to Work 51
8.67 Professional Services 51
8.68 Environmental Matters 51
8.69 Order of Precedence 53
8.70 Cash Basis 54
8.71 Kansas Open Records Act 54

EXHIBIT B

GENERAL CONDITIONS TO CONSTRUCTION MANAGER AGREEMENT

ARTICLE 1 GENERAL PROVISIONS

1.1 Definitions. Whenever any word or expression defined herein, or pronoun used in its stead, occurs in these Contract Documents, it shall have and is mutually understood to have the meaning herein given. Work described in words when so applied have a well-known technical or trade meaning shall be held to refer to such recognized standards.

1.1.1 "Acceptance" means agreement by the City to put the Work into use, but no acceptance by the City shall, at any time, constitute approval or acceptance of Work that is not in accordance with the terms of this Agreement or the Contract Documents, unless such acceptance is specifically described in writing as applying to Work that is not in accordance with this Agreement or the Contract Documents.

1.1.2 "Applicable Laws" means all laws, statutes, ordinances, codes, regulations, rules, orders, and resolutions of all national, administrative, state, local, municipal, and other governing bodies relating to the Project or to the performance of the services or the Work.

1.1.3 "Application for Payment" means a written request for compensation for Work performed submitted per City-approved form.

1.1.4 "Approve" shall mean review by the City, which may be given solely for the benefit of the City but no approval by the City shall, at any time, constitute approval or acceptance of Work that is not in accordance with the terms of this Agreement or the Contract Documents.

1.1.5 "Certificate of Substantial Completion" means written certification from the Designer which establishes the date of Substantial Completion, responsibilities of the City and Construction Manager for security, maintenance, heat, utilities, damage to the Work and insurance, and fixes the time within which the Construction Manager shall finish all items on the list accompanying the Certificate.

1.1.6 "Change Order" means a written order issued after the Agreement is executed by which the City, Designer, and the Construction Manager agree to construct additional items of Work, to modify the contract time, or to change the character and scope of Work shown in the Drawings and Specifications. Change Orders must be signed by the City and Construction Manager to be binding.

1.1.7 "Construction Contingency" means the sum established by the Construction Manager for use at the Construction Manager's discretion to cover costs which are properly reimbursed as a Cost of Work but are not the basis of a Change Order.

1.1.8 "Construction Documents" means documents prepared by the Designer or other design professionals working under the supervision of Designer for construction of the Work, including but not limited to the Plans and Specifications.

1.1.9 "Construction Phase" means the phase of the Project commencing upon completion of the Preconstruction Phase, or upon award of the first subcontract related to construction of the Project, whichever occurs first, and ending upon final completion. The parties acknowledge that the design phase and the Construction Phase may overlap.

1.1.10 "Consultant" or "Designer" or "Design Consultant" shall mean such persons or firms retained or employed by the City who shall be appropriately licensed and responsible for performance of professional design services in connection with the Project.

1.1.11 "Contract Documents" shall consist of the Agreement between the City and Construction Manager (sometimes referred to herein as the "Agreement"), including all addenda issued prior to execution of the Agreement; Design and Construction Documents as such time as they are incorporated into the Agreement; Changes to the Work effected by proper Change Orders including changes to the Work proposed by the City, or changes proposed by the Construction Manager and accepted by the City, if any; Drawings and data which may be furnished by the Construction Manager and approved by the City, if any; additional Drawings which may be furnished by the Designer necessary to make clear the intent of the Contract Documents (and in particular, the Specifications); if any; and any other documents attached to this Agreement.

1.1.12 "Cost of Work" means reimbursable costs, as defined in Section 6.1, necessarily incurred by the Construction Manager in the proper performance of the Work.

1.1.13 "Defective Work" means Work not conforming to the Contract Documents and substitutions not properly approved and authorized.

1.1.14 "Drawings" means the graphic and pictorial portions of the Contract Documents showing the design, location, and dimensions of the Work, generally including plans, elevations, sections, details, schedules, and diagrams.

1.1.15 "Final Certificate for Payment" means written certification from the Designer stating that to the best of the Designer's knowledge, information and belief, and on the basis of the Designer's on-site visits and inspections, the Work has been completed in accordance with the terms and conditions of the Contract Documents and that the entire balance found to be due the Construction Manager and noted in the Final Certificate is due and payable.

1.1.16 "Guaranteed Maximum Price" or "GMP" means the Guaranteed Maximum Price for the Project, as defined and subsequently established in the GMP Change Order and any subsequent Change Orders and shall include the Construction Manager's Fee outlined in Section 5.1 and the Cost of Work as defined in Article 6 and shall be the sum of the estimated cost of the Work, Construction Contingency and the Construction Manager's Fee.

1.1.17 "Life Cycle Costs" means the sum of all costs of the Project over its useful life, and includes the cost of design, construction, acquisition, operation, maintenance and salvage/resale value.

1.1.18 "Normal Weather Conditions" shall mean the average of weather conditions for the month for which delay is claimed over the past five years, based on data from the closest NOAA weather recording facility.

1.1.19 "Preconstruction Phase" shall mean the phase during which Construction Manager shall perform Value Engineering and constructability services in working with the Designer and the City. Preliminary scheduling and cost estimate activities shall also take place during this Phase.

1.1.20 "Program" shall mean the City's criteria on which the design is based, of which the Project and the Work are a part. The City's Program shall be described on **Exhibit "A**" hereto.

1.1.21 "Project" shall mean the overall construction program of the City, which may include work by contractors other than Construction Manager.

1.1.22 "Schedule of Values" means a document accurately and in good faith allocating all of the budgeted Cost of the Work and Contingency among the various portions of the Work, using Construction Manager's best efforts to avoid disproportionate allocation of funds to early completing items.

1.1.23 "Shop Drawings" are drawings, diagrams, schedules, and other data specially prepared for the Work by the Construction Manager or a Subcontractor, manufacturer, supplier, or distributor to illustrate some portion of the Work.

1.1.24 "Specifications" means that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards, and workmanship for the Work, and performance of related services.

1.1.25 "Subcontractor" means an individual, firm, or corporation having a direct contract with the Construction Manager or with another subcontractor for the performance or supply of any part of the Work required by the Contract Documents or the supply of any materials, services, equipment, or installation services required by the Contract Documents.

1.1.26 "Substantial Completion" or "Substantially Complete" means the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the City can occupy or utilize the Work for its intended use and a temporary certificate of occupancy and any other permits and orders necessary for occupancy have been issued by the proper governmental authority. Warranties called for by this Agreement or by the Contract Documents shall commence on the Substantial Completion date.

1.1.27 "Underground Facilities" shall mean all pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels or other such facilities or attachments, and any encasements containing such facilities or utilities which have been installed underground to furnish services or materials including, but not limited to, electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, sewage and drainage removal, traffic or other control systems or water.

1.1.28 "Value Engineering" means the detailed analysis of systems, equipment, materials, services, facilities, and supplies required by the Contract Documents for the purpose of achieving the desired and essential functions of the Project at the lowest Life Cycle Cost consistent with required and necessary performance, reliability, quality, and safety. Value Engineering is to be performed during the Preconstruction Phase as a part of the services required to reach a GMP acceptable to all parties.

1.1.29 "Warranties" means warranties obtained from the Construction Manager, Subcontractors, and all other sub-subcontractors and vendors pursuant to this Agreement covering the Work performed or materials furnished to the Project or any portion thereof by the Construction Manager.

1.1.30 "Work" means the work to be done necessary to complete the construction required of the Construction Manager by the Contract Documents, and includes all construction, labor, materials, tools, equipment, services, and transportation necessary to produce such construction to the City's full satisfaction and in accordance with the Contract Documents to fulfill the Construction Manager's obligations.

1.1.31 "Work Directive" is a written direction from the Designer issued under the terms of this Agreement, directing the Construction Manager to perform Work in the manner specified therein. Issuance of a Work Directive is an acknowledgement that the Construction Manager and the City are not in agreement as to whether the Work has been changed, or the appropriate adjustment to the Guaranteed Maximum Price or Contract Time, if any, associated with the Work Directive.

1.2 Relationship of Parties. The Construction Manager accepts the relationship of trust and confidence established with the City by this Agreement, and covenants with the City to furnish the Construction Manager's reasonable skill and judgment and to cooperate with the Designer in furthering the interests of the City. The Contract Documents shall not be construed to create a contractual relationship of any kind (a) between Construction Manager's Subcontractors and the City, or (b) between any persons or entities other than the City and the Construction Manager, including but not limited to the Designer and any other consultant retained by the City to prepare or review the Work, nor shall anything contained in the Contract Documents create any obligation on the part of the City to pay to or to see to the payment of any sums due any Subcontractor or supplier. It is understood that the Work shall be carried out and the Work shall be constructed fully in accordance with the Contract Documents.

ARTICLE 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES

The Construction Manager shall perform the Work in accordance with the Contract Documents to the City's full satisfaction. Construction Manager shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Designer in the Designer's administration of the Contract, or by tests, inspections, or approvals required or performed by persons other than the Construction Manager. The Construction Manager shall be as fully responsible to the City for the acts and omissions of its Subcontractors, and of persons either directly or indirectly employed by them, as Construction Manager is for the acts and omissions of persons directly employed by it. Construction Manager shall act as consultant to the City in the Preconstruction Phase and as the equivalent of a general contractor during the Construction Phase. Construction Manager shall act as the City's interest and shall manage and control construction costs so as not to exceed the GMP. If the City and Construction Manager

agree, after consultation with the Designer, the Construction Phase may commence before the Preconstruction Phase is completed, in which case the City will issue a Notice to Proceed with the Construction Phase, and both parties will proceed concurrently.

2.1 Preconstruction Phase Services.

2.1.1 Preliminary Evaluation. The Construction Manager shall provide a preliminary evaluation of the City's Program and Project budget requirements, each in terms of the other.

2.1.2 Consultation. The Construction Manager with the Designer shall jointly schedule and attend regular meetings with the City. The Construction Manager shall consult with the City and Designer regarding site use and improvements and the selection of materials, building systems, and equipment. The Construction Manager shall provide recommendations on construction feasibility; actions designed to minimize adverse effects of labor or material shortages; time requirements for procurement, installation and construction completion; and factors related to construction cost, including estimates of alternative designs or materials, preliminary budgets and possible economies.

2.1.3 Preliminary Project Schedule. When the Project requirements described in Section 3.1.1 have been identified, the Construction Manager shall prepare, and periodically update, a preliminary Project schedule for the Designer's review and the City's approval. The Construction Manager shall obtain the Designer's approval of the portion of the preliminary Project schedule relating to the performance of the Designers' services. The Construction Manager shall coordinate and integrate the preliminary Project schedule with the services and activities of the City, Designer, and Construction Manager. The preliminary Project schedule shall be updated to indicate proposed activity sequences and durations, milestone dates for receipt and approval of pertinent information, submittal of a GMP proposal, preparation and processing of Shop Drawings and samples, delivery of materials or equipment requiring long lead time procurement, the City's occupancy requirements showing portions of the Project having occupancy priority, and proposed date of Substantial Completion. If preliminary Project schedule updates indicate that previously approved schedules may not be met, the Construction Manager shall make appropriate recommendations to the City and Designer.

2.1.4 Phased Construction. The Construction Manager shall make recommendations to the City and Designer regarding the phased issuance of Drawings and Specifications to facilitate phased construction of the Work, if such phased construction is appropriate for the Project, taking into consideration such factors as economies, time of performance, availability of labor and materials, and provisions for temporary facilities.

2.1.5 Preliminary Cost Estimates.

2.1.5.1 When the City has sufficiently identified the Project requirements and the Designer has prepared other basic design criteria, the Construction Manager shall prepare, for the review of the Designer and approval of the City, a preliminary cost estimate utilizing area, volume or similar conceptual estimating techniques.

2.1.5.2 When schematic design documents have been prepared by the Designer and approved by the City, the Construction Manager shall prepare, for the review of the Designer and approval of the City a more detailed estimate with supporting data. During the preparation of the design development documents, the Construction Manager shall update and refine this estimate at appropriate intervals agreed to by the City, Designer, and Construction Manager.

2.1.5.3 When design development documents have been prepared by the Designer and approved by the City, the Construction Manager shall prepare a detailed estimate with supporting data for review by the Designer and approval by the City. During the preparation of the Construction Documents the Construction Manager shall update and refine this estimate at appropriate intervals agreed to by the City, Designer, and Construction Manager.

2.1.5.4 If any estimate submitted to the City exceeds previously approved estimates or the City's budget, the Construction Manager shall make appropriate recommendations to the City and Designer.

2.1.6 Long Lead Time Items. The Construction Manager shall recommend to the City and Designer a schedule for procurement of long lead time items which will constitute part of the Work as required, to meet the Project schedule. If such long lead time items are procured by the City, they shall be procured on terms and conditions acceptable to the Construction Manager. Upon the City's acceptance of the Construction Manager's GMP proposal, all contracts for such items shall be assigned by the City to the Construction Manager, who shall accept responsibility for such items as if procured by the Construction Manager. The Construction Manager shall expedite the delivery of long lead items.

2.1.7 Extent of Responsibility. The recommendations and advice of the Construction Manager concerning design alternatives shall be subject to the review and approval of the City and the City's professional consultants. Unless a portion of the Work is identified in the Construction Documents as being Design-Build, and that design responsibility for that portion is specifically delegated to Construction Manager and/or its Subcontractor(s), the City acknowledges that the Construction Manager is in no way providing professional services which constitute the practice of architecture or engineering. It is not the Construction Manager's responsibility to ascertain that the Drawings and Specifications are in accordance with Applicable Laws. However, if the Construction Manager recognizes that portions of the Drawings and Specifications are at variance therewith, the Construction Manager shall promptly notify the Designer and the City in writing.

2.2 Guaranteed Maximum Price Proposal and Contract Time.

2.2.1 At a time to be mutually agreed upon by City and Construction Manager, but within thirty (30) days after completion of the Drawings and Specifications, the Construction Manager shall propose a GMP, which shall be the sum of the estimated Cost of Work, Construction Manager's Fee, and Construction Contingency.

2.2.2 The estimated Cost of Work shall include the Construction Contingency, a sum established by the Construction Manager for the Construction Manager's exclusive use to cover costs arising under Section 2.2.2, above and other costs which are properly

reimbursable as Cost of Work but not the basis for a Change Order. The Construction Manager shall notify the City as to the items of Work and cost thereof prior to any and each use of the contingency, and shall maintain a statement of the contingency costs.

2.2.3 At the time of the GMP amendment to the Agreement, a Substantial Completion date and Final Completion date shall be agreed upon. Liquidated damages for Construction shall be as set forth in the Agreement

2.3 Basis of GMP.

2.3.1 The Construction Manager shall include with the GMP proposal a written statement of its basis, which shall include:

2.3.1.1 A list of the Drawings and Specifications, including all addenda thereto and the conditions of the contract, which were used in the preparation of the GMP proposal.

2.3.1.2 A list of allowances and a statement of their basis.

2.3.1.3 The proposed GMP, including a statement of the estimated cost organized by trade categories, allowances, contingency, and other items and the fee that comprise the GMP.

2.3.1.4 The date of Substantial Completion upon which the proposed GMP is based on and a schedule of the Construction Documents issuance dates upon which the date of Substantial Completion is based.

2.3.1.5 Detailed construction schedule.

2.3.2 The Construction Manager shall meet with the City and Designer to review the GMP proposal and the written statement of its basis. In the event that the City or Designer discovers any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the GMP proposal.

2.3.3 Unless the City accepts the GMP proposal in writing on or before the date specified in the proposal for such acceptance and so notifies the Construction Manager, the GMP proposal shall not be effective without written acceptance by the Construction Manager.

2.3.4 Prior to the City's acceptance of the Construction Manager's GMP proposal and issuance of a notice to proceed with the Construction Phase of the Work, the Construction Manager shall not incur any costs to be reimbursed as part of the cost of the Work, except as the City may specifically authorize in writing.

2.3.5 Upon acceptance by the City of the GMP proposal, the GMP and its basis shall be set forth in the GMP Change Order. The GMP shall be subject to additions and deductions by a change in the Work as provided in the Contract Documents, and the date of Substantial Completion shall be subject to adjustment as provided in the Contract Documents.

2.4 Construction Phase.

2.4.1 General. The Construction Phase shall commence on the City's acceptance of the Construction Manager's GMP proposal and issuance of a notice to proceed.

2.4.2 Utility location. Prior to commencement of any Work in the Construction Phase, Construction Manager shall make all reasonable efforts to specifically locate Underground Facilities which may be affected by the Construction Work, including identification of any utilities which the Construction Manager knows or has reason to know may be affected, whether or not information about such utilities is reported through third-party notification services.

2.4.3 Administration. Those portions of the Work the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or by other appropriate agreements with the Construction Manager. The Construction Manager shall obtain bids from Subcontractors and from suppliers of materials or equipment fabricated to a special design for the Work from the list previously reviewed and, after analyzing such bids, shall deliver such bids to the City and Designer. The City will then review these bids with the Construction Manager, and Construction Manager shall identify the bids which it proposes to accept and state the reasons for its decisions. The City shall have the right, but not the obligation, to direct the Construction Manager to reject a specific bidder. If the City's action to direct the Construction Manager to reject a specific bidder causes the Cost of the Work to be increased, or causes the Contract Time to be extended, the Construction Manager shall be entitled to an increase in the GMP or Contract Time, or both. All subcontracts and purchase orders for major equipment shall contain a provision assigning the rights of Construction Manager to the City in the event of termination of this Agreement by the City.

2.4.3.1 Unless otherwise agreed to in writing by the City, all Work packages and material/equipment items estimated in the Cost of Work at or above specified amounts will require that the Construction Manager obtain competitive bids in writing as follows:

a. At or above $25,000 – at least two (2) competitive bids;
b. At or above $50,000 – at least three (3) competitive bids.

2.4.3.2 A list of approved/prequalified bidders will be established between the City and Construction Manager prior to commencement of bidding.

2.4.3.3 With prior consent of the City, mechanical, plumbing, and electrical Subcontractors may be selected during the Preconstruction Phase based upon a qualification based selection process administered by Construction Manager. The selection process will evaluate experience with similar types of projects/systems and an evaluation of proposed fee structures. Such subcontracts would be subject to the same restrictions on allowable costs and the same right of audit as applies to Construction Manager in this Contract.

2.4.3.4 If the GMP has been established and a specific bidder among those whose bids are delivered by the Construction Manager to the City and Designer (a) is recommended to the City by the Construction Manager; (b) is qualified to

perform that portion of the Work; and (c) has submitted a bid which conforms to the requirements of the Contract Documents without reservations or exceptions, but the City requires that another bid be accepted, then the Construction Manager may request that a change in the Work be issued to adjust the contract time and the GMP by the difference between the bid of the person or entity recommended to the City by the Construction Manager and the amount of the subcontract or other agreement actually signed with the person or entity designated by the City. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.

2.4.3.5 The Construction Manager shall schedule and conduct meetings at which the City, Designer, Construction Manager, and appropriate Subcontractors can discuss the status of the Work. The Construction Manager shall prepare and promptly distribute meeting minutes.

2.4.3.6 Promptly after the City's execution of the GMP Change Order, the Construction Manager shall prepare a schedule in accordance with Section 2.4.4, including the City's occupancy requirements.

2.4.3.7 The Construction Manager shall provide monthly written reports to the City and Designer on the progress of the entire Work. The Construction Manager shall maintain a daily log containing a record of weather, Subcontractors working on the site, number of workers, Work accomplished, problems encountered and other similar relevant data as the City may reasonably require. The log shall be available to the City and Designer.

2.4.3.8 The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the City and Designer at regular intervals.

2.4.4 Construction Schedules. The Construction Manager shall, within ten (10) days after execution of GMP Change Order No. 1, shall furnish the City with a detailed Critical Path Method (CPM) schedule as set forth below, giving the dates on which it expects to start and to complete separate portions of the Construction Work. No Construction Work shall begin until said schedule is approved by the City. The City reserves the right to adjust the Construction Manager's schedule to coordinate with any other projects in the same area. Once approved, the Construction Schedule shall be strictly adhered to unless agreed to in writing by all parties or modified by an extension or extensions of time as hereinafter provided. Approval of any schedule by the City shall not constitute an opinion that the schedule is reasonable for the Construction Manager to rely on. The Construction Schedule shall be value-loaded to serve as a Schedule of Values by which to evaluate payment applications from Construction Manager and its subcontractors. The Schedule of Values shall not be front-end loaded so as to disproportionately shift payment for later-performed Work to earlier periods of time.

2.4.4.1 General Requirements. A computerized network diagram shall be included in the CPM schedule and shall serve as the 'Master Construction Schedule' for the Project, giving mathematical analysis (printout) of that network, which

verifies and validates logic and planning and defines critical path. The approved schedule shall be kept on site with the superintendent and reviewed with Subcontractors each week. The CPM schedule shall be utilized for planning, organizing, and directing the Work, for reporting progress, and requesting payment for Work completed. The schedule shall be reviewed each week as part of the progress meeting. Abbreviations used in CPM schedules shall be clearly explained in a legend of symbols, either separate or attached. Scheduling software shall be compatible with Microsoft Project 2007.

2.4.4.2 Schedule Requirements.

2.4.4.2.1 The CPM schedule shall clearly show sequential interdependencies, with activity duration and float clearly represented. Sequence(s) of activities with no float shall be clearly identified as critical path(s). The scheduling system shall be capable of baseline comparison analysis. Upon development and approval of the schedule, the Contractor shall 'freeze' the initial schedule as the baseline schedule. As Work progresses, Construction Manager shall provide graphics displaying actual progress bars versus baseline or target bars. Activity durations shall be in calendar days.

2.4.4.2.2 The CPM schedule shall include pre-construction tasks, construction tasks (bid items), Shop Drawing submittal and approval process, material and equipment ordering and delivery, submittal of as-built drawings, clean up and punchlist, inspection coordination activities, utility relocation, final inspection and certificate of completion, and final payment. Submittal activities shall be scheduled to allow sufficient time for materials and equipment to be procured and installed, even if the submittal is unacceptable and resubmittal is required. The CPM schedule shall reflect anticipated delays, such as weather delays.

2.4.4.2.3 Construction Manager shall submit the initial schedule, complete revisions, and periodic reports in three hard copies, one reproducible and two prints or plots, and one copy digitally on CD or DVD. This schedule shall include the completed network program consisting of GANTT chart and mathematical analysis within ten (10) days of the executed Agreement. Allow five (5) days for the City to review. Construction Manager shall submit the schedule of submittal activities extracted from the master schedule within ten (10) days after receipt of Notice to Proceed. During the preparation period, Construction Manager shall review this information with the City.

2.4.4.2.4 Submittals to the City of initial and monthly CPM schedule charts shall include three (3) sets of all reports as outlined below. Plots shall be color, blueline, printed or photocopied prints and, if segmentally generated, fully assembled. Highlight the critical path when the critical path is not clearly defined.

2.4.4.2.5 The Construction Manager will participate in the City's review and evaluation of submitted network diagrams and mathematical

analysis of diagrams. Resubmit revisions necessary due to review within five (5) days after the review. Construction Manager and major Subcontractors shall review the network CPM schedule before final submittal.

2.4.4.3 Report Formats. Standard set of reports submitted each month including initial submittals shall consist of a GANTT chart of entire Project. Progress bar chart shall include target or baseline comparison bars. Bar positions shall be early start/early finish with float clearly defined. GANTT charts shall include a tabulation of each activity. For each activity on the GANTT charts furnish the following:

2.4.4.3.1 Initial/submittal schedule shall include a list of responsible contractors and suppliers, task description, duration, start date, end date, latest start date, latest end date, total slack or float time in calendar days and current schedule bar in Gantt view.

2.4.4.3.2 Progress schedule updates shall include a list of responsible contractors and suppliers, task description, duration, actual start date, actual finish date, percentage completion, remaining duration in calendar days and current schedule bar in Gantt view.

Graphics outlined above shall comply with the following criteria unless noted otherwise:

2.4.4.3.3 Sheet size of diagram shall be 11 by 17 inches minimum and time scaled in month as the major timescale and weeks as the minor timescale unless approved otherwise.

2.4.4.3.4 On each page include a title block containing at a minimum the following information:

a. Project Title;
b. Project Number;
c. Construction Manager's Business Name;
d. Date of Submittal and Revision (the date shown must clearly show the current preparation date and separately the revision date of the current schedule - this is a hard date entered and not an auto or status date);
e. Submit a separate Legend Page of Symbols and Abbreviations as applicable.

2.4.4.3.5 Prepare and submit to the City upon request additional charts, reports, and current copy on disk of Project program.

2.4.5 CPM Schedule Implementation and Monitoring. Monthly CPM schedule charts and reports shall accompany the Construction Manager's pay request for Work completed. Where the Construction Manager is shown to be behind schedule, provide accompanying written summary, cause, and explanation of planned remedial action. CPM schedules shall reflect those instances, modifications or other alterations to the schedule, which have an impact on the final completion or interim target dates within

the schedule. Payments or portions of payments may be withheld by the City Engineer, upon failure to maintain scheduled progress of the Work as shown on the approved CPM schedule. Failure to prepare, submit and maintain a CPM schedule as specified shall be cause for rejection of other schedules submitted and for possible delay of payment. Float time belongs to the Project, not to the Construction Manager or to the City Engineer, and may be utilized by both parties.

2.4.6 Schedule Changes and Updates.

2.4.6.1 At a minimum the Construction Manager shall update and submit the CPM Schedule for review weekly. A weekly update is required unless agreed upon by the City. Monthly submittal of the CPM schedule and approval by the City is required prior to payment for Work completed. Activities added to the CPM schedule shall be submitted by the Construction Manager on schedule charts. It is the City's intent that the Project be managed and operated according to the CPM schedule. Payment requests may be held up until the CPM schedule is brought back into compliance with the Contract Documents.

2.4.6.2 Once the CPM schedule is submitted and approved, the City shall identify any modifications to activity durations, logic, values, or descriptions required to resubmit for approval. Such adjustments shall not impact the contracted completion date. Requests for time extensions are addressed in Article 5 Compensation for Construction Phase Services Section 5.5 Change Orders.

ARTICLE 3 CITY'S RESPONSIBILITIES

3.1 Information and Services.

3.1.1 The City shall provide full information in a timely manner regarding the requirements of the Project, including a program which sets forth the City's objectives, constraints and criteria, including space requirements and relationships, flexibility and expandability requirements, special equipment and systems, and site requirements.

3.1.2 The City shall establish and update an overall budget for the Project, based on consultation with the Construction Manager and Designer, which shall include costs which are the responsibility of the City.

3.1.3 The City shall endeavor to promote harmony and cooperation among the City, the Construction Manager, and other persons or entities employed by the City for the Project.

3.2 Structural and Environmental Tests, Surveys, and Reports. In the Preconstruction Phase, the City shall furnish the following with reasonable promptness and at the City's expense. Except to the extent that the Construction Manager knows of any inaccuracy, the Construction Manager shall be entitled to rely upon the accuracy of any such information, reports, surveys, Drawings, and tests described in Sections 3.2.1 through 3.2.6 but shall exercise customary precautions relating to the performance of the Work.

3.2.1 Reports, surveys, Drawings, and tests concerning the conditions of the site which are required by law.

3.2.2 Surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data pertaining to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All information on the survey shall be referenced to a Project benchmark.

3.2.3 The services of a geotechnical engineer when such services are requested by the Construction Manager. Such services may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, ground corrosion and resistivity tests, including necessary operations for anticipating subsoil conditions, with reports and appropriate recommendations.

3.2.4 Structural, mechanical, chemical, air and water pollution tests, tests for hazardous materials, and other laboratory and environmental tests, inspections and reports which are required by law.

3.2.5 The services of other consultants when such services are reasonably required by the scope of the Project and are requested by the Construction Manager and agreed to by the City.

3.2.6 As-built drawings of existing facilities, as available.

3.3 **City's Designated Representative**. The City shall designate in writing a representative who shall have express authority to bind the City with respect to all matters requiring the City's approval or authorization. This representative shall have the authority to make decisions on behalf of the City concerning estimates and schedules, construction budgets, and changes in the Work, and shall render such decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Designer does not have such authority.

3.4 **Designer**. The City shall retain a Designer to provide basic services, including normal structural, mechanical and electrical engineering services, other than cost estimating services. The City shall authorize and cause the Designer to provide those additional services described in this Agreement, requested by the Construction Manager which must necessarily be provided by the Designer for the Preconstruction and Construction Phase of the Work. Such services shall be provided in accordance with time schedules agreed to by the City, Designer, and Construction Manager. Upon request of the Construction Manager, the City shall furnish to the Construction Manager a copy of the City's Agreement with the Designer.

ARTICLE 4 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

4.1 **Payments.** If compensation is based on a multiple of direct personnel expense, direct personnel expense is defined as the direct salaries of the Construction Manager's personnel engaged on the Project and the portion of the cost of their mandatory and

customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, pensions, and similar contributions and benefits.

4.1.1 Payments shall be made monthly following presentation of Construction Manager's Application for Payment and, where applicable, shall be in proportion to services performed.

4.1.2 Payments are due and payable thirty (30) days from the City's receipt of the Construction Manager's undisputed Application for Payment.

4.2 **City's Right to Withhold Payment.** In the event the City becomes credibly informed that any representations of Construction Manager provided in its monthly pay requests, are wholly or partially inaccurate, the City may withhold payment of disputed sums then or in the future otherwise due to Construction Manager until the inaccuracy and the cause thereof, is corrected to the City's reasonable satisfaction. In the event the City questions some element of a pay request, that fact shall be made known to the Construction Manager immediately. Construction Manager will help effect resolution and transmit an Application for Payment, if necessary. Amounts not questioned by the City shall be paid to Construction Manager in accordance with the contract payment procedures.

ARTICLE 5 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

City shall compensate the Construction Manager for Construction Phase Services as follows:

5.1 **Compensation.**

5.1.1 For the Construction Manager's performance of the Work as described in Article 2 herein, the City shall pay the Construction Manager in current funds the amount stated in the Agreement.

5.2 **GMP.** Construction Manager agrees that its compensation for its Work shall not exceed the amount provided in the GMP Change Order, subject to additions and deductions by changes in the Work as provided in the Contract Documents and approved in writing by the City. Such maximum sum as adjusted by approved changes in the Work is referred to in the Contract Documents as the GMP. Costs which would cause the GMP to be exceeded shall be paid by Construction Manager without reimbursement by the City.

5.3 **Savings.** If at the time of final payment to Construction Manager, the sum of the actual cost of the Work and Construction Manager's Fees are less than the GMP, as such GMP may have been adjusted over the course of the Project for approved scope Changes, the difference ("Savings") shall be shared as stated in the Agreement.

5.4 **Liquidated Damages.** The Construction Manager accepts the daily rate of Liquidated Damages set forth in the Agreement, if any.

5.5 **Change Orders.** The City, without invalidating the Contract, may, by Change Order, direct changes in the Work which may result in an addition to or deduction from the GMP and/or changes in the schedule. All Change Orders shall be executed under the provisions of the original Contract Documents. If the Change Order consists of a modification to the GMP, the value of such change shall be determined as per Section 5.5.3, below.

5.5.1 Except for Work done as a result of an emergency endangering life or property, no activity resulting in an increase in the GMP or extension of the Construction Schedule shall be performed unless pursuant to the provisions of a Change Order, or a written Work Directive pursuant to Section 5.5.2 below.

5.5.2 Work Directives. From time to time the Designer may also issue written orders to Construction Manager for needed clarifications, modifications or corrections. When the Designer issues such an order, if the Construction Manager believes compliance will impact the time or cost of performing the Work the Construction Manager may request that the Designer issue a Work Directive. Issuance of a Work Directive by the Designer is not an admission that the City, or the Designer, believes that the cost or time to perform Work in question has been changed. Work Directives can also be used where the parties agree that there has been a change, but are not in agreement as to the appropriate adjustment in the Guaranteed Maximum Price or Time, if any. The Construction Manager shall submit its proposed adjustment for the Work described in the Work Directive, with sufficient back-up and detail to permit a full evaluation, within five (5) working days of receipt of the Work Directive, and shall not commence the Work described in the Work Directive until ordered in writing by the Designer to do so. If so stated in the Work Directive, the Construction Manager shall keep records of the cost and time of performing the Work Directive, and the parties shall attempt in good faith to resolve any disagreements over the Work Directive as soon as possible. In any case, the parties reserve their rights to resolve Work Directive disagreements through the Disputes Resolution provisions of this Agreement.

5.5.3 The value of any change in the Work which results in an addition/deletion to the GMP shall be determined in one or more of the following ways, at the option of the City:

5.5.3.1 By agreed lump sum.

5.5.3.2 By agreed upon unit prices.

5.5.3.3 By actual field cost (time and material) plus Construction Manager's Fee (which includes overhead and profit) stated in the Agreement and shall include a "Not to Exceed" figure.

5.5.4 In order to arrive at the value for any change, Construction Manager shall credit the City with its projected cost(s) for any Work which was previously included but which has been excluded by any such change.

5.5.5 No change in the Work shall entail additional time unless both parties determine that additional time is required and specifically so provides in the Change Order.

5.5.6 Where extra Work is performed under this Section, the term "actual field cost" as referenced in Section 5.5.3, above, of such extra Work is hereby defined to be and shall include:

5.5.6.1 The cost of all workers, such as foremen, timekeepers, mechanics, and laborers, for the time actually employed in the performance of the extra Work;

5.5.6.2 All materials and supplies;

5.5.6.3 Trucks and rentals on machinery and equipment for the time actually employed or used in the performance of said extra Work;

5.5.6.4 Any transportation charges necessarily incurred in connection with said equipment authorized by the City for use on said Work and similar operating expenses;

5.5.6.5 All incidental expenses incurred as a direct result of such extra Work, including payroll taxes and a ratable proportion of premiums on construction bonds and, where the premiums therefore are based on payroll costs, public liability and property damage, worker's compensation, and other insurance required by the Contract Documents; provided, however, Construction Manager must enumerate and justify to the City's satisfaction any such claimed incidental expenses; and provided, further, that without in any way limiting the City's right to challenge any individual costs claimed by Construction Manager, incidental costs shall not include:

5.5.6.5.1 Payroll costs and other compensation of Construction Manager's officers, executives, principals (of partnership and sole proprietorships), general managers, engineers, architects, estimators, lawyers, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks and other personnel employed by Construction Manager whether at the site or in Construction Manager's principal or a branch office for general administration of the Work unless specifically agreed to by the City all of which are to be considered administrative costs covered by the Construction Manager's overhead and profit.

5.5.6.5.2 Expenses of Construction Manager's principal and branch offices other than Construction Manager's office at the site.

5.5.6.5.3 Any part of Construction Manager's capital expenses, including interest on Construction Manager's capital employed for the Work and charges against Construction Manager for delinquent payments.

5.5.6.5.4 Costs due to the negligence of Construction Manager, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of Defective Work, disposal of materials or equipment wrongly supplied and making good any damage to property.

5.5.6.5.5 Other overhead of general expense costs of any kind and the costs of any item not specifically and expressly agreed to by the City.

5.5.7 Both parties shall agree to the form in which accounts of the Actual Field Cost shall be kept and may also specify in writing, before the Work commences, the method of doing the Work and the type and kind of machinery and equipment, if required, which shall be used in the performance of extra Work under this Section. In the event that machinery and heavy construction equipment shall be required for such extra Work, the authorization and basis of payment for the use thereof shall be stipulated in the Change Order at the rates set forth in Section 6.1.4.2 below.

5.5.8 No claim for extra Work of any kind will be allowed except as provided herein. If extra Work orders are given in accordance with the provisions of this Agreement, such Work shall be considered a part hereof and subject to each and all of the terms and requirements of this Agreement.

5.5.9 Construction Manager shall be responsible for notifying its surety(ies) of any modifications to the GMP or schedule, and said surety(ies) shall not seek discharge as a result of any failure on Construction Manager's part to notify surety(ies).

ARTICLE 6 COST OF THE WORK FOR CONSTRUCTION PHASE

6.1 **Cost of Work Items.** Cost of Work items shall be at rates not higher than those customarily paid at the place of the Project except with prior consent of the City. The Cost of Work shall include only the items set forth in this Article.

6.1.1 Labor Costs.

6.1.1.1 Wages of construction workers directly employed by the Construction Manager to perform the construction of the Work at the site or, with the City's agreement, at off-site workshops.

6.1.1.2 Wages or salaries of the Construction Manager's supervisory and administrative personnel when stationed at the site City or at the Construction Manager's principal office pursuant to the hourly rate schedule approved by the City as part of the GMP Proposal. Scope of work performed at the Construction Manager's principal office to be pre-approved by the City.

6.1.1.3 Wages and salaries of the Construction Manager's supervisory or administrative personnel engaged at factories, workshops, or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

6.1.1.4 Costs paid or incurred by the Construction Manager for payroll taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements, and for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations, and pensions, provided that such costs are based on wages and salaries included in the Cost of Work under Sections 6.1.1.1 through 6.1.1.3.

6.1.2 Subcontract Costs. Payments made by the Construction Manager to Subcontractor in accordance with the requirements of the subcontracts.

6.1.3 Costs of Materials and Equipment Incorporated in the Completed Construction.

6.1.3.1 Costs, including transportation, of materials and equipment incorporated or to be incorporated in the completed construction.

6.1.3.2 Cost of the materials described in Section 6.1.3.1 in excess of those actually installed but required to provide reasonable allowance for waste and spoilage. Unused excess materials, if any, shall be handed over to the City at the completion of the Work or, at the City's option, shall be sold by the Construction

Manager; amounts realized, if any, from such sales shall be credited to the City as a deduction from the Cost of Work.

6.1.4 Costs of Other Materials and Equipment, Temporary Facilities and Related Items.

6.1.4.1 Costs, including transportation, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment, and hand tools not customarily owned by the construction workers, which are provided by the Construction Manager at the site and fully consumed in the performance of the Work; and cost less salvage value on such items if not fully consumed, whether sold to others or retained by the Construction Manager. Cost for items previously used by the Construction Manager shall mean fair market value.

6.1.4.2 Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by the construction workers, which are provided by the Construction Manager at the site, whether rented from the Construction Manager or others, and costs of transportation, installation, minor repairs and replacements, dismantling and removal thereof. Rates and quantities of equipment rented shall be subject to the City's prior approval. Rates and quantities of equipment furnished by Construction Manager or any subcontractor shall be limited to no more than 85% of the prevailing local rental rate, and in no case shall exceed the purchase price of the item rented.

6.1.4.3 Cost of removal of debris from site.

6.1.4.4 Reproduction costs, postage and express delivery charges, telephones at the site and reasonable petty cash expenses of the site office, to the extent actually used.

6.1.4.5 That portion of the reasonable travel and subsistence expense of the Construction Manager's personnel incurred while traveling in discharge of duties connected with the Work shall be subject to the City's prior approval.

6.1.5 Miscellaneous Costs.

6.1.5.1 Premiums for that portion of insurance, deductibles and bonds and deductibles incurred required by the Contract Documents that can be directly attributed to this Contract. Self-insurance for either full or partial amount of the coverages required by the Contract Documents, with the Owner's prior approval. Insurance and Bonds provided by the Construction Manager shall be included in the GMP at the following values: General Liability Insurance Rate = 0.95%, Builder's Risk Rate = 0.35% and Payment and Performance Bond Rate = actual cost as invoiced by bonding company. Construction Manager shall certify in writing to the City that all of the costs were paid to a third party and that no part of the premium was received or retained by Construction Manager.

6.1.5.2 Fees of testing laboratories for tests required by the Contract Documents, except those related to nonconforming Work.

6.1.5.3 Data processing costs related to the Work.

6.1.5.4 Deposits lost for causes other than the Construction Manager's negligence or failure to fulfill a specific responsibility to the City set forth in this Agreement.

6.1.5.5 Legal costs, other than those arising from disputes between the City and the Construction Manager, reasonably incurred by the Construction Manager in the performance of the Work and with the City's written permission, which permission shall not be unreasonably withheld.

6.1.6 Other Costs. Other costs incurred in the performance of the Work if and to the extent approved in advance in writing by the City.

6.1.7 Emergencies and Repairs to Damaged or Nonconforming Work. The Cost of Work shall also include costs which are incurred by the Construction Manager:

6.1.7.1 In taking action to prevent threatened damage, injury or loss in case of emergency affecting the safety of persons and property.

6.1.7.2 In repairing or correcting damaged or nonconforming Work executed by the Construction Manager or the Construction Manager's Subcontractors or suppliers, provided that such damaged or nonconforming Work was not caused by the negligence or failure to fulfill a specific responsibility to the City set forth in this Agreement of the Construction Manager or the Construction Manager's personnel to supervise adequately the Work of the Subcontractor or suppliers, and only to the extent that the cost of the repair or correction is not recoverable by the Construction Manager from insurance, Subcontractors or suppliers.

6.2 Costs Not To Be Reimbursed.

6.2.1 The Cost of Work shall not include:

6.2.1.1 Salaries, expenses, and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the Project site office, except as specifically provided for in Section 6.1.1.2 and 6.1.1.3.

6.2.1.2 Expenses of the Construction Manager's principal office and offices other than the site office, except as specifically provided in Section 6.1.

6.2.1.3 Overhead and general expenses, except as may be expressly included in Section 6.1.

6.2.1.4 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work.

6.2.1.5 Rental costs of machinery and equipment, except as specifically provided in Section 6.1.4.2.

6.2.1.6 Costs due to negligence of the Construction Manager or to the failure of the Construction Manager to fulfill a specific responsibility to the City set forth in this Agreement.

6.2.1.7 Costs incurred in the performance of Preconstruction Phase Services.

6.2.1.8 Any costs not specifically and expressly described in Section 6.1.

6.2.1.9 Costs which would cause the GMP to be exceeded.

6.3 Discounts, Rebates, and Refunds.

6.3.1 Cash discounts obtained on payments made by the Construction Manager shall accrue to the City, if before making payment, the Construction Manager included them in an Application for Payment and received payment therefore from the City; otherwise cash discounts shall accrue to the Construction Manager. Trade discounts, rebates, refunds, and amounts received from sales of surplus materials and equipment shall accrue to the City, and the Construction Manager shall make provisions so they can be secured.

6.3.2 Amounts which accrue to the City shall be credited to the City as a deduction from the Cost of Work.

6.4 Accounting Records. The Construction Manager shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Agreement; the accounting and control systems shall be satisfactory to the City. The City and the City's accountants shall be afforded access to the Construction Manager's records, books, correspondence, instructions, Drawings, receipts, subcontracts, purchase orders, invoices, vouchers, memoranda, and other data relating to this Project, and the Construction Manager shall preserve these for a period of five (5) years after final payment, or for such longer period as may be required by law, and shall be subject to audit by the City and the Kansas Department of Revenue.

ARTICLE 7 PAYMENT APPLICATIONS FOR CONSTRUCTION PHASE SERVICES

7.1 Payments.

7.1.1 Based upon Applications for Payment submitted to the Designer by the Construction Manager and certificates for payment issued by the Designer, the City shall make payments on account of the Agreement sum to the Construction Manager as provided below and elsewhere in the Contract Documents. With each Application for Payment, Construction Manager shall submit documentation of its payment of subcontractors and suppliers, and its release of claims and (where applicable) lien rights for itself and its Designer and Subcontractors on the forms attached hereto as **Exhibit D**.

7.1.2 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 the City and Construction Manager.

7.1.3 Before the first Application for Payment, the Construction Manager shall submit to the Designer and the City a Schedule of Values allocated to the various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as the Designer and the City may require. This schedule, unless objected to by the Designer or the City, shall be used only as a basis for the Construction Manager's Applications for Payment and does not constitute approval by the Designer or the City of the method or performance by the Construction Manager.

7.1.4 Payment will be made to Construction Manager monthly from funds available on the basis of a duly certified estimate of the value of all labor and materials delivered on the site and accepted by the Designer and the City during the preceding month, calculated in proportion to the GMP, but to ensure the proper performance of the Agreement, ten percent (10%) of the amount of each estimate, (including undisputed portions of Work Directives and un-finalized changes) will be retained until Substantial Completion and acceptance of Work covered by this Agreement, except for projects which are governed by K.S.A. §16-1904, in which case retainage shall be set at five percent (5%) unless the factors enumerated in that statute justify the withholding of greater sums.

7.1.4.1 Subcontracts and agreements with suppliers furnishing materials or equipment fabricated to a special design shall conform to these same payment provisions and shall not be awarded on the basis of cost plus a fee without the prior consent of the City.

7.1.5 Each payment made to the Construction Manager shall be on account of the total amount payable to the Construction Manager by or for the City, and all materials and Work covered by the partial payments made shall therefore become the sole property of the City. This provision shall not be construed as relieving the Construction Manager from the responsibility imposed by the Contract Documents for the care and protection of materials and Work upon which payments have been made, for the restoration of any damaged Work, or as a waiver of the right of the City to require the fulfillment of all the terms of the Agreement. Progress payments in respect to materials will be made only for materials delivered on the site and accepted by the Designer or the City, all calculated in proportion to the GMP.

7.1.6 In general, no allowance will be made in estimates for materials on site, or stored at a facility approved by the City, if site is unable to take delivery, and not incorporated in the Work except in case of those items considered by the City to be major items of considerable magnitude, which will be allowed in estimates on the basis of ninety-five percent (95%) of invoices (except for projects which are governed by K.S.A. §16-1904, in which case retainage shall be set at five percent (5%) unless the factors enumerated in that statute justify the withholding of greater sums), the value calculated in proportion to the GMP. If the City should elect to pay for materials or equipment prior to their delivery to the Project site and/or incorporation into the Project, Construction Manager shall deliver to the City prior to payment a fully executed Bill of Sale, attesting to the City's ownership of such materials or equipment, and a Bailment Agreement, attesting to the proper storage and insurance of such materials and equipment until such time as they are delivered to the site, on the forms attached hereto as **Exhibit E** and **Exhibit F**.

7.1.7 The retained percentages herein provided for are to be retained and held for the sole protection and benefit of the City, and no other person, firm or corporation shall have or assert any lien, claim, right or priority therein, thereon or thereto, or be entitled to receive any part thereof, except as herein expressly provided.

7.1.8 The City shall require at intervals as it shall determine and at any time before final payment is made for the Work specified herein that the Construction Manager furnish the City with documentation of its payment of subcontractors, subconsultants and suppliers, and its release of claims and (where applicable) lien rights and payment by all Subcontractors and vendors who have done Work or labor on, or who have furnished

materials for, this Project that they have been fully paid by the Construction Manager for such Work or labor done or materials furnished by them for which payment has been made to Construction Manager by the City on the form attached hereto as **Exhibit D.** Construction Manager's failure to furnish said list or to include all such Subcontractors and vendors shall not relieve Construction Manager or its surety of any obligation assumed under this Agreement, nor shall the City's request for such list create any obligation on the City's part to verify accuracy.

7.1.9 The Construction Manager shall be responsible for the return and/or exchange of surplus materials, and all credits for returned or exchanged materials shall be first submitted to the Designer and the City for approval. Applications for Payment shall reflect any such credits, and the GMP shall be adjusted as necessary to reflect such credits. Unreturnable excess materials shall be turned over to the City, or, at its option, be removed from the Project site at Construction Manager's expense.

7.1.10 The acceptance by the Construction Manager of final payment shall be and shall operate as a release to the City of all claims and all liability to the Construction Manager other than written claims in stated amounts as may be specifically excepted by the Construction Manager for all things done or furnished in connection with this Agreement and for every act and neglect of the City and others relating to or arising out of this Agreement. Any payment, however, final or otherwise, shall not release the Construction Manager or its sureties from any obligations under the Contract Documents, the bonds, or insurance coverage's.

7.2 **Payments Withheld.** The City may withhold or, on account of subsequently discovered evidence, nullify the whole or a part of any Application for Payment to the extent necessary to protect the City from loss on account of:

7.2.1 Incomplete Work or Defective Work not remedied;

7.2.2 A reasonable doubt that the Work can be completed for the balance of the Agreement price then unpaid;

7.2.3 Damage to the City; or

7.2.4 A breach of this Agreement.

7.3 **Substantial Completion.**

7.3.1 When Construction Manager considers the Work, or a portion thereof which the City agrees to accept separately, that Substantially Complete, the Construction Manager shall prepare and submit to the Designer and the City a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Construction Manager to complete all Work in accordance with the Contract Documents.

7.3.2 Upon receipt of the Construction Manager's list, the Designer and the City will make an inspection to determine whether the Work or designated portion thereof is Substantially Complete. If the Designer and the City's inspection discloses any item, whether or not included on the Construction Manager's list, which is not sufficiently complete in accordance with the Contract Documents so the City can occupy or utilize the Work or

designated portion thereof for its intended use, the Construction Manager shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Designer and the City. In such case, the Construction Manager shall then submit a request for another inspection by the Designer and the City to determine Substantial Completion.

7.3.3 When the Work or designated portion thereof is Substantially Complete, the Designer will prepare a Certificate of Substantial Completion for signature by the City. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

7.3.4 The Certificate of Substantial Completion shall be submitted to the City and Construction Manager for their written acceptance of responsibilities assigned to them in such Certificate. Upon such acceptance and Consent of Surety Company to Final Payment, the City shall make payment of retainage applying to such Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

7.3.5 Retainage will be released to Construction Manager within thirty (30) days of Substantial Completion, less 150% of the reasonable value of any Work which is incomplete or not performed in compliance with the Contract Documents.

7.4 Final Completion and Final Payment.

7.4.1 Upon receipt of written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the City with the assistance of the Designer will promptly make such inspection. Upon receipt from the Designer of the Final Certificate for Payment, the City will process the final payment. The Designer's Final Certificate for Payment will constitute a further representation that conditions listed in Section 7.4.2, below, as precedent to the Construction Manager's being entitled to final payment have been fulfilled.

7.4.2 Final payment shall not be due until all of the following have been received by the City:

(a) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work have been paid or otherwise satisfied;

(b) receipt by the City of all close-out documents required by the Contract Documents, including but not limited to a Project Completion Certificate, O&M manuals, manufacturer's warranties and final as- built drawings;

(c) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least thirty (30) days' prior written notice has been given to the City;

(d) a written agreement that the Construction Manager knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents;

(e) Consent of Surety Company to Final Payment; and

(f) if required by the City, other data establishing payment or satisfaction of obligations, such as receipts, releases of claims and lien rights (where applicable), security interests or encumbrances arising out of the Agreement, to the extent and is such form as is attached to this Agreement as **Exhibit G**. If a Subcontractor refuses to furnish a release or waiver required by the City, the Construction Manager may furnish a bond and shall furnish a letter from its payment bond surety affirming its obligation on such bond notwithstanding refusal of a subcontractor to furnish a waiver or release as a condition precedent to payment of such disputed amount to Construction Manager.

7.4.3 If after Substantial Completion of the Work, final completion is materially delayed through no fault of the Construction Manager or by issuance of Change Orders affecting final completion, and the Designer and the City so confirms, the City shall, upon application by the Construction Manager and certification by the Designer, and without terminating the Agreement, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written Consent of Surety Company to Final Payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Construction Manager to the Designer and the City prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims. The making of final payment shall constitute a waiver of claims by the City except those arising from:

(a) claims, lien rights (where applicable), security interests or encumbrances arising out of the Agreement and unsettled;

(b) failure of the Work to comply with the requirements of the Contract Documents; or

(c) warranties required by the Contract Documents.

7.4.4 Acceptance of final payment by the Construction Manager, a Subcontractor, or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final acceptance for payment.

ARTICLE 8 GENERAL CONDITIONS

8.1 **Extent of Contract.** This Contract, which includes this Agreement and the other documents incorporated herein by reference, represents the entire and integrated Agreement between the City and the Construction Manager and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the City and Construction Manager. If anything in any document incorporated into this Agreement is inconsistent with this Agreement, this Agreement shall govern.

8.2 **Assignment.** The City and Construction Manager respectively bind themselves, their partners, successors, assigns, and legal representatives to the other party hereto and to

partners, successors, assigns, and legal representatives of such other party in respect to covenants, agreements, and obligations contained in the Contract Documents. Neither party to the Agreement shall assign the Agreement as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Agreement.

8.3 **Appointment of Service Agent.** 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. Any contractor domiciled outside of the State of Kansas must comply with these statutory requirements; (form attached) to be submitted with the GMP Change Order.

8.4 **Non-Discrimination, Affirmative Action, and Sexual Harassment.**

8.4.1 The Construction Manager agrees that:

8.4.1.1 The Construction Manager shall observe the provisions of the Kansas Act Against Discrimination Section 5-801 *et seq*. of the Code of the City of Prairie Village, Kansas, and shall not discriminate against any person in the performance of work under the present Agreement because of race, religion, color, sex, disability, national origin, ancestry, sexual orientation, gender identity, or age;

8.4.1.2 In all solicitations or advertisements for employees, the Construction Manager shall include the phrase, "equal opportunity employer," or a similar phrase to be approved by the Kansas Human Rights Commission ("Commission");

8.4.1.3 If the Construction Manager fails to comply with the manner in which the Construction Manager reports to the Commission in accordance with the provisions of K.S.A. 44-1031 and amendments thereto, the Construction Manager shall be deemed to have breached the present Agreement and it may be cancelled, terminated or suspended, in whole or in part, by the City;

8.4.1.4 If the Construction Manager is found guilty of a violation of the Kansas Act Against Discrimination under a decision or order of the Commission which has become final, or if the Construction Manager is found guilty of a violation of Section 5-801 *et seq*. of the Code of the City of Prairie Village, Kansas, the Construction Manager shall be deemed to have breached the present Agreement and it may be cancelled, terminated or suspended, in whole or in part, by the City; and

8.4.1.5 The Construction Manager shall include the provisions of Subsections 8.4.1.1 through 8.4.1.4 in every subcontract or purchase order so that such provisions will be binding upon such Subcontractor or vendor.

8.4.2 The Construction Manager further agrees that they 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 Applicable Laws and to furnish any certification required by any federal, state or local governmental agency in connection therewith.

8.5 Insurance.

8.5.1 Construction Manager shall provide insurance as set forth on **Exhibit H** – INSURANCE REQUIREMENTS. **Construction Manager shall not be permitted to commence any work on site until satisfactory copies of the Certificates evidencing insurance written on a form acceptable to the City; Notice of Cancellation Endorsement; and Additional Insured Endorsement, have all been received and approved by City.**

8.5.2 Failure by the Construction Manager to furnish the required insurance within the time specified in the Agreement by the City may, at the City's option, be the basis for the City's exercising its right to terminate the Agreement.

8.6 Bonds and Other Performance Security. Construction Manager shall provide a Performance Bond, and a Statutory Labor and Materials Payment Bond (forms attached hereto as **Exhibit I** and **Exhibit J**) to be submitted with the GMP Change Order, in the amount of one hundred percent (100%) of the Agreement price to cover the entire scope of Work including planning, Value Engineering, procurement, construction, and completion of the Project, and any other specific performance security that may be indicated in this Agreement. With each bond there shall be filed with the City one copy of "Power of Attorney" certified to include the date of the bonds.

8.7 Indemnity.

8.7.1 Definitions. For purposes of indemnification requirements as set forth throughout the Agreement, the following terms shall have the meanings set forth below:

8.7.1.1 "Construction Manager" means and includes Construction Manager, all of its affiliates and subsidiaries, its Subcontractors and materialmen and their respective servants, agents and employees.

8.7.1.2 "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 Agreement whether arising before or after the completion of the Work required hereunder.

8.7.2 The Indemnity. For purposes of this Agreement, and without in any way limiting indemnification obligations that may be set forth elsewhere in the Contract Documents, Construction Manager 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 Construction Manager, its employees, agents, subcontractors, and suppliers.

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.

8.7.3 General Limitation. Nothing in this Section shall be deemed to impose liability on the Construction Manager to indemnify the City for Loss due to the City's negligence or other actionable fault is the cause of Loss.

8.7.4 Waiver of Statutory Defenses. With respect to the City's rights as set forth herein, the Construction Manager expressly waives all statutory defenses, including, but not limited to, those under workers compensation or similar statutes to the extent said defenses are inconsistent with or would defeat the purposes of this Section.

8.8 Contract Documents/Agreement for Construction.

8.8.1 The Contract Documents are complementary, and what is called for by any one shall be as binding as if called for by all. The intention of the Contract Documents is to include all construction, labor, materials, tools, equipment, and transportation necessary for the workmanlike construction of the Project in accordance with the Contract Documents.

8.8.2 If there is any conflict or discrepancy between the Contract between the City and the Construction Manager and any other of the Contract Documents, the Agreement between the City and Construction Manager shall prevail. The Contract Documents supersede all previous agreements and understandings between the parties, which previous agreements and understandings are of no further force and effect.

8.8.3 The Contract Documents as enumerated herein, or as added through the GMP Change Order, form the Contract for construction. 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.

8.8.4 All time limits stated in the Contract Documents are of the essence.

8.9 Defects in the Contract Documents. If Construction Manager has reasonable cause such that it should, in the exercise of ordinary care of someone in its position, know that any errors, omissions, discrepancies or inconsistencies (hereinafter "Defects") appear in the Contract Documents, including, but not limited to, the plans, Specifications and other documents or the Work, Construction Manager shall notify the Designer in writing of such Defects. The Contract Documents shall be appended to all agreements between the Construction Manager and any Subcontractor or any more remote tier Subcontractor, and such Subcontractors and remote tier Subcontractors shall, likewise, notify the Construction Manager in writing of any Defects therein. The Construction Manager will not be permitted to take advantage of any such Defect.

8.10 Copies of the Agreement. Unless otherwise provided in the Contract Documents, the Construction Manager shall be furnished, a maximum of five (5) copies of the Contract Documents, Drawings and Specifications as are reasonably necessary for execution of the Work. Construction Manager shall keep at the Project site and make available to the City and Designer, one copy of all Contract Documents for the Work, in good order and legibly marked

to reflect actual construction. Construction Manager shall also maintain at the site all approved samples and a print of all approved Shop Drawings. Such documents, samples, and Shop Drawings, shall be turned over to the City at the completion of the Work if requested by the City. Contract Documents are the property of the City, and none of the Contract Documents are to be used on other work by Construction Manager. At the City's request, all Contract Documents shall be returned to the City with the exceptions of one record set for Construction Manager. All models and calculations are the property of the City.

8.11 Scope, Nature and Intent of Drawings and Specifications.

8.11.1 The Drawings and Specifications are intended to complement, but not necessarily duplicate each other. Together they shall constitute one complete set of the Drawings and Specifications, and any Work exhibited in one but not the other shall be executed just as if it had been set forth in both in order that the Work shall be completed according to the complete design or designs as decided and determined by the Designer and/or the City.

8.11.2 Should anything be omitted from the Drawings and Specifications which is necessary to a clear understanding of the Work, or should it appear that various instructions are in conflict, or in the event the Drawings and Specifications are silent as to any detail then it shall be the duty of the Construction Manager to secure in written instructions from the Designer and the City before proceeding with the construction affected by such omissions, discrepancies or silence. Construction Manager's failure to bring any such matter to the attention of the Designer and the City shall be at the Construction Manager's peril, and there shall be no compensation for extra work necessitated thereby.

8.11.3 It is recognized that the Construction Manager's review is made in the Construction Managers capacity as a contractor and not as a licensed design professional. The Construction Manager is not required to ascertain that the Contract Documents are in accordance with Applicable Laws, but any nonconformity discovered by or made known to the Construction Manager shall be reported promptly to the Designer and the City. If Construction Manager believes that additional cost or time is involved because of clarifications or instructions issued by the Designer and the City in response to the Construction Manager's notice or requests for information the Construction Manager may request a Change Order. The Construction Manager shall not be liable to the City or Designer for damages resulting from errors, inconsistencies, or omissions in the Contract Documents or for differences between field measurements or conditions and the Contract Documents unless the Construction Manager recognized such error, inconsistency, omissions, or differences and knowingly failed to report it to the Designer and the City.

8.11.4 Dimensions and elevations shown on the Drawings shall be accurately followed, even though they may differ from scaled measurements. No Work shown on the Drawings, the dimensions of which are not indicated, shall be executed until the required dimensions have been obtained from the Designer and the City. Construction Manager shall be responsible for verification of all locations, dimensions, and elevations in the field (including, but not limited to verification of location of underground facilities and utilities) and shall verify all field dimensions shown on the Contract Documents.

8.11.5 All Work performed under this Contract shall be done to the lines, grades, and elevations shown on the Drawings. The Construction Manager shall keep the Designer and the City informed, a reasonable time in advance of the times and places at which it wishes to do Work, in order that lines and grades may be furnished and necessary measurements for record and payment may be made with the minimum of inconvenience and delay to the Designer, the City, and Construction Manager. Any Work done without being properly located and established by base lines, offset stakes, bench marks, or other basic reference points may be ordered removed and replaced at the Construction Manager's cost and expense.

8.11.6 Construction Manager, together with its Subcontractors, shall carefully examine the Drawings and Specifications for any interference with the Work and clearances that may be required. Construction Manager shall be responsible for the proper fitting of materials and equipment without substantial alterations. Construction Manager shall be responsible for eliminating interferences without additional cost to the City. If departures from the Drawings and Specifications, or other Contract Documents, are deemed necessary by Construction Manager, details of such discrepancies and reasons therefore shall be submitted to Designer and the City, with Drawings (if Designer and the City determine that Drawings are necessary), for approval as soon as practical. No such departure shall be made except at the peril of the Construction Manager without the prior written approval of the Designer and the City.

8.12 **Shop Drawings.** Within thirty (30) days of execution of the GMP Amendment, Construction Manager shall prepare and submit to the City a submittal schedule, identifying the time when all Shop Drawings shall be submitted, which Schedule shall allow sufficient time (minimum ten working days unless otherwise agreed) for review and comment by the City. Construction Manager shall review, and submit, with such promptness as to cause no delay in its own Work or in that of any Subcontractor or other contractor, three (3) copies of all shop, fabrication, assembly, foundation and other drawings and schedules required by the Specifications, including, but not limited to: (1) drawings of equipment and devices offered by the Construction Manager for approval of the Designer and the City in sufficient detail to adequately show the construction and operation thereof; (2) drawings showing essential details of any change in design of construction proposed, for consideration by the Designer and the City by the Construction Manager in lieu of the design or arrangement required by the Contract Documents, or any item of extra Work there under; (3) all required wiring and piping layouts; and (4) structural and reinforcing fabrication drawings. All submittals, regardless of origin, shall be stamped by the Construction Manager and identified with the name and number of this Contract; Construction Manager's name and references to applicable Drawings and Specification paragraphs. Each submittal shall indicate the intended use of the item in the Work. Construction Manager's stamp is representation to the Designer and the City, that the Construction Manager accepts full responsibility for determining and verifying all quantities, dimensions, field construction criteria, materials, and similar data, and that they have reviewed or coordinated each submittal with the requirements of the Work and the Contract Documents. All deviations from the Contract Documents shall be identified on each submittal and shall be tabulated in The City shall timely respond, advising Construction Manager of any comments or concerns it has with the submittals. Neither comments from the City nor the City's failure to comment shall in any way relieve Construction Manager of any responsibility for the design or construction under this Agreement.

8.12.1 The Construction Manager's letter of transmittal. Such submittals shall, as pertinent to the deviation, indicate essential details of all changes proposed by Construction Manager (including modifications to other facilities that may be a result of each deviation).

8.12.2 The Designer and the City shall review the Shop Drawings for conformance with the design concept of the Work and information as given in the Contract Documents. The Construction Manager is not relieved of responsibility for any deviation from the requirements of the Contract Documents by the Designer's and the City's approval of the Shop Drawings, product data, or samples. The Construction Manager is not relieved from responsibility for errors or omissions in Shop Drawings by the Designer's and the City's review thereof. The Designer and the City shall respond to, accept or reject such submissions within a reasonable time after receipt thereof. Construction Manager shall make such revisions as deemed necessary. Prior to and as a condition of final acceptance, the Designer and the City shall be furnished with a total of five (5) copies of each Drawing as finally approved, such number to include any copies of preliminary or revised Drawings which are approved as submitted. No Work shall be performed in connection with the fabrication or manufacture of material or equipment shown by any Drawing thereof, nor shall any accessory, appurtenance or device not fabricated or manufactured by the Construction Manager or its Subcontractors be purchased, until the Drawing or Drawings therefore have been approved as stipulated, except at the Construction Manager's own risk and responsibility.

8.13 **Construction Manager's Responsibilities as to Ambiguities.** If there is any ambiguity in the Designer's Drawings or instruction, Construction Manager shall ask the Designer for clarification. Upon written request of Construction Manager, the Designer shall furnish, with reasonable promptness, additional instructions by means of Drawings, Specifications, or other information necessary for the proper execution of the Work. The Work shall be executed in conformity therewith, and, in accordance with Section 8.9, Construction Manager shall do no Work without proper instructions except at its peril. Nothing herein to the contrary shall affect Construction Manager's responsibilities with regard to defects as set forth in Section 8.9.

8.14 **Concealed Conditions.** Construction Manager warrants that it has examined the site and conducted such tests and examinations as it deems necessary. That being the case, should concealed conditions encountered in the performance of the Work below the ground or should concealed or unknown conditions in an existing structure be at variance with the conditions indicated by the Contract Documents, or should unknown physical conditions below the surface of the ground or should concealed or unknown conditions in an existing structure of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in Work of the character provided for in this Agreement, be encountered, there will be no equitable adjustment in the contract sum or time, or both, for any extra Work necessitated thereby unless the condition either:

(a) varies materially from what was specifically represented to Construction Manager in the Construction Documents; or

(b) varies materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents.

In either such, the Construction Manager shall promptly provide notice to the City and the Designer before conditions are disturbed and in no event later than three working days after first observance of the conditions. The Designer will promptly investigate such conditions and, if the Designer determines that they differ materially and cause an increase or decrease in the Construction Manager's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the GMP or Contract Time, or both. If either party disputes the Designer's determination or recommendation, that party may proceed to make a claim.

8.15 Permits, Fees, and Notices.

8.15.1 Unless otherwise provided in the Contract Documents, the Construction Manager shall secure and pay for the building permit and other permits and governmental fees, licenses, and inspections necessary for proper execution and completion of the Work which are customarily secured after execution of the Agreement and which are legally required when bids are received or negotiations concluded.

8.15.2 If Construction Manager performs Work contrary to Applicable Laws without such notice to the Designer and the City, the Construction Manager shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

8.15.3 Construction Manager shall give all notices required by, and all Work shall be done in accordance with, all Applicable Laws bearing on the conduct of the Work.

8.15.4 Construction Manager shall notify all affected utilities of the Work and coordinate with the utilities to avoid interruption of utility service and damage to utility lines and property. This notice requirement shall also apply as to the owner/operator of any affected underground facility. Any Project delay, damages or increases in construction costs due to utility relocation delays shall be at the Construction Manager's risk.

8.15.5 Construction Manager shall give reasonable notice to all owners or occupants of property which is potentially susceptible to damage through the performance of the Work and shall make all necessary arrangements with such owners or occupants relative to the removal and replacement or protection of such property or utilities.

8.16 General Administration of the Contract. The Construction Manager shall supervise and direct the Work, using the Construction Manager's best skill and attention.

8.16.1 Unless otherwise stipulated, Construction Manager shall provide and pay for all Work (including labor, transportation, tools, equipment, machinery, plant, and appliances) necessary in producing the results called for by the Contract Documents.

8.16.2 The Construction Manager shall be solely responsible for and have complete control and charge of construction means, methods, techniques, sequences, and procedures, and for safety precautions and programs in connection with the Work. The City shall not be responsible for nor have control or charge over the acts or omissions of the Construction Manager, Subcontractors, or any of their agents or employees, or any other persons performing any of the Work.

8.16.3 The Construction Manager shall, in addition to the schedule required by Section 2.4.4, give to the Designer full information in advance as to its plans for carrying on any part of the Work. If at any time before the beginning or during the progress of the Work, any part of the Construction Manager's plant or equipment or any of its methods of executing the Work, appear to the Designer to be unsafe, inefficient or inadequate to ensure the required quality or rate of progress of Work, the Designer may order the Construction Manager to increase or improve its facilities or methods, and the Construction Manager shall promptly comply with such orders; but neither compliance with such orders nor failure of the Designer to issue such orders shall relieve the Construction Manager from its obligation to secure the degree of safety, the quality of Work and the rate of progress required by the Agreement.

8.16.4 The approval by the Designer of any plan, schedule, or method of Work proposed by the Construction Manager shall not relieve the Construction Manager of any responsibility therefore, and such approval shall not be considered as an assumption by the City, or any officer, agent or employee thereof, of any risk or liability, and the Construction Manager shall have no claim under this Agreement on account of the failure or inefficiency of any plan or method so approved. Such approval shall be considered and shall mean that the Designer has no objection to the Construction Manager's use or adoption at the Construction Manager's own risk and responsibility, of the plan or method so proposed by the Construction Manager.

8.16.5 Any plan or method of Work suggested by the Designer or the City, to the Construction Manager, but not specified or required, if adopted or followed by the Construction Manager in whole or in part, shall be used at the risk and responsibility of the Construction Manager, and the Designer and the City will assume no responsibility therefore.

8.16.6 The Construction Manager shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

8.16.7 Construction Manager shall be responsible to the City for acts and omissions of the Construction Manager's employees, Subcontractors, and their agents and employees, and other persons or entities performing portions of the Work for or on behalf of the Construction Manager or any of its Subcontractors.

8.17 Construction Manager's Employees.

8.17.1 Construction Manager shall at all times enforce strict discipline and good order among its employees and shall not employ on the Work any unfit person or anyone not skilled in the Work assigned to them.

8.17.2 Construction Manager shall be responsible for compliance with all Applicable Laws including those pertaining to wages, hours and benefits for workers employed to carry out the Work.

8.18 Samples. Construction Manager shall furnish, for approval, samples if directed by the Designer or the Contract Documents. The Work shall be in accordance with approved samples.

8.19 **Protection of Work and City Property.** Construction Manager shall maintain at all times, as required by the conditions and progress of the Work, all necessary safeguards for the protection of life, the Work, supplies, materials, and equipment on the Project site not yet incorporated in the Work, the City's property. Construction Manager shall assume full responsibility for the Work and shall bear any loss and repair any damage at its own cost occasioned by neglect, accident, vandalism, or natural cause, whether foreseen or unforeseen, during the progress of the Work and until the Work is completed and accepted by the City. The Construction Manager shall establish, maintain and enforce all the safety requirements of this Agreement and Applicable Law.

8.20 **Protection of Property/Liability.** Construction Manager shall be solely liable for all damages to the City or the property of the City, to other contractors or other employees of the City, to neighboring premises, or to any private or personal property, due to improper, illegal or negligent conduct of the Construction Manager, its Subcontractors, employees or agents in and about said Work, or in the execution of the Work. The Construction Manager shall be liable to the City for any damages, whether property damage or personal injury, occasioned by Construction Manager's use of any scaffolding, shoring, apparatus, ways, works, machinery, plant or any other process or thing that is required for the Work. Underground Facilities and utilities, damaged by the Construction Manager within or outside the right-of-way shall be restored at the Construction Manager's expense and at no cost to the City. The Construction Manager shall make every effort to locate these lines and protect them.

8.21 **Tests and Inspections.**

8.21.1 Designer and the City shall at all times have access to the Work for the observation and inspection thereof wherever it is in preparation or progress, and Construction Manager shall provide proper facilities for such inspection. The Construction Manager shall furnish all reasonable aid and assistance required for any such inspection.

8.21.2 All Work must be inspected, tested or approved and the Construction Manager shall give the Designer and the City timely notice of its readiness for such inspection, testing or approval and the date fixed for such inspection, testing or approval, if the inspection, testing or approval is by an authority other than Designer and the City.

8.21.3 Designer and the City reserve the right to inspect any and all Work before it is covered up; and, accordingly, Construction Manager must notify Designer and the City before covering any Work. Designer and the City shall be given a reasonable time to make its inspection. Construction Manager shall not cover any Work prior to Designer and the City having a reasonable time to inspect. If Work to be covered does not conform to the Contract Documents, Designer and the City can withhold its consent to covering up Work until such Work is made to conform at Construction Manager's expense.

8.21.4 If any Work should be covered up which is required by the above to be inspected, tested or approved and which, by virtue of being so covered up, is not susceptible to being properly inspected, tested or approved, Construction Manager shall, if requested by Designer or the City, uncover such work and at Construction Manager's expense bear the cost of uncovering such Work and redoing same after inspection, testing or approval and redoing such other Work damaged as a result of having to uncover and redo same. The City reserves the right to inspect any and all Work before it is covered up; and, accordingly, Construction Manager must notify the City before covering any

Work. The City shall be given a reasonable time to make its inspection. Construction Manager shall not cover any Work prior to the City having a reasonable time to inspect. If Work to be covered does not conform to the Contract Documents, the City can withhold its consent to covering up Work until such Work is made to conform at the Construction Manager's expense.

8.21.5 If any labor, supplies, materials or equipment are found not to be in accordance with the Contract Documents, Construction Manager shall at its own expense bear the cost of uncovering such labor, supplies, materials or equipment, the cost of removing same, as well as the cost of undoing and redoing the work and other work damaged by such nonconforming labor, supplies, materials or equipment.

8.21.6 The City, the Designer and all designated inspectors shall be free at all times to perform their duties, including the observation and inspection of the Work, and intimidation or attempted intimidation of any one of them by the Construction Manager or by any of its employees shall be sufficient reason, if the City so desires, to terminate the Agreement.

8.21.7 Any inspection, by whosoever conducted, shall not relieve the Construction Manager from any obligation to perform the Work strictly in accordance with the Drawings and Specifications, and any of the Work not so constructed shall be removed and made good by the Construction Manager at its own expense.

8.22 Superintendence and Supervision.

8.22.1 Construction Manager shall provide all necessary supervision to the Work using its best skill, care, judgment, and attention and shall keep on the Work, during its progress, a competent superintendent and any necessary assistants, all satisfactory to the Designer and the City. The superintendent shall not be changed except with the consent of the Designer and the City unless the superintendent proves to be unsatisfactory to the Construction Manager and/or ceases to be in its employ; provided however, that the Designer and the City retain the right to require that the Construction Manager replace the superintendent at any time, such right not to be arbitrarily exercised.

8.22.2 The superintendent shall be fully authorized to act for the Construction Manager and receive whatever orders as may be given for the proper prosecution of the Work or notices in connection therewith. The superintendent shall be available to communicate with the City at all reasonable times, and Construction Manager shall give the City the phone number, pager number, and email address. The superintendent shall speak such languages as are necessary to be able to effectively communicate with all of Construction Manager's employees and subcontractors.

8.22.3 Use of Subcontractors on portions of the Work shall not relieve the Construction Manager of its obligation to have a competent superintendent directly employed by the Construction Manager on the Work at all times.

8.23 Construction Manager's Office at Site of Work. During the performance of this Agreement, the Construction Manager shall maintain a suitable office at or near the site of the Work which shall be the headquarters of the superintendent authorized to receive Drawings, instruction, or other communications or articles from the Designer, and any such communication given to said superintendent or delivered at the Construction Manager's

office at the site of Work in his/her absence shall be deemed to have been given to the Construction Manager.

8.24 Work Stoppages. Construction Manager further agrees that in the event of any strike, picket, sympathy strike, Work stoppage or other form of labor dispute or picket in connection with the Work of the Construction Manager, other contractors, Subcontractors, the City, or any other person, the Construction Manager will, contingent upon the City providing a picket-free entrance, continue to perform the Work required herein without interruption or delay. Anything in this Agreement to the contrary notwithstanding, in the event the Construction Manager fails to continue performance of the Work included herein without interruption or delay, because of such picket or other form of labor dispute, the City may terminate the services of said Construction Manager after giving two (2) working days written notice to Construction Manager and its sureties of its intent to do so, or the City may invoke any of the rights set forth elsewhere in the Contract Documents.

8.25 Patent Liability Clause.

8.25.1 Construction Manager agrees to defend any claim, action or suit that may be brought against the City, its Governing Body, officers, agents or employees for infringement of any Letters Patent of the United States arising out of the performance of this Agreement or out of the use or disposal by or for the account of the City of supplies furnished or construction Work performed hereunder, and also to indemnify and hold harmless the City, its Governing Body, officers, agents, and employees against all judgments, decrees, damages, costs and expenses recovered against it or them or sustained by it or them on account of any such actual or alleged infringement.

8.25.2 It is understood that all royalties and fees for and in connection with patents, or patent infringement, claims for materials, articles, apparatus, devices or equipment used in or furnished for the Work shall be included in the GMP price. Final payment to the Construction Manager by the City shall not be made while any suit or claim involving infringement or alleged infringement of any patent remains unsettled.

8.26 Independent Contractor. The right of general supervision of the City and/or the Designer shall not make the Construction Manager an agent of the City, and the liability of the Construction Manager for all damages to persons, firms, and corporations arising from the Construction Manager's execution of the Work shall not be lessened because of such general supervision, but as all such persons, firms, and corporations, and the damages, if any, to them or their property, the Construction Manager herein is an independent contractor in respect to the Work.

8.27 Separate Contracts.

8.27.1 The City reserves the right to perform by itself, or let other contracts, in connection with Work. Construction Manager shall afford reasonable opportunity for the introduction and storage of materials and the execution of Work by the City or others and shall properly connect and coordinate its Work with the Work of the City or others.

8.27.2 If any part of Construction Manager's Work depends upon the Work of the City or others, Construction Manager shall inspect and promptly report to the City any defects in any such work that render it unsuitable for proper execution or results. Its failure to

so inspect and report shall constitute an acceptance by it of such other work as fit and proper for the reception of its Work.

8.28 Relations with Other Contractors.

8.28.1 The Construction Manager shall cooperate with all other contractors or workers who may be performing work on behalf of the City or any other entity on any work in the vicinity of the Work to be done under this Agreement, and it shall so conduct its operations as to interfere to the least possible extent with the work of such contractors or workers. Construction Manager shall be responsible for any injury or damages that may be sustained by other contractors, workers or their work because of any fault or negligence on Construction Manager's part, and shall at its own expense repair or pay for such injury or damage. Any difference or conflict which may arise between the Construction Manager and other contractors, or between the Construction Manager and the workers of the City or any other entity, in regard to their work, shall be adjusted and determined by the Designer and the City. If the Work of the Construction Manager is delayed or damaged because of any acts or omissions of any other contractor or contractors, over which the Construction Manager has no control and which is not a result of the Construction Manager's acts or the acts of any of its employees, Subcontractor or suppliers, negligent or otherwise the City may, in its discretion, grant an extension of time.

8.28.2 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 Designer and the City shall decide which contractor or Construction Manager shall cease Work and which shall continue, whether the Work on both contracts shall progress at the same time, and in what manner the Work is to proceed.

8.28.3 When the territory of one contract is the necessary or convenient means of access for the transportation or movement of men/women, materials or appliances required for the execution of another contract, such privileges of access or any other responsible privilege may be granted by Designer and the City to the contractor or Construction Manager so desiring to the extent which may be reasonably necessary.

8.28.4 In the event that Construction Manager is performing Work at a site or on a project involving the City and one or more other private or governmental entities, which have their own contractors on site as well, Construction Manager shall advise Designer and the City when it anticipates there may be interference with the Construction Manager's Work or with the Work of any other contractor. Designer and the City shall, to the best of its ability, with input from Construction Manager as to coordination of the Work, seek to schedule Work of the various contractors so as to avoid as much inconvenience and delay as possible; provided, however, that in the event Construction Manager experiences a delay or damage to Construction Manager's Work as a result of the presence of other such contractors, the City may, in its discretion, grant an extension of time and/or an adjustment in the GMP as may be appropriate for the circumstances.

8.29 Provision for Emergencies. Whenever, in the opinion of the Designer and the City, the Construction Manager 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 Designer and 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 Designer and the City, with or without notice to the Construction Manager, shall provide suitable protection to the said interests by causing such work to be done and materials to be furnished at places as the Designer and the City may consider necessary and adequate. The cost and expense of such work and material so furnished shall be borne by the Construction Manager 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 Construction Manager. The performance of such emergency work shall in no way relieve the Construction Manager of responsibility for damages which may occur during or after such precaution has been duly taken.

8.30 Assignment and Subletting of Contract.

8.30.1 In case the Construction Manager assigns all, or any part, of the monies due or to become due under this Agreement, the instrument of assignment shall contain a clause substantially to the effect that it is agreed that the right of the assignee in and to any monies due or to become due the Construction Manager shall be subject to all prior claims of all persons, firms and corporations for services rendered or materials supplied for the performance of the Work called for in this Agreement and that no money shall be paid assignee on behalf of the Construction Manager by the City until such time as the Construction Manager has discharged its obligations to the City under the Agreement. It is expressly understood and agreed that no assignment shall be effective as against the City unless it complies with the foregoing.

8.30.2 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 Construction Manager shall not make any substitution for any Subcontractor accepted by the City unless the City so agrees in writing.

8.30.3 The Construction Manager shall cause appropriate provisions to be inserted in all subcontracts relative to the Work to bind Subcontractors to the Construction Manager by the terms of the Contract Documents insofar as applicable to the Work of the Subcontractor and to give the Construction Manager the same power to terminate any subcontract as the City has to terminate the Construction Manager under any provisions of the Contract Documents.

8.30.4 Prior to the City's approval of the GMP the Construction Manager shall submit to the City for acceptance a list of the names of all Subcontractors proposed for portions of the Work and shall designate which work each is to perform. 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 Contract Documents.

8.30.5 The Construction Manager shall not make any substitution for any Subcontractor who has been accepted by the City unless the City determines that there is a good cause for doing so. The City's disapproval of any Subcontractor shall not, under any circumstance, be the basis for an increase in the GMP or a claim for delay damages.

8.31 **Authority and Duty of the Designer**. Unless the City acts as its own Designer, the Designer is an independent contractor. It is mutually agreed between the parties to the Agreement that the Designer shall observe and inspect all Work included herein (provided, however, that any such observations and inspections shall not alter the rights, responsibilities and obligations of the parties). Anything in the Contract Documents to the contrary notwithstanding, in order to prevent delays and disputes and to discourage litigation, it is further agreed by and between the parties of this Agreement that the Designer shall in all cases determine the amount and quantities of the several kinds of Work which are to be paid for under this Agreement; that Designer shall determine all questions relating to the plans and Specifications for the Project; that Designer shall issue promptly any written clarifications or interpretations of the requirements of the Contract Documents (in the form of Drawings or otherwise) which Designer may determine are necessary, which shall be consistent with or reasonably inferable from the overall intent of the Contract Documents; that Designer's decisions and findings shall be a condition precedent to the right of the Construction Manager to submit any disputed matter and to any rights of the Construction Manager to receive any money under this Agreement; provided, however, that should the Designer 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 Agreement, either party may file with the other, within twenty (20) days a written objection to the decision or direction so rendered and, by such action, may reserve the right to submit the question so raised as herein provided. It is the intent of the Agreement that there shall be no delay in the execution of the Work, and the decisions or directions of the Designer as rendered shall be promptly carried out.

8.32 **Liquidated Damages.**

8.32.1 It is mutually understood and agreed by and between the parties to this Agreement that time is of the essence of this Agreement, and that in the event that the Construction Manager shall fail in the performance of the Work specified and required to be performed within the period of time stipulated therefore in the Agreement, after due allowance for any extension or extensions of time which may be granted under the Agreement, the said Construction Manager shall pay to the City, as stipulated liquidated damages and not as a penalty, the sum stipulated herein for each and every day that the Construction Manager shall be in default.

8.32.2 In the case of joint responsibility for any delay in the final completion of the Work covered by this Agreement, where two or more separate contracts are in force at the same time and cover Work on the same project and at the same site, the total amount of liquidated damages assessed against all contractors under such agreements, for any one day of delay in the final completion of the Work will not be greater than the approximate total of the damages sustained by the City by reason of such delay in completion of the Work as stipulated in the Agreement and the amount assessed against any one contractor for such one day of delay will be based upon the individual responsibility of such contractor for the aforesaid delays as determined by, and in the judgment of, the City.

8.32.3 Construction Manager acknowledges that its failure to achieve Substantial Completion by the date stipulated in GMP Change Order No. 1 shall require the City to incur substantial additional costs and damages which may be difficult to calculate with specificity. Accordingly, the parties agree that they hereby agree to liquidate the City's damage for late completion to the amount stated in the Agreement, for each 24-hour

calendar day, including weekends and holidays, the Work remains incomplete over the specified completion time, or such lesser amount as the City may agree to in the event that the City accepts partial occupancy of the Work.

8.33 Partial Occupancy or Use.

8.33.1 The City may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Construction Manager, provided such occupancy or use is consented to by the insurer and authorized by public authorities having jurisdiction over the Work. Such partial occupancy or use may commence whether or not the portion is Substantially Complete, provided the City and Construction Manager have accepted in writing the responsibilities assigned to each of them for payments, retainage, security, maintenance, heat utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of Warranties required by the Contract Documents. When the Construction Manager considers a portion Substantially Complete, and the City desires to accept the use of that portion of the Work, the Construction Manager shall prepare and submit a list to the Designer and the City, per Section 7.3.1. Consent of the Construction Manager to partial occupancy or use shall not be unreasonably withheld, and the rate of liquidated damages for remaining Work shall be set. The stage of the progress of the Work shall be determined by written agreement between the City and Construction Manager or, if no such agreement is reached, through the disputes procedures of this Agreement.

8.33.2 Immediately prior to such partial occupancy or use, the City, Construction Manager, and Designer shall jointly inspect the area to be occupied or portion of the Work to be used to determine and record the condition of the Work.

8.33.3 Unless otherwise agreed upon, partial occupancy or use of a portion of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

8.34 Correction of Work.

8.34.1 Upon Designer and/or the City's request, Construction Manager shall, at Construction Manager's expense, promptly remove from the job site all labor, supplies, materials, equipment and/or other facilities condemned by Designer and the City as not in accordance with the Contract Documents, whether incorporated or not; and the Construction Manager shall, at Construction Manager's expense, promptly replace and re execute all labor, supplies, materials, equipment and/or other facilities in accordance therewith and, at Construction Manager's expense, restore all work of other contractors and Subcontractors destroyed or damaged as a result of such removal, replacement and re execution.

8.34.2 In addition to Construction Manager's obligations under Section 8.64 below, if, within two years after the date of Substantial Completion or other date established for commencement of warranties, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Construction Manager shall correct it promptly after receipt of written notice from the City to do so unless the City has previously given Construction Manager a written acceptance of such condition. The City shall give such notice promptly after discovery of the condition. During the two-

year period for correction of Work, if the City fails to notify Construction Manager and give Construction Manager a reasonable opportunity to make the correction(s), the City waives the right to require correction by Construction Manager and to make a claim against Construction Manager for breach of warranty. If Construction Manager fails to correct non-conforming Work within a reasonable time after receipt of notice, the City may correct it and Construction Manager shall be responsible for payment of the City's expenses.

8.34.3 The Construction Manager's obligation to correct Work under this Section of these General Conditions is not the limit of the Construction Manager's liability and shall not constitute a waiver of the City's rights under Section 8.64 nor elsewhere in the Contract nor as otherwise provided by law. Nothing herein shall limit the Construction Manager's liability under any applicable statute of limitations or any longer warranties required by the Contract.

8.34.4 Acceptance of Nonconforming Work. If the City prefers to accept Work which is not in accordance with the requirements of the Contract Documents, the City may do so instead of requiring its removal and correction, in which case the GMP will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

8.35 Dispute Resolution.

8.35.1 The City and Construction Manager agree that disputes relative to the Work shall first be addressed by negotiations between the parties. If direct negotiations fail to resolve the dispute, the party initiating the claim that is the basis for the dispute shall be free to take such steps as it deems necessary to protect its interests; provided, however, that notwithstanding any such dispute Construction Manager shall proceed with the Work as per the Contract Documents as if no dispute existed; and provided further that no dispute will be submitted to arbitration without the City's express written consent.

8.35.2 Should the Construction Manager believe that it is entitled to any relief due to errors, omissions or defects in the Design Documents, or as a result of any act or omission of the Designer(s) in connection with the Project, the City shall cooperate with Construction Manager by permitting Construction Manager to pursue legal action against the Designer(s) in the name of the City at Construction Manager's sole risk and expense. The City shall pay to Construction Manager such sums as may be recovered from the Designer(s) on behalf of Construction Manager. Other than this duty of cooperation and remittance, the City shall have no liability or obligation to Construction Manager for any act, omission, negligence or breach of duty by the Designers.

8.36 Delays and Extensions of Time.

8.36.1 If Construction Manager shall be delayed at any time in the progress of the Work by events over which Construction Manager has no control, including the weather conditions which: (a) fall outside the parameters of Normal Weather Conditions; (b) adversely impact the critical path of the Work; and (c) cannot be reasonably avoided or mitigated through ordinary construction planning and operations, and which delay is not a result of Construction Manager's acts or the acts of any of its employees, Subcontractors or suppliers, negligent or otherwise, then the time of Substantial Completion shall be extended and/or adjusted for such reasonable time and the

Designer and the City shall decide. Additionally, if Work on the Critical Path is delayed due to acts or omissions of the City or any separate contractor employed by the City, an equitable adjustment in compensation shall be made to the Agreement as the City may reasonably decide. No charge shall be made by Construction Manager for hindrances or delays from any cause during the progress of the Work, or any portion thereof, included in this Agreement, except as provided in this Section.

8.36.2 No such extension shall be made for delay unless Construction Manager provides written notice to Designer and the City of such delay, the reasons therefore, and the expected length of delay within two (2) working days of the commencement of such delay, to enable the City to take immediate action with respect to the cause of delay, if the City should decide to do so. In the case of a continuing cause of delay, only one claim is necessary.

8.36.3 In executing the Agreement, Construction Manager expressly covenants and agrees that, in undertaking to complete the Work within the time agreed in the GMP Change Order, 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, workers, and Normal Weather Conditions or otherwise. Additional time shall not be permitted for weather conditions that do not impact the Critical Path of the Work or for weather conditions impacting less than a full day of work.

8.36.4 The Construction Manager shall delay or suspend the progress of the Work or any part thereof, whenever it shall be so required by written order of the Designer or the City, and for such periods of time as the Designer or the City shall require; 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 Designer or the City shall not otherwise modify or invalidate in any way, any of the provisions of this Agreement. In the event that the Work shall be stopped by order of the Designer or the City, through no fault of the Construction Manager, its employees, Subcontractors or suppliers, any expenses which, in the opinion and judgment of the Designer and the City, are caused thereby shall be paid by the City to the Construction Manager.

8.37 <u>Remedies for Default by Construction Manager</u>.

8.37.1 If Construction Manager fails or refuses to comply with any material term of this Agreement, then the City may, upon five days' written notice to Construction Manager and its surety, take such action as the City deems appropriate to either correct the defective Work, terminate this Agreement, or, in the City's sole discretion, permit Construction Manager to demonstrate its ability to successfully complete the Work and continue performance.

8.37.2 If the City should elect to not terminate at the time, but, after notice to Construction Manager's surety, to take other action such as to delete items of Work from Construction Manager's scope of work, or arrange to complete or repair defective or incomplete Work with other forces, Construction Manager and its surety shall be liable to the City for all costs and damages incurred.

8.37.3 In the event that a petition in bankruptcy is either filed by Construction Manager or by creditors of Construction Manager, Construction Manager shall immediately upon written notice from the City provide documented evidence of its ability to continue performance under the terms of this Agreement. If Construction Manager is unable or unwilling to provide such evidence, Construction Manager shall immediately petition the Bankruptcy Court for an order rejecting the Agreement as an executory contract of the Debtor, and lifting the Automatic Stay imposed pursuant to 11 U.S.C. §362(a) to enable the City to terminate this Agreement and proceed to complete the Work.

8.37.4 In the event that the City should elect to terminate this Agreement due to default by Construction Manager, the City may, subject to any prior rights of Construction Manager's surety:

8.37.4.1 take possession of the site and all materials, equipment, tools and construction equipment and machinery thereon owned by Construction Manager;

8.37.4.2 accept assignment of subcontracts with Construction Manager's Subcontractors and suppliers as provided in Article 2, above; and

8.37.4.3 finish the Work by whatever reasonable method the City may deem expedient.

In the event that this Agreement shall be terminated under the terms of this Section, the insurance, indemnification, warranty and other obligations that continue after termination shall continue to apply.

8.37.5 In the event that the City terminates this Agreement for default by Construction Manager, no further payment shall be made to Construction Manager until the Work is completed and an accounting can be made of all of the City's damages. If any funds remain due and owing to Construction Manager at that time, the City shall remit them to Construction Manager. If, however, the costs and expenses of the City exceed any remaining contract balance, Construction Manager or its surety shall pay the difference to the City within ten days of receipt of invoice.

8.37.6 Any termination of the Agreement for alleged default by Construction Manager that is ultimately determined to be unjustified shall automatically be deemed a termination for convenience of the City.

8.38 <u>Termination of the Agreement for the Convenience of the City</u>.

8.38.1 The City reserves the right, in its sole discretion and for its convenience and without cause or default on the part of Construction Manager, and without waiving any other right or remedy of the City, to terminate this Agreement in whole or in part by providing written notice of such termination to Construction Manager. Upon receipt of such notice from the City, Construction Manager shall: (a) immediately cease all Work; or (b) meet with the City and, subject to the City's approval, determine what Work shall be required of Construction Manager in order to bring the Work to a reasonable termination in accordance with the request of the City.

8.38.2 If the City shall terminate this Agreement for its convenience, in whole or in part, as herein provided, the City shall: (a) compensate Construction Manager for all purchased materials and actual Cost of Work satisfactorily completed to date of termination, and

Construction Manager's fee, all as a percentage of the GMP equivalent to the percentage of completion of the Scope of Work as of the date of Notice of Termination, and documented unavoidable expenses of termination such as re-stocking charges; (b) take possession of any uninstalled equipment or materials; (c) have the right to assume Construction Manager's rights in any subcontracts or purchase orders; and (d) release and indemnify the City against any liability Construction Manager may have to any third parties as the result of any contracts, commitments, purchase orders or any other such liabilities Construction Manager may have incurred as a result of its obligations under the provisions of this Agreement which occur after the date of termination. The Construction Manager agrees that it shall minimize such potential liabilities by, where practical, informing third parties of the City's right to terminate and attempting to obtain from such third parties a waiver of any liability in the event of such termination.

8.38.3 In the event that this Agreement shall be terminated under the terms of this Section, the insurance, indemnification, warranty and other obligations that continue after termination shall continue to apply.

8.38.4 Any termination of the Agreement for alleged default by Construction Manager that is ultimately determined to be unjustified shall automatically be deemed a termination for convenience of the City.

8.39 **Termination by the Contractor.** The Construction Manager may terminate this Agreement upon not less than seven (7) days' written notice to City because the City or the City's architect has not issued a certificate for payment and has not notified the Construction Manager of the reason for withholding certification within any time periods required hereunder, or because the City has not made payment on an approved certificate for payment within the time stated in the Contract Documents.

8.40 **Waiver of Consequential Damages and Anticipatory Profit.** Construction Manager and City waive claims against each other for consequential damages arising out of or relating to this Agreement or the Work. This mutual waiver includes, but is not necessarily limited to, (1) damages incurred by the City for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons and (2) damages incurred by Construction Manager for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with this Agreement. However, nothing contained in this Section 8.39 shall be deemed to preclude the City making a claim for liquidated damages against Construction Manager or an award of liquidated damages against Construction Manager, when applicable, in accordance with the requirements of the Contract Documents.

8.41 **Ownership and Use of Design and Design Documents.** The design and design documents, and all statutory, common law and other rights, including copyright, in the intellectual property of that design are governed by agreements between the City and its design professionals, and Construction Manager shall assert no claim or interest in them.

8.42 Use of Premises.

8.41.1 Construction Manager shall confine its operations to limits indicated by Applicable Laws of the City and directions of Designer or the City and shall not unreasonably encumber the premises and/or site.

8.41.2 Construction Manager shall not load or permit any part of any structure, streets or highways to be loaded with a weight that exceeds load limits that will endanger their safety.

8.41.3 Construction Manager shall comply with Applicable Laws, as well as any specific instructions regarding signs, advertisements, fires, and smoking from Designer and the City.

8.41.4 A laydown area or staging area will be provided at the site and shall be chosen by Designer and the City. Construction Manager shall furnish its own weather protection if required.

8.41.5 No City equipment will be taken out of service or put into service without approval of the City.

8.43 Allowances. Construction Manager agrees that the GMP includes all allowances required by the Contract Documents. Construction Manager agrees that the GMP includes all other sums for expenses and overhead and fee on account of allowances as it deems proper. No demand for expenses or overhead and fee other than those included in the GMP shall be allowed.

8.44 Cutting, Patching, and Digging. Construction Manager shall do all cutting, fitting, or patching of its Work that may be required to make its several parts come together properly and fit it to receive or be received by Work of others shown upon or reasonably implied by the Contract Documents. Construction Manager shall not endanger any property of the City or any other individual or entity, or the Work by cutting, digging, or otherwise and shall not cut or alter the Work of others except with the written consent of the City. Construction Manager shall assume responsibility for the patching or repairs, by the proper trade, of damages caused by the Work under this Contract. Construction Manager shall comply with all Applicable Laws dealing with cutting, patching, and digging and shall obtain all necessary permits.

8.45 Cleaning Up. Construction Manager shall at all times keep the premises/site free from accumulations of waste material or rubbish caused by its employees or Work; and at the completion of the daily Work it shall remove all its rubbish from and about the premises/site and all its tools, scaffolding, and surplus materials, and shall leave its Work "broom clean" or its equivalent unless more exactly specified. In case of dispute, the City may remove the rubbish and charge the cost to Construction Manager.

8.46 Temporary Facilities.

8.46.1 Except where special permission has been granted by the City to use existing toilet facilities belonging to the City, Construction Manager shall provide and maintain sanitary temporary toilet facilities located where directed by Designer for accommodation of all persons engaged on the Work. Temporary toilets shall be

enclosed and weatherproof and kept in sanitary and approved condition at all times. After use for same has ceased, Construction Manager shall remove the temporary toilet facilities from the City's premises and disinfect and fill any vaults. All temporary toilet facilities shall comply with this Section.

8.46.2 Construction Manager shall provide and maintain any necessary temporary offices, storerooms, roadways, etc., as may be required for the Work. Same shall be located and constructed in an approved manner acceptable to Designer. Upon completion of Work or when requested by Designer, Construction Manager shall remove same from the City's premises and leave the area in a clean and orderly condition.

8.46.3 Construction Manager shall provide and maintain temporary heat as required to protect all Work and material against injury from dampness and/or cold to the satisfaction of Designer.

8.46.4 Unless otherwise specified in the Contract Documents, Construction Manager shall provide, at its cost and expense, temporary power, wiring and lights from the City's provided source as may be required for its operations.

8.47 **Sanitary Regulations and Water.** The operations of the Construction Manager shall be in full conformity with all of the rules and regulations of boards and bodies having jurisdiction with respect to sanitation. The Construction Manager shall supply safe and sufficient drinking water to all of its employees. The Construction Manager shall obey and enforce all sanitary regulations and orders, and shall take precautions against infectious diseases and the spread of same. All water used in the course of the Work shall be hauled in or purchased from the local water company's distribution system at the Construction Manager's own cost and expense.

8.48 **Unfavorable Construction Conditions.** During unfavorable weather, or other unfavorable conditions for construction operations, the Construction Manager shall pursue only such portions of the Work as will not be damaged thereby. No portions of the Work, the satisfactory quality or efficiency of which will be affected by any unfavorable conditions, shall be constructed while these conditions exist, unless, by special means or precautions approved by the Designer, the Construction Manager shall be able to perform the Work in a proper and satisfactory manner. Construction Manager shall notify the City immediately in such events, to give the City the maximum opportunity to authorize extra expenditures for steps that might avoid delay, but the City shall have absolutely no obligation to incur such obligations.

8.49 **Safety Precautions and Programs.** The Construction Manager shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of this Agreement. This shall include 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.

8.50 Safety of Persons and Property.

8.50.1 The Construction Manager shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury, or loss to:

8.50.1.1 employees on the Work and other persons who may be affected thereby;

8.50.1.2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Construction Manager or the Construction Manager's Subcontractors or sub-subcontractors; and

8.50.1.3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation or replacement in the course of construction.

8.50.2 Construction Manager shall comply with any and all instructions from the Designer regarding prevention of accidents, fires, or for the elimination of any unsafe practice and shall observe all the applicable recommendations of the National Fire Protection Association Standard No. 241 (or other later revisions) "Standard For Safeguarding Building Construction and Demolition Operations".

8.50.3 The Construction Manager shall give notices and comply with Applicable Laws and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

8.50.4 The Construction Manager shall give reasonable notice to the affected owner or owners when any such property is liable to injury or damage through the performance of the Work and shall make all necessary arrangements with such owner or owners relative to the removal and replacement or protection of such property and/or utilities.

8.50.5 The Construction Manager shall erect and maintain, as required by existing conditions and performance of the Agreement, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards created by such features of construction as protruding nails, hod hoists, well holes, elevator hatchways, scaffolding, window openings, stairways, falling materials, open trenches, other excavations, obstructions and similar conditions, promulgating safety regulations and notifying owners and users of adjacent sites and utilities. Barriers shall be kept placed at all times to protect persons other than those engaged on or about the Work from accident, and Construction Manager will be held responsible for all accidents to persons or property resulting from the acts of Construction Manager or its employees

8.50.6 Construction Manager shall satisfactorily shore, support, and protect any and all structures and all pipes, sewers, drains, conduits, and other facilities and shall be responsible for any damages resulting thereto. Construction Manager shall not be entitled to any additional time on account of any postponement, interference, or delay caused by any such structures and facilities being on the line of the Work, whether they are shown on the Plans or not, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.

8.50.7 When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Construction Manager shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

8.50.8 The Construction Manager shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property caused in whole or part by the Construction Manager, a Subcontractor, a sub- subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable for and for which the Construction Manager is responsible, except damage or loss attributable to acts or omissions of the City or Designer or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Construction Manager. The foregoing obligations of the Construction Manager are in addition to the Construction Manager's obligations of indemnification.

8.50.9 The Construction Manager shall designate a responsible member of the Construction Manager's organization at the site whose duty shall be the prevention of accidents. This person shall be the Construction Manager's superintendent unless otherwise designated by the Construction Manager in writing to the City and Designer.

8.50.10 The Construction Manager shall not load or permit any part of the construction or site to be loaded so as to endanger its safety.

8.51 Safety Program.

8.51.1 Construction Manager is expected to establish and enforce a comprehensive safety program on this Project for the protection of its personnel, its Subcontractors' personnel, the City's employees and all other persons exposed to hazards resulting from Construction Manager's operations. As a minimum requirement, Construction Manager shall review and discuss the details of its program with Designer and the City at the first project meeting. The items to be covered shall include, but not necessarily be limited to:

a. Personal protective equipment;
b. First aid personnel and facilities;
c. Arrangements for medical attention;
d. Sanitary facilities;
e. Fire protection;
f. Signs, signals and barricades;
g. Security regulations;
h. Safety inspections;
i. Designation of persons responsible for the program;
j. Reporting forms and procedures;
k. Material handling and storage;
l. Lines of communication;
m. Determination of potential hazards;
n. Personnel safety meetings and education;
o. Access to work areas;

p. Subcontractors involvement in the program;
q. Inspections and corrective action.

8.51.2 Construction Manager is fully responsible for the safety program and any and all methods and procedures provided for therein whether or not the City or Designer shall have reviewed and/or accepted such program.

8.52 Handling of Emergencies, Emergency Plan.

8.52.2 In an emergency affecting the safety of life, the Work, the City's property or of adjoining property, Construction Manager, without special instruction or authorization from the City, is hereby permitted to act, at its discretion, to prevent such threatened injury or loss. Any compensation claimed by Construction Manager on account of emergency Work shall be determined by mutual agreement of the City and Construction Manager.

8.52.3 Construction Manager shall develop and maintain an up-to-date emergency action plan, taking into account fires, hazardous materials, explosions, adverse weather, floods, etc., which shall be in compliance with all Applicable Laws. The procedures should outline specific action to be taken to protect life and to secure and protect the building materials, constructed Work, buildings, equipment, and the position of cranes. Construction Manager shall be fully responsible for the contents of and procedures outlined in said plan, including deficiencies therein, whether or not the City shall have reviewed said plan.

8.53 Weekends, Holiday, and Night Work.

8.53.2 No Work shall be done between the hours of 6:00 p.m. and 8:00 a.m., or on weekends or the City designated holidays, without the written approval or permission of the City, forty-eight (48) hours in advance in each case, except such Work as may be necessary for the proper care, maintenance and protection of Work already done or of equipment, or in the case of an emergency.

8.53.3 Night Work may be established by the Construction Manager, as a regular procedure, with the written permission of the City; such permission, however, may be revoked at any time by the City.

8.54 Approval of Equals.

8.54.1 Approved equals, where permitted by the Contract Documents or otherwise made feasible by market conditions, shall be approved as follows:

8.54.2.1 Construction Manager shall notify the City in writing if it elects to use an approved equal specifically named in the Contract Documents.

8.54.2.2 If Construction Manager desires to use an "equal" not specifically named in the Contract Documents, it must first inform the City and receive written approval for such substitutions. The City has no obligation to approve such request and is not responsible for any delay or cost incurred caused by Construction Manager's making such request.

8.54.3 The Construction Manager shall be solely responsible for design risks, delays and other claims arising out of any approved alternates.

8.55 Test of Materials Offered by Construction Manager. All specified and required tests for approval of material shall be made at the expense of the Construction Manager by a properly equipped laboratory of established reputation, whose work and testing facilities shall be approved by the Designer and the City. Approval of materials based on acceptable tests will apply only while such materials as furnished equal or exceed the tested samples or test specimens in quality and minimum requirements. Any change in origin, method of preparation or manufacture of such materials will require new tests and approval thereof. Reports of all tests shall be furnished to the Designer and the City in as many certified counterparts as may be required by the Designer or the City.

8.56 Testing of Completed Work. Before final acceptance, all installed and constructed equipment, devices and other Work which is to be tested under the Contract Documents shall be tested and each part shall be in good condition and working order or shall be placed in such condition and order at the expense of the Construction Manager. All tests of such completed Work required under this Agreement shall be made under the direction of the Designer and the City.

8.57 Borrow and Waste Areas.

8.57.1 All borrow materials shall be obtained by the Construction Manager at its own cost and expense. The borrow area and materials shall be approved by the Designer and shall be friable material suitable for compaction.

8.57.2 All waste areas shall be located off the site and arrangements and payment for use of such areas shall be the sole responsibility of the Construction Manager. All waste disposal shall be in compliance with Applicable Laws. Unless specifically stated in the Contract Documents, the City makes no representation as to the availability, feasibility, cost or restrictions on locations for borrow or disposal of materials.

8.58 Street Signs and Traffic Aids. The Construction Manager shall be responsible for all preexisting traffic control devices at the Project site, including installation, maintenance, removal, and storage of such devices. All temporary and permanent traffic control devices supplied by the Construction Manager shall comply with and be installed in accordance with the Manual and Uniform Traffic Control Devices, current edition as revised, and the Traffic Control Devices Handbook.

8.59 Federal Lobbying Activities.

8.59.1 31 USCS Section 1352 (the "Code") requires all subgrantees, contractors, subcontractors, and consultants/designers 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.

8.59.2 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.

8.59.3 Necessary forms are available from the City and must be returned to the City with other Contract Documents. It is the responsibility of the Construction Manager to obtain executed forms from any Subcontractors who fall within the provisions of the Code and to provide the City with the same.

8.60 **Titles, Subheads, and Capitalization.** Titles and subheadings as 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 provisions of the Contract Documents. Some terms are capitalized throughout the Contract Documents, but the use of or failure to use capitals shall have no legal bearing on the interpretation of such items.

8.61 **Severability.** If any provision or any part of a provision of this Agreement shall be finally determined to be superseded, invalid, illegal, or otherwise unenforceable pursuant to Applicable Laws by any authority having jurisdiction, such determination shall not impair or otherwise affect the legality, or enforceability of the remaining provisions or parts of the provision of this Agreement, except a provision going to the basic consideration to the City for entering the Agreement, which shall remain in full force and effect as if the unenforceable provision or part was deleted.

8.62 **Taxes.** It is the intent of the City to supply Construction Manager with a Project Exemption Certificate for use in purchasing materials and supplies used on the Contract. Construction Manager shall, in preparing its GMP Proposal, omit from its computed costs all sales and compensation taxes. Upon issuance of a Kansas tax exemption number, two (2) copies of the Project Exemption Certificate (Form PR-74a) will be forwarded to Construction Manager. Upon completion of the Project, the City will provide the State of Kansas with the Contract completion date and the State will issue a Project Completion Certification (Form DO-77). This will be forwarded to Construction Manager who must sign and return it to the City. All invoices must be retained by Construction Manager for a period of five (5) years and are subject to audit by the Kansas Department of Revenue. Final payment will not be made to the Construction Manager until the City has received the Project Completion Certification from the Contractor along with a Consent of Surety Company to Final Payment.

8.63 **Governing Law.** It is the intent of the parties that this Agreement and the performance hereunder, and all suits and special proceedings under this Agreement, be constructed in accordance with and under and pursuant to the laws of the State of Kansas and that, in any action, special proceeding or other proceeding that may be brought arising out of, in connection with, or by reason of this Agreement, the laws of the State of Kansas shall be applicable and shall govern to the exclusion of the law of any other forum, without regard to the jurisdiction in which any action or special proceeding may be instituted. The Construction Manager agrees to abide by all Applicable Laws and to furnish any certification required by any federal, state, or local government agency in connection with same.

8.64 **Venue.** Venue of any litigation arising in connection with this Agreement shall be the State courts of Johnson County, Kansas.

8.65 **Warranty.**

8.65.1 The Construction Manager shall provide a two (2) year correction period (unless failure is due to normal wear and tear or misuse by owner); this correction period

shall not limit any warranties (including manufacturer warranties) as required by the Contract Documents or limit the Owner's legal rights or remedies under this Contract or State Law.

8.65.2 Construction Manager shall assign to the City all manufacturers' and vendors' and subcontractors' warranties that may be called for by the Contract Documents.

8.66 Access to Work. Construction Manager shall provide the City and Designer access to the Work in preparation and progress wherever located.

8.67 Professional Services. The Construction Manager shall not be required to provide professional services which constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Construction Manager needs to provide such services in order to carry out the Construction Manager's responsibilities for construction means, methods, techniques, sequences, and procedures. The Construction Manager shall not be required to provide professional services in violation of Applicable Law. If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Construction Manager by the Contract Documents, the City and the Designer will specify all performance and design criteria that such services must satisfy. The Construction Manager shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all Drawings, calculations, Specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Designer. The City and the Designer shall be entitled to rely upon the adequacy, accuracy, and completeness of the services, certifications or approvals performed by such design professionals, provided the City and Designer have specified to the Construction Manager all performance and design criteria that such services must satisfy. The Designer will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Construction Manager shall not be responsible for the adequacy of the performance or design criteria required by the Contract Documents.

8.68 Environmental Matters.

8.68.1 Environmental Definitions. As used in this Agreement, the terms defined in the General Provisions hereto shall have the respective meanings specified therein, and the following additional terms shall have the meanings specified:

8.68.1.1 "Environmental Claim" means any investigative, enforcement, cleanup, removal, containment, remedial or other private or governmental or regulatory action at any time threatened, instituted or completed pursuant to any applicable Environmental Requirement (hereinafter defined), against the City, relating to damage, contribution, cost recovery, compensation, loss or injury resulting from or in any way arising in connection with any Hazardous Material (hereinafter defined) or any Environmental Requirement.

8.68.1.2 "Environmental Law" means any federal, state or local law, statute, ordinance, code, rule, regulation, license, authorization, decision, order, injunction, decree,

or rule of common law, and any judicial interpretation of any of the foregoing, which pertains to health, safety, any Hazardous Material, or the environment (including but not limited to ground or air or water or noise pollution or contamination, and underground or above ground tanks), and all rules, regulations, orders and decrees now or hereafter promulgated under any of the foregoing, as any of the foregoing now exist or may be changed or amended or come into effect in the future.

8.68.1.3 "Environmental Requirement" means any Environmental Law (hereinafter defined), agreement or restriction (including but not limited to any condition or requirement imposed by any insurance or surety company), as the same now exists or may be changed or amended or come into effect in the future, which pertains to health, safety, any Hazardous Material, or the environment, including but not limited to ground or air or water or noise pollution or contamination, and underground or aboveground tanks.

8.68.1.4 "Hazardous Material" means any substance, whether solid, liquid or gaseous: which is listed, defined or regulated as a "hazardous substance", "hazardous waste" or "solid waste", or otherwise classified as hazardous or toxic, in or pursuant to any Environmental Requirement; or which is or contains asbestos, lead-based paint, radon, any polychlorinated biphenyl, urea formaldehyde foam insulation, explosive or radioactive material, or motor fuel or other petroleum hydrocarbons; in each of the foregoing cases such that the substance is present at a concentration or quantity above applicable standards pursuant to Environmental Law.

8.68.2 Environmental Compliance. The Construction Manager is responsible to ensure that the design developed and the construction performed by the Construction Manager or by subcontractors or agents of Construction Manager are in accordance with applicable Environmental Laws and Environmental Requirements. The Construction Manager will document compliance with applicable Environmental Laws and Environmental Requirements and provide such documentation to the City. This obligation includes identifying all Environmental Laws and Environmental Requirements and the presence of Hazardous Materials. This includes but is not limited to conducting appropriate inquiries, including environmental assessments and surveys to identify Hazardous Materials that may be encountered or disturbed or encountered as a part of conducting the Work.

8.68.3 Notice to the City/Stop Work.

8.68.3.1 If, despite best efforts to comply with 8.67.2, those efforts will be inadequate to prevent foreseeable bodily injury to persons as a result of the presence of Hazardous Materials or an imminent threat or actual release of Hazardous Material(s) as a part of the Work, the Construction Manager shall upon recognizing the condition immediately stop work in the affected area and report the condition to the City.

8.68.3.2 If (a) the condition was attributable to the presence of Hazardous Material(s) which Construction Manager did not cause to be introduced or rendered dangerous in the course of its design or construction, or (b) the Construction Manager could not have anticipated through reasonable due diligence, then the

City shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Construction Manager and, in the event such material or substance is found to be present, to verify that it has been rendered harmless.

8.68.3.3 If the condition meets either criterion of Section 8.67.3.2, and unless otherwise required by the Contract Documents, the City shall furnish in writing to the Construction Manager the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such Hazardous Materials(s) or who are to perform the task of removal or safe containment of same. The Construction Manager will promptly reply to the City in writing stating whether or not either has reasonable objection to the persons or entities proposed by the City. If the Construction Manager has an objection to a person or entity proposed by the City, the City shall propose another to whom the Construction Manager has no reasonable objection. When the Hazardous Materials(s) has been rendered harmless, Work in the affected area shall resume upon written agreement of the City and the Construction Manager. The contract time shall be extended appropriately and the GMP shall be increased in the amount of the Construction Manager's reasonable additional costs of shut-down, delay and start-up, which adjustments shall be accomplished as provided in Section 5.5, herein.

8.68.3.4 If the condition described in the 8.67.3.1 does not meet either criteria described in 8.67.3.2, then Construction Manager shall undertake and pay for all of the steps described in 8.67.3.3, and the City shall have the rights of Construction Manager set forth in 8.67.3.3.

8.68.4 Environmental Indemnity. The Construction Manager will release, indemnify, defend, and hold harmless the City, and its directors, officers, employees, agents and other representatives from and against any and all actions, Environmental Claims, causes of action, costs, demands, damages, expenses, fines, penalties, liabilities, losses, obligations (Losses) arising out of the Construction Manager 's (including their employees, contractors and agents) breach of Sections 8.67.1-3 or arising out of any negligent act or omission of Construction Manager (including their employees, contractors and agents) that causes any threatened or actual release of Hazardous Materials resulting in contamination of or adverse effects on, the environment. If without negligence or non-compliance with Environmental Laws and Environmental Requirements by the part of the Construction Manager, the Construction Manager is held liable for the cost of remediation of a Hazardous Material(s) solely by reason of performing Work and meeting the criteria of section 8.67.3.2, the City shall reimburse the Construction Manager for all cost and expense thereby incurred.

8.68.5 Conflict. If there is a conflict between this provision and other provisions of this Agreement, the provisions herein shall govern.

8.69 Order of Precedence. If any conflict exists between the provisions of these General Conditions and any other provision of this Agreement, the provision setting the highest standard shall govern.

8.70 **Cash Basis.** The City is obligated only to make payments under this Agreement as may be lawfully made from funds budgeted and appropriated for the purposes as set forth in this Agreement during the City's current budget year. In the event the City does not so budget and appropriate the funds, the parties acknowledge and agree that they shall be relieved from all obligations, without penalty, under this Agreement.

8.71 **Kansas Open Records Act.** Design-Builder acknowledges that the City is subject to K.S.A 45-215, *et seq*, the Kansas Open Records Act (KORA), and that any duty of confidentiality or disclosure shall be subject to the City's obligations under KORA or any other provision of law.

EXHIBIT C

AFFIDAVIT OF PARTIAL PAYMENT AND CONDITIONAL RELEASE AND WAIVER OF CLAIMS

To: The City of Prairie Village, Kansas, the owner of the real estate (the "Property") identified below and other parties, if any, having any interest in (hereinafter collectively the "Beneficiaries").

The "Property":_____

Description of the "Project":_____

The undersigned hereby applies for payment, certifies and waives and releases all claims of entitlement to compensation for work performed through the last date covered by the accompanying request for payment, except as noted below.

Payment Request Amount: $_____

Date of last work covered by payment request:_____

Certificate

The undersigned, contingent upon the issuance, final clearance and payment of a valuable consideration of the sum stated above, and being familiar with the penalties for false certification, does hereby certify to the Beneficiaries that:

1. The amount requested for labor performed and equipment and material supplied on this Project or in connection with the Property reference above, represent the actual value of work accomplished under the terms of the undersigned's agreement and all authorized changes thereto concerning work to be performed on the Property (hereinafter the "Contract").

2. No labor, equipment or materials have been supplied by the undersigned to the Project which have not been included in the applications for payment submitted to date, under any agreement, verbal or written, or any arrangements of any type whatsoever, except as specifically noted here:

_____

_____

3. Payment in full, less retainage and other claims documented as required by the Contract (if any), has been made by the undersigned through the period covered by all prior payments (a) to all of the undersigned's subcontractors, equipment providers, materialmen and laborers, and (b) for all materials and labor used or furnished by the undersigned in connection with the performance of the Contract. The undersigned represents and warrants that it owes no monies or other things of value to any subcontractor, materialman, person or entity for work performed or material supplied through the date of the most recent payment by the City, except as identified below:

_____

_____

4. The undersigned has complied with Federal, State and Local tax laws, including, without limitation, Income Tax Withholding, Sales Tax, Fringe Benefits owed pursuant to collective bargaining agreements, Social Security, Unemployment Compensation and Worker's Compensation laws, insofar as applicable to the performance of the contract. Specifically, the undersigned has paid, or out of the proceeds of this payment will promptly pay, all sales or use tax due and owing.

5. The undersigned acknowledges and agrees that it is receiving the funds paid in consideration of this Application as a trustee, and said funds will be: held in trust for the benefit of all subcontractors, materialmen, suppliers and laborers who supplied work for which the Beneficiaries or their property might be liable, and that the undersigned shall have no interest in such funds until all these obligations have been satisfied in full.

Partial Release of Claims

NOW, THEREFORE, contingent upon the issuance, final clearance and payment of $_____, the undersigned irrevocably and unconditionally releases and waives any and all right to claim against the City, except as pertains to unpaid retainage, identified pending change orders and claims, documented as required by the Contract, through the date of last work covered by the payment application stated above. The undersigned shall indemnify and hold the Beneficiaries and their respective successors and assigns harmless against any lien, bond, claims or suits in connection with the materials, labor, and everything else in connection with this Contract for which payment has been made.

Dated _____, 20__.

CONTRACTOR:

_____

By:_____
Name:_____
Title:_____

State of _____)
County of _____)

On this _____ day of _____, 20__, before me, the undersigned, personally appeared _____ of _____, known to me to be the person who executed this document and acknowledged to me that he/she executed the same for the purposes therein stated.

_____ _____
Notary Public in and for said County and State Commission Expires

EXHIBIT D

BILL OF SALE

SELLER: _____
_____
_____

In consideration of payments made by the City of Prairie Village, Kansas (the "City"), referenced in the agreement dated _____, 20___, receipt of which is hereby acknowledged, Seller declares and certifies that it now possesses, and does hereby grant, sell, transfer and deliver to the City all right, title and interest in the following goods:

_____
_____

The City shall have all right and title to the goods in itself and successors and assigns forever and Seller, on behalf of itself, its successors and assigns, will warrant and defend the title to said goods and chattels hereby sold unto the City, its successors and assigns, forever, against the lawful claims and demands of all persons. It is expressly understood and agreed that the acceptance of the goods described herein is not a waiver of any right of action that the City may have for breach of warranty or any other cause under the agreement referenced above or at law.

IN WITNESS WHEREOF, Seller has executed this Bill of Sale the _____ day of _____, 20___.

SELLER:

_____

By:_____
Name:_____
Title:_____

Subscribed and sworn to before me this__day of_____, 20____.

_____
Notary Public in and for said County and State

My commission expires:

_____

_____

EXHIBIT E

BAILMENT AGREEMENT

BAILOR: _____

_____

_____

BAILEE:

Contractor/Subcontractor/Supplier

_____

_____

_____

LOCATION OF STORAGE:

The goods and materials described below are held and stored at the above referenced location pursuant to the Contract by and between Bailee, as Contractor/Subcontractor/Supplier, and the City of Prairie Village, Kansas, for Work to be performed at

_____

_____

In consideration of payment made to the undersigned Bailee, the receipt and sufficiency of which are admitted, the Bailee agrees:

1. To keep said goods and materials at the above-mentioned address, separate and apart from all other goods and identified as subject to this bailment,

2. To keep said goods and materials fully insured against all risk of physical loss or damage,

3. To keep said goods protected from the weather, commingling, vandalism and/or diversion from said Project, and

4. To deliver said goods and materials to the Project site in conjunction with the performance of Bailee's Contract referenced above or upon the direction of Bailor and no other. The Bailee acknowledges that it has no ownership rights or title in, nor shall claim any lien upon, said goods and materials.

QUANTITY	DESCRIPTION OF ITEMS

Receipted and Acknowledged:

BAILEE:

_____

By: _____

Name: _____

Title: _____

EXHIBIT F

AFFIDAVIT OF FINAL PAYMENT AND CONDITIONAL WAIVER AND RELEASE OF CLAIMS

To: The City of Prairie Village, Kansas, the Owner of the real estate (the "Property") identified below, any Lender(s) having any loans secured by the Property, and other parties, if any, having any interest in (hereinafter collectively the "Beneficiaries").

The "Property":_____

Description of the "Project":_____

The undersigned hereby applies for payment, certifies and waives and releases all claims of entitlement to compensation for work performed, except as noted below.

Payment Request Amount: $_____

Certificate

The undersigned, contingent upon the issuance, final clearance and payment of a valuable consideration of the amount stated above, and being familiar with the penalties for false certification, does hereby certify to the Beneficiaries that:

1. The amount requested for labor performed and equipment and material supplied on this Project or in connection with the Property reference above, represent the actual value of work accomplished under the terms of the undersigned's agreement and all authorized changes thereto concerning work to be performed on the Property (hereinafter the "Contract").

2. No labor, equipment or materials have been supplied by the undersigned to the Project which have not been included in the applications for payment submitted to date, under any agreement, verbal or written, or any arrangements of any type whatsoever, except as specifically noted here:

_____

_____

3. Payment in full has been made, or with the funds requested hereby will be made, by the undersigned (a) to all of the undersigned's subcontractors, equipment providers, materialmen and laborers, and (b) for all materials and labor used or furnished by the undersigned in connection with the performance of the Contract. The undersigned represents and warrants that it owes no monies or other things of value to any subcontractor, materialman, person or entity for work performed or material supplied through the date of the most recent payment by Owner, and that the payments that have been or will be made out of this final payment to such persons or firms will fully and completely compensate them for all work in connection with the Project.

4. The undersigned has complied with Federal, State and Local tax laws, including, without limitation, Income Tax Withholding, Sales Tax, Fringe Benefits owed pursuant to collective bargaining agreements, Social Security, Unemployment Compensation and Worker's Compensation laws, insofar as applicable to the performance of the contract.

5. The undersigned acknowledges and agrees that it is receiving the funds paid in consideration of this Application as a trustee, and said funds will be held in trust for the benefit of all subcontractors, materialmen, suppliers and laborers who supplied work for which the Beneficiaries or their property might be liable, and that the undersigned shall have no interest in such funds until all these obligations have been satisfied in full.

Final Waiver and Release of Claims

NOW, THEREFORE, the undersigned, contingent upon the issuance, final clearance and payment of $_____, which the undersigned irrevocably and unconditionally releases and waives any and all claims against the City, or any other claims of any kind whatsoever in connection with this Contract and with the Property. The undersigned shall indemnify and hold the Beneficiaries and their respective successors and assigns harmless against any lien, bond, claims or suits in connection with the materials, labor, and everything else in connection with this Contract.

Dated _____, 20__.

CONTRACTOR:

_____

By:_____
Name:_____
Title:_____

State of _____)
County of _____)

On this _____ day of _____, 20__, before me, the undersigned, personally appeared _____ of _____, known to me to be the person who executed this document and acknowledged to me that he/she executed the same for the purposes therein stated.

_____ _____
Notary Public in and for said County and State Commission Expires

EXHIBIT G

INSURANCE REQUIREMENTS

1. Construction Manager agrees to procure and carry, at its sole cost, until completion of this Agreement and all applicable warranty periods, including the statute of repose for claims, all insurance as set forth below; provided, however:

1.1 All insurance is to be issued by companies authorized to do business in the State of Kansas, and with liability limits acceptable to the City. Insurers shall have AM Best rating of no less than A- or higher, and at least a Class VIII financial rating.

1.2 The City reserves the right to review certified copies of any and all insurance policies to which this Agreement is applicable.

2. Such insurance shall include the following terms and conditions:

2.1 All coverages obtained by Construction Manager, except professional liability if applicable, shall be on an occurrence policy form and not on a claims'-made policy form.

2.2 The cost of defense of claims shall not erode the limits of coverage furnished.

2.3 Advance notice of cancellation. All insurance certificates will state that all coverages are in effect and will not be canceled without thirty (30) days' prior written notice ("endeavor to notify" language is not acceptable), to the City and other required additional insureds, and Construction Manager shall submit to the City, prior to commencing any Work on the Project, an endorsement to the policy confirming that such notice shall be given. All policies of liability insurance shall contain an endorsement stating the insurer's agreement to provide such notice, using a form acceptable to the City. If Allied form IL 70 03 09 11 is used, it shall be supplemented by an endorsement stating that in the event of non-payment of premium, notice shall be given at least ten (10) days in advance of cancellation.

2.4 Advance notice of claims/reduction of policy limits. The Construction Manager, 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 Construction Manager shall 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 Construction Manager's limits of protection shall have been impaired or reduced to such extent that the limits fall below the minimum amounts required herein. The Construction Manager shall promptly reinstate the original limits of liability required hereunder and shall furnish evidence thereof to the City.

2.5 Severability of Interest. All insurance carried shall be endorsed to provide that, inasmuch as this policy is written to cover more than one insured, all terms, conditions, insuring agreements and endorsements, with the exception of limits of liability, shall operate in the same manner as if there were a separate policy covering each insured.

2.6 Comprehensive Automobile Liability Insurance. Construction Manager shall maintain comprehensive automobile insurance, including contractual liabilities insuring the indemnities set forth in this Agreement covering all owned, non-owned and hired automobiles used in connection with the services or other work hereunder, whether on or off the site, and shall have

minimum bodily injury and property damage limits of $1,000,000.00 combined single limit per occurrence. An MCS-90 endorsement shall be procured when applicable.

2.7 Workers' Compensation and Employer's Liability Insurance. Construction Manager shall maintain Worker's Compensation Insurance to cover the statutory limits of the Workers' Compensation laws of the state in which any work is to be performed and when applicable to Federal Laws, Voluntary Compensation and Employer's Liability (including occupational disease) coverage with limits not less than $500,000.00 per occurrence/aggregate for all workers on site, $100,000 each employee/$500,000 policy limit for Bodily Injury by Disease, $100,000 per accident for Bodily Injury by Accident, regardless of whether a worker is also an employee of Construction Manager.

2.8 Commercial General Liability Insurance. Construction Manager shall obtain and maintain comprehensive Commercial General Liability Insurance, on an occurrence form for the hazards of (i) construction operations; (ii) subcontractors and sub-subcontractors; (iii) interruption of the City's business; (iv) independent Contractors; (v) products and completed operations (with completed operations to remain in force for two years following project completion); (vi) explosion, collapse and underground, and (vii) Construction Manager's protective and contractual liability insuring the indemnities set forth in the Agreement, including personal injury, death and property damage.

2.8.1 Each Project shall maintain minimum limits of $2,000,000.00 per occurrence, $1,000,000 Personal and Advertising Injury, and $2,000,000.00 general and completed operations/aggregate.

2.8.2 Each Policy MUST include Pollution Liability (Applicable only to contracts involving pollutants such as asbestos & lead abatement, sludge or other waste abatement, etc.)

2.9 Owner's Protective Liability (to be submitted with GMP Change Order No. 1). The Construction Manager shall take out, pay for and deliver to the City, an Owner's Protective Liability insurance policy written on an occurrence basis and naming the City as named insured. The policy shall be maintained during the life of this Agreement. Limits of protection shall be at least **$1,000,000** Combined Single Limits, Bodily Injury and Property Damage, and shall contain no exclusion relative to any function performed by the City or its employees and agents in connection with the Project.

2.10 Excess Liability. Construction Manager shall maintain Excess Liability coverage on an umbrella form with minimum limits of $2,000,000.00 per occurrence and $2,000,000.00 aggregate.

2.11 Waiver of Subrogation. All insurance policies supplied (except professional liability and workers' compensation) shall include a waiver of any right of subrogation of the insurers thereunder against the City and all its assigns, subsidiaries, affiliates, employees, insurers and underwriters. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity has an insurable interest in the property damaged.

2.12 Additional Insureds. The City, and any other person or entity required by the Agreement, and all their assigns, subsidiaries and affiliates shall be included as additional insureds

under Construction Manager's furnished insurance (except Workers' Compensation Insurance), for ongoing and completed operations, using a form acceptable to the City. Said insurance shall be written on an OCCURRENCE basis, and shall be PRIMARY and NON-CONTRIBUTING.

3. No Limitation of Liability. The required coverages referred to and set forth herein shall in no way affect, nor are they intended as a limitation on, Construction Manager's liability with respect to its performance of the Contract.

4. Subcontractors Insurance. Construction Manager shall require all those Subcontractors providing equipment, materials or services directly to Construction Manager in connection with this Agreement to obtain, maintain and keep in force coverages in accordance with the insurance requirements set forth herein during the time they are involved in performance of services or other work hereunder. Construction Manager shall obtain certificates of insurance and additional insured endorsements evidencing such coverage and provide the City with such certificates and endorsements. Construction Manager shall not be excused from its obligations to cause such subcontractors to meet the insurance coverage requirements set forth under this section unless Construction Manager shall have obtained in writing from the City a waiver, which shall be effective only as to such requirements and for such subcontractor specifically identified therein.

5. Patent Liability. Construction Manager shall protect, defend and save the City harmless from any liability, including costs and expenses, for, or on account of, any patented or unpatented invention, article or appliance manufactured or used in the performance of this Agreement selected by Construction Manager, and further agrees to pay all loss and expense incurred by the City by reason of any such claims or suits, including attorneys' fees.

6. Professional Liability. If any design or other professional services are included in the Agreement, Construction Manager shall purchase, and maintain for a period of three years after the date of Final Completion, insurance covering claims arising out of the performance or furnishing of Design or Professional Services and for claims arising out of allegations of errors, omissions or negligent acts in connection with the Agreement. The policy shall include, a minimum limit of $1,000,000 per occurrence and $2,000,000 aggregate.

7. Builder's Risk Property Insurance. (submitted with GMP Change Order No. 1)

7.1 Unless otherwise provided in the Contract Documents, Construction Manager shall procure and maintain property insurance from insurance companies authorized to do business in the State of Kansas upon the entire Project to the full insurable value of the Project, including professional fees, overtime premiums and all other expenses incurred to replace or repair the insured property. The property insurance obtained by Construction Manager shall include the City as a "loss payee" and the Construction Manager, Design Consultants, Subcontractors and sub-subcontractors as additional insureds, and shall insure against the risk of direct physical loss including but not limited to fire and extended coverage, theft, vandalism, malicious mischief, collapse, flood, earthquake, debris removal and other perils or causes of loss as called for in the Contract Documents. The property insurance shall include physical loss or damage to the Work, including materials and equipment in transit, at the Site or at another location as may be indicated in Construction Manager's Application for Payment and approved by the City. All deductibles are the responsibility of the Construction Manager.

7.2 Unless the Contract Documents provide otherwise, Construction Manager shall procure and maintain boiler and machinery insurance that will include the interests of the City, Construction Manager, Design Consultants, Subcontractors and sub-subcontractors.

7.3 Any loss covered under Construction Manager's property insurance shall be adjusted with the City and Construction Manager and made payable to both of them as trustees for the insured's as their interests may appear, subject to any applicable mortgage clause. All insurance proceeds received as a result of any loss will be placed in a separate account and distributed in accordance with such agreement as the interested parties may reach. Any disagreement concerning the distribution of any proceeds will be resolved in accordance with the Disputes Resolution Section of the Agreement.

8. Minimum Requirements. The insurance specified herein is the minimum requirement. In the event Construction Manager or any subcontractor has or obtains insurance coverage in amounts in excess of those required herein, such additional insurance coverage shall also inure to the benefit of the City.

9. **Construction Manager shall not be permitted to commence any work on site until satisfactory copies of the Certificates evidencing insurance written on a form acceptable to the City; Notice of Cancellation Endorsement; and Additional Insured Endorsement, have all been received and approved by City. Delay in commencement due to failure to provide such documentation shall constitute an unexcused delay.**

EXHIBIT H

CITY OF PRAIRIE VILLAGE, KANSAS
PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS, that we, the undersigned _____ _____, of _____, as principal, hereinafter referred to as the "Contractor," and _____, a corporation or other legal business entity organized under the laws of the State of _____ and authorized to transact business in the State of Kansas, as "Surety", are held and firmly bound unto the City of Prairie Village, Kansas, hereinafter referred to as "City," in the penal sum of $_____ _____ Dollars ($_____), lawful money of the United States of America, for the payment of which sum well and truly to be made we bind ourselves, and our heirs, executors, administrators, successors and assigns, jointly and severally by these presents:

THE CONDITION OF THE FOREGOING OBLIGATION IS SUCH THAT:

WHEREAS, the above bonded Contractor, has on the _____ day of _____, 20__, executed a written Agreement with the aforesaid City for furnishing in a good, substantial and workmanlike manner all construction, labor, materials, equipment, tools, transportation, superintendence and other facilities and accessories for **Prairie Village Public Works Campus**, designated, defined and described in the Agreement and in accordance with the Contract Documents to include the General Conditions, Project Special Provisions, Specifications, Plans and other Contract Documents therefor; a copy of the Agreement being attached hereto and made a part hereof.

NOW, THEREFORE, if said Contractor shall in all particulars promptly and faithfully perform each and every covenant, condition, and part of the Agreement, and the General Conditions, Project Special Provisions, Specifications, Plans and other Contract Documents thereto attached or by reference made a part thereof, including all warranties contained therein, according to the true intent and meaning in each case, upon written acceptance by the City of the improvement herein described in substantial compliance with the Contract Documents, then this obligation shall be and become null and void.

PROVIDED, that said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Agreement or the Work to be performed thereunder or the General Conditions, Project Special Provisions, Specifications, Plans and other Contract Documents accompanying same shall in any way affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Agreement or to the Work or to the Specifications, Plans and other Contract Documents.

Whenever Contractor is declared by City to be in default under the Contract Documents, the Surety may promptly remedy the default or shall within fourteen (14) days from the date of notice from the City:

1. Commence completing the Work of the Agreement in accordance with its terms and conditions. However, Surety may not use the defaulting Contractor, or any legal reformation of the defaulting Contractor, to complete the Work and the Surety may not use any of the subcontractors of the defaulting Contractor to complete the Work without the written consent of the City; or

2. Commence the process of obtaining a bid or bids for completing the Work of the Agreement in accordance with its terms and conditions, and upon determination by the City and the surety jointly of the lowest and best responsive, responsible bidder, arrange for an Agreement between such bidder and the City, and make available as work progresses sufficient funds to pay the cost of completion less the balance of the Contract Price, including other costs and damages for which the surety may be liable hereunder, which sum shall not exceed the amount set forth in the first paragraph hereof. The term "balance of the Contract Price," as used in this paragraph, shall mean the total amount payable by City to Contractor under the Agreement and any amendments thereto, less the amount properly paid by City to Contractor. No right of action shall accrue on this bond to or for the use of any person or corporation other than the City or successors of the City.

IN TESTIMONY WHEREOF, said Contractor has hereunto set his/her hand, and said Surety has caused these presents to be executed in its name; and its corporate or other seal to be hereunto affixed by its attorney-in-fact duly authorized thereunto so to do on this on this, the _____ day of _____, 20___.

CONTRACTOR:

_____

By:_____

Name:_____

Title:_____

SURETY:

_____

By:_____

Name:_____

Title:_____

ATTEST:

By:_____

Name:_____

Title:_____

(SEAL)

NOTES:

1. Date of bond must not be prior to date of contract.
2. If Contractor is partnership, all partners should execute bond.
3. Surety companies executing bonds must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the State of Kansas.
4. Accompany this bond with Attorney-in-Fact's Authority from the surety company certified to include the date of the bond.

EXHIBIT I

CITY OF PRAIRIE VILLAGE, KANSAS
STATUTORY LABOR AND MATERIALS PAYMENT BOND

Prairie Village 2022 Pool Repairs

KNOW ALL MEN BY THESE PRESENTS, that we, the undersigned _____ _____, of _____, as principal, hereinafter referred to as the "Contractor," and _____, a corporation or other legal business entity organized under the laws of the State of _____ and authorized to transact business in the State of Kansas, as "Surety", are held and firmly bound unto the City of Prairie Village, Kansas, hereinafter referred to as "City," in the penal sum of $_____ _____ Dollars ($_____), lawful money of the United States of America, for the payment of which sum well and truly to be made we bind ourselves, and our heirs, executors, administrators, successors and assigns, jointly and severally by these presents:

THE CONDITION OF THE FOREGOING OBLIGATION IS SUCH THAT:

WHEREAS, the said Contractor has on the _____ day of _____, 20___, entered into an Agreement with the City of Prairie Village, Kansas, a copy of which is attached hereto and incorporated herein for furnishing all tools, equipment, materials, transportation and supplies, performing all labor, and constructing public improvements described in the Agreement and the Contract Documents, all in accordance with Provisions, Specifications, Plans and other Contract Documents on file in the office of the City Clerk of the City of Prairie Village, Kansas.

NOW, THEREFORE, if the Contractor or the subcontractors of the Contractor shall pay all indebtedness incurred for supplies, materials, transportation or labor furnished, or equipment used or consumed in connection with or in or about the construction or making of the improvements described in the above-mentioned Contract Documents, then this obligation shall be void; otherwise, it shall remain in full force and effect, as required by K.S.A. 60-111. This bond shall be construed as a statutory bond.

The said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Agreement and the Contract Documents to the work to be performed thereunder, or the Provisions, Plans and Specifications accompanying the same, shall in any way affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time alteration or addition to the terms of the Agreement, Contract Documents or to the Plans and Specifications.

PROVIDED, that it is expressly agreed that this bond shall be deemed amended automatically and immediately, without formal and separate amendments hereto, upon amendment to the Agreement not increasing the contract price more than 50 percent, so as to bind the Contractor and the Surety to the full and faithful performance of the Agreement as so amended. The term "amendment," wherever used in this bond and whether referring to this bond or the Agreement shall include any alteration, addition, extension or modification of any character whatsoever.

The said Surety further agrees that any person to whom there is due any sum for labor furnished, transportation, materials, equipment or supplies used or consumed in connection with or in or about the construction of said public improvement, as hereinbefore stated or said person's assigns,

may bring action on this bond for the recovery of said indebtedness within six (6) months from the completion of said public improvement.

IN TESTIMONY WHEREOF, said Contractor has hereunto set his/her hand, and said Surety has caused these presents to be executed in its name; and its corporate or other seal to be hereunto affixed by its attorney-in-fact duly authorized thereunto so to do on this on this, the _____ day of _____, 20___.

CONTRACTOR:

_____

By:_____

Name:_____

Title:_____

SURETY:

_____

By:_____

Name:_____

Title:_____

ATTEST:

By:_____

Name:_____

Title:_____

(SEAL)

NOTES:

1. A Statutory Bond is required only in connection with a Contract exceeding one hundred thousand dollars ($100,000.00) in accordance with K.S.A. 60-1111 as amended.
2. Contractor shall be responsible for seeing to it that this Statutory Bond is filed with the Clerk of the District Court for Johnson County, Kansas.
3. Date on bond must not be prior to date of contract.
4. If Contractor is partnership, all partners should execute bond.
5. Surety companies executing bonds must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the state of Kansas.
6. Accompany this bond with Attorney-in-Fact's Authority from the surety company certified to include the date of the bond.

EXHIBIT J

CITY OF PRAIRIE VILLAGE, KANSAS

MAINTENANCE BOND
Prairie Village 2022 Pool Repairs

*Bond Number*_____

KNOW ALL MEN BY THESE PRESENTS:

That we, _____, as Principal and _____, as Surety, are held and firmly bound unto the City of Prairie Village, Kansas, in the full and just sum of _____($_____) for the payment of which, will and truly to be made, we, and each of us, bind ourselves, our heirs, executors and assigns, themselves, and its successors and assigns, jointly and severally, firmly by these presents.

The Conditions of this obligation are such that Principal upon completion of the **Project: Prairie Village 2022 Pool Repairs, ARPABG85**, which is incorporated herein by reference, and upon acceptance by the City of Prairie Village, Kansas, in accordance with the approved Contract Documents, Plans and Specifications, with no unacceptable deviations thereof, has agreed to guarantee the construction and installation, including all materials and workmanship, for the period of two years beginning on the date the City so accepts said work, said date being the formal acceptance date.

The said Surety, for value received, hereby stipulates and agrees that no changes, extension of time, alteration or addition to the terms of the Contract to the work to be performed there under, or the specifications accompanying the same, shall in any way affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract or to the specifications. Surety further agrees that any person to whom there is due any sum for labor or material furnished, as herein before stated, or said person's assigns, may bring action on this bond for the recovery of said indebtedness; PROVIDED, that no action shall be brought on said bond after two (2) years from the completion of said public improvements.

NOW, THEREFORE, if said Principal shall guarantee and maintain the work referred to above in accordance with the Contract for a period of two (2) years from date of formal acceptance, then this obligation shall be null and void, otherwise to remain in full force and effect.

PROVIDED FURTHER, that if said Principal fails to duly and faithfully guarantee and maintain said work, the Surety will pay for the same in any amount not exceeding the amount of this obligation, together with interest as provided by law.

Signed, sealed and delivered the day and year first above written

By: _____ Countersigned: _____

By: _____ By: _____
Kansas Resident Agent Attorney-in-Fact

Dated this _____ day of _____, 2021.

Power of Attorney attached.

GUARANTEED MAXIMUM PRICE AMENDMENT TO THE AGREEMENT BETWEEN OWNER AND CONSTRUCTION MANAGER

This AMENDMENT, effective **_____day of _____2022,** modifies and amends the Standard Form of Agreement Between Owner and Construction Manager, dated **21"[1] day of November 2022** ("Agreement"),

BETWEEN the Owner:

City of Prairie Village, Kansas
7700 Mission Road
Prairie Village, Kansas 66208

and the Construction Manager:

KC Gunite
16207 Kentucky
Belton, Missouri 64012

The Project:

Prairie Village 2022 Pool Repairs
ARPABG85

The Architect:

Lamp Rynearson
9001 State Line Rd, Ste 200
Kansas City, Missouri 64114

The Owner and Construction Manager agree as set forth below:

Whereas, the Owner and Construction Manager previously agreed to amend the Agreement to establish the Guaranteed Maximum Price (GMP) for the Project; and

Whereas, the Owner and Construction Manager now desire to so amend the Agreement,

NOW, THEREFORE, the parties agree to the Agreement as set forth below:

I. **DESCRIPTION AND SCOPE OF WORK:** Construction Manager agrees to fully perform and execute the Work described in the Contract Documents, including without limitation, the work described in the drawings, specifications, and other documents referenced in this Amendment.

2. **NOTICE TO PROCEED.** The date for the Notice to Proceed and the commencement of construction is the date of this Amendment, submittal of maintenance, performance and statutory bonds

3. **DATE OF SUBSTANTIAL COMPLETION:** The Construction Manager shall achieve Substantial Completion of the Work on or before the following date:

   This date will be included in a future Amendment with full detailed construction schedule indicating Substantial Completion date.

4. **GUARANTEED MAXIMUM PRICE:** In accordance with Article **6** of the Agreement, Owner and Construction Manager hereby establish the Guaranteed Maximum Price for the performance of the Work, subject to additions and deductions for changes as may be agreed upon in writing or as provided for by the Agreement, in the following amount:

   If not previously agreed upon, the Construction Manager's Fee for the Work of this Amendment shall be **FOUR HUNDRED SEVENTY FIVE THOUSAND AND NO/100 DOLLARS ($475,000.00)**

   This Guaranteed Maximum Price is for the performance of the Work in accordance with the Contract Documents and other documents listed and attached to this Amendment and marked as Exhibit A.

   Exhibit A: GMP Description

5. **OTHER PROVISIONS:**

   a. **Bonds and Certificate of Insurance.** Construction Manager shall submit the following:

   MAINTENANCE,PERFORMANCE AND STATUTORY BONDS
   CERTIFICATE OF INSURANCE

OWNER: **CONSTRUCTION MANAGER:**

BY: _____ BY: _____

TITLE: _____ TITLE: _____

DATE: _____ DATE: _____

EXHIBIT A- GMP DESCRIPTION

EXECUTIVE SUMMARY

This Guaranteed Maximum Price (GMP) Contract Amendment 02 Proposal is the second amendment for the construction of The project consists of pool repairs to the Adult and Lap Pools. The supply and return water systems for both pools will be completely reconstructed back to the filter house.

GMP COST SUMMARY

Our Contract Amendment No. 02 is based on the below items:

1. The GMP Proposal for this Contract Amendment per scope and Contract Documents is **FOUR HUNDRED SEVENTY FIVE THOUSAND AND NO/100 DOLLARS ($475,000.00).**
2. This cost will be rolled into a future amendment and will be considered part of the final GMP and will include bond cost, schedule and liquidated damages.

DOCUMENTATION

All pricing is based upon the following Drawings, Narratives and Notes:

DESCRIPTION	AUTHOR	DATED
Design Development VE	Lamp Rynearson	TBD
Steel Package – Shop Drawings	Manufacturer	TBD

SCHEDULE - (working days)

ORDER DATE	ON OR BEFORE NOV 30, 2022
DELIVERY DATE (ESTIMATED)	EST. IN FEBRUARY 2023

ACCEPTED OPTIONS

The following options have been accepted by the team and incorporated in the GMP amendment cost.

1. STEEL DRAINS AT PERIMETER AND MAIN DRAINS MATERIAL ONLY COST

CLARIFICATIONS

This GMP amendment includes only the STEEL fabrication cost. All other cost for the repairs, including installation of the steel drains, will be included in future amendments.

Inclusions

1. Cost of work to furnish and deliver the steel drains and main drains.
2. Design assist cost to finalize the steel drain configuration.

Exclusions

1. Construction Manager's Fee
2. Construction Contingency
3. Taxes
4. Concrete and foundations
5. Construction testing expenses

GUARANTEED MAXIMUM PRICE AMENDMENT TO THE AGREEMENT BETWEEN OWNER AND CONSTRUCTION MANAGER

This AMENDMENT, effective **_____day of _____2022,** modifies and amends the Standard Form of Agreement Between Owner and Construction Manager, dated **21"[1] day of November 2022** ("Agreement"),

BETWEEN the Owner:

City of Prairie Village, Kansas
7700 Mission Road
Prairie Village, Kansas 66208

and the Construction Manager:

KC Gunite
16207 Kentucky
Belton, Missouri 64012

The Project:

Prairie Village 2022 Pool Repairs
ARPABG85

The Architect:

Lamp Rynearson
9001 State Line Rd, Ste 200
Kansas City, Missouri 64114

The Owner and Construction Manager agree as set forth below:

Whereas, the Owner and Construction Manager previously agreed to amend the Agreement to establish the Guaranteed Maximum Price (GMP) for the Project; and

Whereas, the Owner and Construction Manager now desire to so amend the Agreement,

NOW, THEREFORE, the parties agree to the Agreement as set forth below:

I. **DESCRIPTION AND SCOPE OF WORK:** Construction Manager agrees to fully perform and execute the Work described in the Contract Documents, including without limitation, the work described in the drawings, specifications, and other documents referenced in this Amendment.

2. **NOTICE TO PROCEED.** The date for the Notice to Proceed and the commencement of construction is the date of this Amendment, submittal of maintenance, performance and statutory bonds

3. **DATE OF SUBSTANTIAL COMPLETION:** The Construction Manager shall achieve Substantial Completion of the Work on or before the following date:

This date will be included in a future Amendment with full detailed construction schedule indicating Substantial Completion date.

4. **GUARANTEED MAXIMUM PRICE:** In accordance with Article **6** of the Agreement, Owner and Construction Manager hereby establish the Guaranteed Maximum Price for the performance of the Work, subject to additions and deductions for changes as may be agreed upon in writing or as provided for by the Agreement, in the following amount:

If not previously agreed upon, the Construction Manager's Fee for the Work of this Amendment shall be FOUR HUNDRED THOUSAND AND NO/100 DOLLARS ($400,000.00)

This Guaranteed Maximum Price is for the performance of the Work in accordance with the Contract Documents and other documents listed and attached to this Amendment and marked as Exhibit A.

Exhibit A: GMP Description

5. **OTHER PROVISIONS:**

a. **Bonds and Certificate of Insurance.** Construction Manager shall submit the following:

MAINTENANCE,PERFORMANCE AND STATUTORY BONDS
CERTIFICATE OF INSURANCE

OWNER:	**CONSTRUCTION MANAGER:**
BY: _____	BY: _____
TITLE: _____	TITLE: _____
DATE: _____	DATE: _____

EXHIBIT A- GMP DESCRIPTION

PRAIRIE VILLAGE 2022 POOL REPAIRS
PRAIRIE VILLAGE, KS
CONTRACT AMENDMENT NO. 02 | Nov 21, 2022

EXECUTIVE SUMMARY

This Guaranteed Maximum Price (GMP) Contract Amendment 02 Proposal is the second amendment for the construction of The project consists of pool repairs to the Adult and Lap Pools. The supply and return water systems for both pools will be completely reconstructed back to the filter house.

GMP COST SUMMARY

Our Contract Amendment No. 02 is based on the below items:

1. The GMP Proposal for this Contract Amendment per scope and Contract Documents is FOUR HUNDRED THOUSAND AND NO/100 DOLLARS ($400,000.00)
2. This cost will be rolled into a future amendment and will be considered part of the final GMP and will include bond cost, schedule and liquidated damages.

DOCUMENTATION

All pricing is based upon the following Drawings, Narratives and Notes:

DESCRIPTION	AUTHOR	DATED
Design Development VE	Lamp Rynearson	TBD
Demolition Plans	Lamp Rynearson	November 2022

SCHEDULE - (working days)

START DATE OF DEMO	ON OR BEFORE NOV 30
COMPLETION DATE OF DEMO	DEPENDENT ON STEEL DELIVERY

ACCEPTED OPTIONS

The following options have been accepted by the team and incorporated in the GMP amendment cost.

EXHIBIT A- GMP DESCRIPTION

CLARIFICATIONS

This GMP amendment includes only the DEMOLITION required as noted in plans produced by Lamp Rynearson to begin the construction of the repairs to the Adult and Lap Pools.

Inclusions

1. Cost of work to perform demolition required for the installation of the supply and return water systems from pools to filter house.

Exclusions

1. Construction Manager's Fee
2. Construction Contingency
3. Taxes
4. Construction testing expenses

PUBLIC WORKS DEPARTMENT

Council Meeting Date: November 21, 2022

COU2022-74 **Consider Small Cell Facility Deployment and Master Right-of-Way License Agreement (ExteNet)**

RECOMMENDATION:

RECOMMEND THE CITY COUNCIL APPROVE A SMALL CELL FACILITY DEPLOYMENT AND MASTER RIGHT-OF-WAY LICENSE AGREEMENT WITH EXTENET SYSTEMS, LLC

BACKGROUND:

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

Accordingly, the City entered into "franchise" ordinance agreements and "master license/pole attachment" agreements with such providers. However, in an additional effort to limit municipal authority in this area, in 2019 the wireless industry pushed the Kansas Legislature to pass legislation that prohibits cities from requiring franchise agreements (of the kind previously entered into with such providers) or requiring franchise fees. Kansas Senate Bill No. 68 (2019) amended K.S.A. 12-2001 by adding the following:

> [Except as otherwise provided in the statute, a city] [s]hall not require a wireless services provider or a wireless infrastructure provider to enter into a franchise, franchise agreement, franchise ordinance, contract franchise or contract franchise ordinance for the provision of wireless services …

K.S.A. 12-2001(t)(1)(A). However, a city **may** still:

> govern the use of the public right-of-way by a wireless services provider or a wireless infrastructure provider by requiring a small cell facility deployment agreement or a master license agreement, through permitting requirements or municipal ordinances or codes, or any combination thereof, in a manner consistent with federal and state law;

K.S.A. 12-2001(t)(1)(B). In a sense, then, this is somewhat a matter of semantics: Where the City previously entered into "franchise" and "master license/pole attachment" agreement with providers, the City would instead now enter into "small cell facility deployment agreements" with providers. Indeed, the term "small cell facility deployment agreement" is defined as follows:

> [A]n agreement between a wireless services provider or wireless infrastructure provider and an authority for the deployment of small cell facilities on or adjacent to existing, modified, replacement or new utility poles within the public right-of-way pursuant to K.S.A. 66-2019 [the Kansas Wireless Siting Act], and amendments thereto, and federal law. A "small cell facility deployment agreement" is **not** a franchise, franchise agreement, franchise ordinance, contract franchise or contract franchise ordinance.

In 2021, the City entered into its first such deployment agreement under the new law with AT&T. ExteNet Systems, LLC—a "wireless infrastructure provider"—has now applied to the City for a similar deployment agreement for its operations. The form presented for the Council's consideration is in substantially the same form as that previously approved for AT&T. Substantively, the small cell facility deployment agreement is similar to the combined provisions of the "franchise" and the "master license/pole attachment" agreements which the City had also previously approved with other providers:

- The agreement grants ExteNet the right to construct and maintain its facilities in the public right-of-way, subject to the terms of the agreement and subject to other requirements of applicable law (including but not limited to the City's right-of-way regulations and the City's updated zoning regulations applicable to wireless facilities). As required by law, the authority to occupy the public right-of-way must be granted in a competitively neutral and nondiscriminatory basis.

- ExteNet is required to pay all applicable fees in accordance with the City's updated fee resolution (approved in November 2020) for wireless services.

- The agreement operates as a "master" agreement, applicable to any attachments that ExteNet might make to City-owned poles (and to any replacement poles that ExteNet might install). Specific attachments would be documented by numbered "Supplements" to the Agreement. There are no current applications from ExteNet for installation of any facilities.

- The agreement contains standard and appropriate indemnity and insurance provisions. As with previous franchises, the agreement also requires that ExteNet maintain a performance bond to better ensure the appropriate and timely performance of ExteNet's work in the right-of-way.

- The agreement would be effective for an initial term of ten (10) years, as required by the Act. *See* K.S.A. 66-2019(f)(10). The agreement would automatically renew for two additional five (5) year terms. This is consistent with previous franchises and with AT&T's deployment agreement.

ATTACHMENTS

ExteNet Small Cell Deployment Agreement and Master License Agreement

PREPARED BY

David E. Waters
City Attorney

Date: November 15, 2022

SMALL CELL FACILITY DEPLOYMENT
AND MASTER RIGHT-OF-WAY LICENSE AGREEMENT

EXTENET SYSTEMS, LLC

THIS SMALL CELL FACILITY DEPLOYMENT AND MASTER RIGHT-OF-WAY LICENSE AGREEMENT (this "Agreement") is effective as of _____, 2022 (the "Effective Date") is made by and between the **CITY OF PRAIRIE VILLAGE, KANSAS** (the "City"), and **EXTENET SYSTEMS, LLC**, a Delaware limited liability company ("Grantee") (collectively the "Parties").

RECITALS

WHEREAS, the City owns, operates, maintains and regulates the Right-of-way, and the City further owns, operates and maintains certain facilities within the Right-of-way, including but not limited to those defined herein as City Facilities; and

WHEREAS, Grantee proposes to construct, attach, operate and maintain Grantee's Wireless Facilities within the Right-of-way on or within: (i) the facilities *(i.e. poles, lines and conduit)* of third parties *(e.g., Kansas City Power & Light Company, Southwestern Bell Telephone Company, etc.)*; (ii) Grantee's own poles *(e.g., a small cell monopole)*; and/or (iii) City Facilities as Attachments; and

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

WHEREAS, pursuant to above-referenced Statutes and the City's Home Rule authority, the Parties are entering into this Agreement to address both Grantee's siting of Grantee's Wireless Facilities within the Right-of-way *(as described further in Part II)* and the attachment of Grantee's Attachments on City Facilities *(as described further in Part III)*.

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

PART I - INTRODUCTION

1. ORGANIZATION

This Agreement is organized into four parts in order to account for the difference in the City's general regulatory authority of the Right-of-way (Part II) and the City's proprietary ownership of City Facilities and its decision to grant a license for the use thereof (Part III). This Introduction (Part I) and the General Provisions (Part IV) apply to both the regulatory and proprietary interests.

2. DEFINITIONS

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

Applicable Laws: means all applicable federal, state and local laws, rules and regulations. (See Section 4).

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

Attaching Entity: means any public or private entity, including Grantee, who, pursuant to a valid authorization with the City, places small cell facilities (as defined by K.S.A. 66-2019(b), as amended) on City Facilities to provide Wireless Services.

Attachment(s): means Grantee's Wireless Facilities placed directly on a City Facility (subject to the authorization process in Part III). For billing purposes an Attachment shall include Grantee's antenna(s) on each City Facility together with the associated cables and small-cell equipment.

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

City Facility(ies): means City Streetlights and associated property, that are capable of accommodating Grantee's Wireless Facilities in accordance with Applicable Standards. Provided, no Attachments will be allowed on any traffic control signal (as defined in the Manual on Uniform Traffic Devices).

City Streetlight: means each City-owned streetlight fixture, pole and attached photocell, together with the lateral arm on which the streetlight fixture is mounted.

Days: means calendar days unless business days are specified.

FCC: means the Federal Communications Commission.

Grantee: means EXTENET SYSTEMS, LLC, a Delaware limited liability company, authorized to do business in Kansas, its authorized agents, successors, designees and assigns.

KCC: means the Kansas Corporation Commission.

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

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

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

Right-of-way: means only the area of real property in which the City has a dedicated or acquired right-of-way interest in the real property. It shall include the area on, below or above the present and future streets, alleys, avenues, roads, highways, parkways or boulevards dedicated or acquired as right-of-way. The term does not include utility easements.

Site: means each place for which the Parties enter into a Supplement pursuant to this Agreement for the purposes of installing Grantee's Attachment on a designated City Facility.

Supplement: means the written sublicense, substantially in the form attached hereto as Exhibit A, which will be executed by the Parties and shall document Grantee's authorization to make and maintain a specific Attachment to a specific City Facility at a specific Site pursuant to the requirements of this Agreement and any applicable city code or regulation.

Supplement Application: means the application for a Supplement pursuant to the applicable requirements of this Agreement and any applicable city code or regulation. The Supplement Application shall include the application for any applicable ROW Permit.

Tag: means to place distinct markers on wires and cables, coded by color or other means specified by Applicable Laws, that will readily identify the type of Attachment and its owner.

Wireless Facilities: means Grantee's "small cell facilities," and any applicable "wireless support structure" comprising of Grantee's "small cell network system" facilities located within the Right-of-way that are designed and constructed for the purpose of producing, receiving, amplifying or distributing Wireless Services. (Terms in quotations shall have the meanings set forth in K.S.A. 66-2019(b), as amended.)

Wireless Infrastructure Provider: shall have the meaning set forth in K.S.A. 66-2019(b)(20), as amended.

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

Wireless Services Provider: means a provider of Wireless Services. (See K.S.A. 66-2019(b)(24)).

PART II – REGULATIONS FOR THE USE OF RIGHT-OF-WAY

3. GRANT

3.1. There is hereby granted to Grantee this nonexclusive Agreement governing the construction, operation and maintenance of Grantee's Wireless Facilities along, across, upon or under any Right-of-way for the purpose of supplying Wireless Services as a Wireless Infrastructure Provider within the corporate boundaries of the City, for the term of this Agreement, subject to the terms and conditions of this Agreement. This Agreement does not:

3.1.1 Convey title, equitable or legal, in the Right-of-way, and shall give only the right to occupy the Right-of-way, for the purposes and for the period stated in this Agreement.

3.1.2 Grant the authority to construct, operate or maintain any of Grantee's Wireless Facilities on any easements dedicated to the City or on any (real) property owned or controlled by the City outside of the Right-of-way, specifically including, but not limited to, parkland, arboretum, golf courses, farmstead, soccer complex, pools, community center property, city hall property, other city office property, or public works facility property.

3.1.3 Grant the right to use the facilities, equipment or any other (personal) property owned or controlled by the City. (Except as specifically set forth in Part III hereafter.)

3.1.4 Grant the right to use the facilities or other (real or personal) property owned or controlled by a third party without the consent of the third party.

3.2 As a condition of this grant, Grantee is required to obtain and is responsible for any necessary permit, license, certification, grant, registration or any other authorization required by any appropriate governmental entity, including, but not limited to, the City, the FCC and the KCC. Grantee shall also comply with all Applicable Laws. (See Section 4.)

3.3 Grantee shall not provide any additional services for which a separate agreement or franchise is required without first obtaining such agreement or franchise from the City.

3.4 Grantee shall not knowingly allow the use of Grantee's Wireless Facilities by any third party in violation of any federal, state or local law.

This authority to occupy the Right-of-way shall be granted in a competitively neutral and nondiscriminatory basis and not in conflict with state or federal law.

4. REGULATORY COMPLIANCE

4.1 **Lawful Purpose and Use.** Grantee's Wireless Facilities must at all times serve a lawful purpose, and the use of the Right-of-way or any City Facilities must comply with all Applicable Laws (federal, state and local laws, rules and regulations).

4.2 **City Right-of-way Regulations.** Grantee's use of the Right-of-way shall always be subject and subordinate to the reasonable public health, safety and welfare requirements and regulations of the City. The City may exercise its home rule powers in its administration and regulation related to the management of the Right-of-way; provided that any such exercise must be competitively neutral and may not be unreasonable or discriminatory. Grantee shall be subject to all applicable laws and statutes, and/or rules, regulations or policies, resolutions and ordinances adopted by the City, relating to the construction and use of the Right-of-way, including, but not limited to the City's adopted building and electrical codes, the City's Use and Occupancy of the Public Right-of-Way Ordinance and amendments thereto, Codified at Chapter 13, Article 5 of the City Code, and the City's zoning and land use ordinances, and related rules and regulations and amendments thereto (each as may be

amended from time to time) to the extent such laws do not conflict with or are not preempted by any federal or state law or regulation.

4.3 **Necessary Authorizations.** Grantee shall be responsible for obtaining from the appropriate public or private authority or other appropriate persons any required authorization to construct, operate and/or maintain Grantee's Wireless Facilities on public and/or private property before it occupies any portion of the Right-of-way or attaches onto any City Facilities. The City retains the right to require evidence that appropriate authorization has been obtained before any ROW Permit is issued or any Supplement is finalized. Grantee's obligations under this Subsection include, but are not limited to, its obligation to obtain all necessary approvals to occupy Right-of-way, including, but not limited to, any applicable FCC or KCC authorization, any ROW Permit, or any applicable zoning or land use approval, and to pay all costs associated therewith. Grantee shall defend, indemnify and reimburse the City for all reasonable loss and expense, including reasonable attorney's fees, that the City may incur as a result of claims by owners of private property, or other persons, that Grantee does not have sufficient rights or authority to occupy any specific portion of the Right-of-way, to attach Grantee's Attachments on City Facilities, or to provide particular Wireless Services.

5. SPECIFICATIONS

5.1 **Applicable Standards.** Grantee's use of the Right-of-way, its Wireless Facilities and its attachment of Attachments to City Facilities shall be subject to and shall meet all Applicable Standards, Notwithstanding, unless required by federal or state law or regulation or due to a threat to the public health safety and welfare, Grantee shall not be required to retrofit any existing Wireless Facilities or Attachments to comply with any change in the Applicable Standards.

5.2 **No Obstruction.** Grantee's Wireless Facilities shall be so constructed, operated and maintained so as not to obstruct or hinder the usual travel or public safety in the Right-of-way or obstruct the legal use by other utilities and service providers.

5.3 **Tagging.** Grantee shall Tag all of Grantee's Wireless Facilities in accordance with any Applicable Laws.

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

5.5 **Pedestals, Enclosures and Cabinets.** Except as permitted by Applicable Laws, nothing in this Agreement shall authorize Grantee to place above-ground pedestals, enclosures or cabinets in the Right-of-way or at the base of any City Facilities upon which Grantee has made authorized Attachments, without the City's approval..

5.6 **RF Emissions.** Grantee's operation of its Wireless Facilities shall comply with all FCC regulations regarding RF emissions and exposure limitations. Grantee is allowed to install signage and other mitigation, such as a power cut-off switch on its facilities and the facilities on which it attaches, to allow workers and third parties to avoid excess exposure to RF emissions. Except in an emergency, the City's authorized field personnel will contact Grantee's designated point of contact at least one business day in advance to inform Grantee of the need for a temporary power-shut-down. In the event of an unplanned outage or cut-off of power or an emergency, the power-down will be performed with such advance notice as practicable. Once the work has been completed and the worker(s) have departed the exposure area, the party who accomplished the power-down shall restore power and inform Grantee as soon as possible that power has been restored. The Parties acknowledge that they understand the vital nature of Grantee's Wireless Facilities and agree to limit the frequency of power-downs and to restore power as promptly as reasonably possible.

5.7 **Interference.** Grantee shall not allow Grantee's Wireless Facilities to impair the ability of the City or any third party which exists prior to the installation of Grantee's Wireless Facilities to use City Facilities, nor shall Grantee allow its Attachments to interfere with the operation of any City or other governmental facilities and equipment.

5.7.1 Grantee shall comply with all FCC and other federal, state and local laws, rules, orders and regulations and all directives of the relevant regulatory agencies that are applicable in connection with the installation and operation of Grantee's Wireless Facilities.

5.7.2 In the event that the installation, operation or maintenance of Grantee's Wireless Facilities on a City Facility, whether or not such operation is in compliance with the terms of Grantee's applicable FCC licenses, creates any interference with the operation of the City's or any other governmental entity's communication or other equipment, Grantee shall as soon as reasonably possible, at Grantee's sole cost and expense, take such reasonable steps as may be necessary to eliminate such interference in accordance with FCC or other applicable regulatory requirements.

5.7.3 In the event that the installation, operation or maintenance of one of Grantee's Attachments creates any interference with the operation of the pre-existing equipment of third parties using a designated City Facility pursuant to an agreement with the City or any other pre-existing uses of electronic equipment, Grantee shall as soon as reasonably possible, at Grantee's sole cost and expense, take such reasonable steps as may be necessary to eliminate such interference in accordance with FCC or other applicable regulatory requirements.

5.7.4 If Grantee is unable or refuses to eliminate such interference (set forth in Subsections 5.7.2 and 5.7.3), the City may require Grantee to power down Grantee's Wireless Facilities to eliminate the interference. In the event Grantee is thereafter unable to take necessary action to eliminate such interference within a period of 90 days or such period as the Parties otherwise agree to in writing, the City may (if applicable) terminate Grantee's use of or right to use the City Facility upon which such interfering Wireless Facilities is located, and Grantee shall promptly remove the Wireless Facilities from the City Facility. The City agrees to include a provision substantially similar to this Subsection in any future agreements with third parties seeking to install wireless facility equipment on City Facilities.

5.7.5 Notwithstanding the foregoing, if equipment installed on a City Facility by any third party using the City Facility pursuant to an agreement with the City subsequent to the installation of Grantee's Attachment on the Site causes interference, either electronically or physically, with Grantee's previously installed Attachments, Grantee shall immediately notify City and such third party and City shall work in good faith with the parties to develop workable solutions to resolve the interference in a mutually acceptable manner in accordance with FCC or other applicable regulatory requirements. Alternatively, Grantee may upon 30 days written notice to the City terminate the affected Supplement.

6. DUTIES AND RESPONSIBILITIES

6.1 **Kansas One Call.** Grantee shall participate in the Kansas One Call utility location program.

6.2 **As-Is Condition.** Grantee acknowledges and agrees that the City does not warrant the **condition** or safety of the Right-of-way or any City Facilities, or the premises surrounding the same.

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

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

6.5 **Protection of Grantee's Wireless Facilities.** It shall be the responsibility of Grantee to take adequate measures to protect and defend its Wireless Facilities from harm or damage. If Grantee fails to accurately or timely locate its Wireless Facilities when requested, in accordance with the Kansas Underground Utility Damage Prevention Act, K.S.A. 66-1801 et seq., it has no claim for costs or damages against the City and its authorized contractors unless such parties are responsible for the harm or damage caused by their gross negligence or intentional conduct.

6.6 **Environmental Hazards.** Grantee represents and warrants that its use of the Right-of-way or any City Facilities will not generate any Hazardous Substances, that it will not store or dispose on or about or transport to the Right-of-way or any City Facilities any hazardous substances and that Grantee's Wireless Facilities will not constitute or contain and will not generate any hazardous substance in violation of federal, state or local law now or hereafter in effect including any amendments. Notwithstanding the foregoing, Grantee shall be permitted to bring and keep equipment commonly used in the wireless industry, including without limitation, electrical components and batteries. "Hazardous Substance" shall be interpreted broadly to mean any substance or material designated or defined as hazardous or toxic waste, hazardous or toxic material, hazardous or toxic or radioactive substance, or other similar terms by any federal, state, or local laws, regulations or rules now or hereafter in effect including any amendments. Grantee and its agents, contractors and subcontractors shall defend, indemnify and hold harmless the City and its officials, officers, employees, agents and contractors against any and all liability, costs, damages, fines, taxes, special charges by others, penalties, punitive damages, expenses (including reasonable attorney's fees and all other costs of litigation) arising from or due to the release, threatened release, or storage of any Hazardous Substances on, under or adjacent to the Right-of-way or any City Facilities attributable to Grantee's use, except to the extent of the City's negligence or willful misconduct in connection with such liability. The City acknowledges Grantee shall not be responsible for any contamination to the extent caused in whole or in part by the City or a third party.

6.7 **Liens.** In no event shall Grantee permit any lien to be filed or to exist upon the Right-of-way, any City Facilities, or any other City property, as a result of any claim against Grantee. In the event such lien is filed as a result of any claim against Grantee, Grantee agrees, within 60 days of the receipt of notice of such lien, to cause the lien to be released of record by payment or posting of a bond; provided, however, Grantee shall have the right to contest in good faith such lien, and in such event, may permit the items so contested to remain undischarged and unsatisfied during the period of such contest and any appeal therefrom as long as such lien is bonded over and/or released of record as set forth herein.

PART III – LICENSE TO USE CITY FACILITIES

(City's Proprietary Interests)

7. GRANT OF LICENSE

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

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

7.3 **No Interest in Property.** No use, however lengthy, of any City Facility, and no payment of any fees or charges required under this Agreement, shall create or vest in Grantee any easement or other ownership or property right of any nature in any portion of such City Facility. Neither this Agreement nor any Supplement shall constitute an assignment of any of the City's rights to any City Facility.

Notwithstanding anything in this Agreement to the contrary, Grantee shall, at all times with respect to City Facilities, be and remain a Grantee of a license only.

7.4 **Grantee's Right to Attach.** Nothing in this Agreement, other than a Supplement executed by the Parties, shall be construed as granting Grantee any right to attach Grantee's Attachment to any specific City Facility.

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

7.6 **Expansion of Capacity.** The City may take steps as reasonably appropriate, in a competitively neutral manner, to expand City Facilities to accommodate Grantee's request for Attachment. Notwithstanding the foregoing, nothing in this Agreement shall be construed to require the City to install, retain, extend or maintain any City Facility or portion of thereof for use when such City Facility is not needed for the City's or any other governmental service requirements. Likewise, the City may agree – but is not required – to allow Grantee to provide a substitute for the City Facility that can accommodate Grantee's Attachment; provided, the Parties agree that City will have ownership of the substitute City Facility. (For example, Grantee might provide a replacement light pole that is aesthetically comparable to the City's light pole but has more structural capacity so that it can support Grantee's Attachment.)

7.7 **Effect of Consent to Construction/Maintenance.** Consent by the City (granted through a Supplement) to the construction, operation or maintenance of any Attachment by Grantee to a City Facility shall not be deemed consent, authorization or an acknowledgment that Grantee has the authority to construct, operate or maintain any other such Attachments. It is Grantee's responsibility to obtain all necessary approvals for each Attachment from all appropriate parties or agencies.

7.8 **No Forfeiture of City's Rights.** In the event an Attachment creates a forfeiture of City's rights, City shall notify Grantee in writing of the reasons why City believes such a forfeiture would occur and afford Grantee a reasonable time period in which to attempt to resolve the issue. If after exhausting all of its remedies Grantee is unable to resolve the matter in a period not to exceed thirty (30) days or such reasonable time as agreed to by the parties, Grantee shall remove its Attachments from the subject City Facility within ninety (90) days. Upon such removal, City shall provide an alternate City Facility for relocation of the Attachment equivalent to Grantee's current use of the City Facility, in which case Grantee shall submit a Supplement Application for such new location and City shall waive the applicable Supplement Application Fee.

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

8. SPECIFICATIONS

8.1 **Installation and Maintenance of Attachment.** Upon execution of a Supplement pursuant to this Agreement, Grantee's Attachment shall be installed and maintained in accordance with the City's applicable requirements and specifications and all Applicable Laws. All of Grantee's Attachments must comply with all Applicable Standards Grantee shall be responsible for the installation and maintenance of its Attachments. Grantee shall, at its own expense, make and maintain its Attachments in safe condition and good repair, in accordance with all Applicable Standards; and Grantee shall replace, remove, reinforce or repair any defective Attachments (unless otherwise agreed to by the City in writing). Notwithstanding, unless required by federal or state law or regulation or due to a threat to the public health safety and welfare, Grantee shall not be required to retrofit any existing Wireless Facilities or Attachments to comply with any change in the Applicable Standards.

8.2 **Authorized Attachment(s) and Installation Methods.**

8.2.1 Prior to any installation of an Attachment, the City must approve the Attachment that Grantee is proposing to place on a City Facility. Except as authorized by the City in writing, only the Attachments depicted and described in the approved Supplement Application may be attached to the City Facility; provided, however, subsequent to the original installation of an Attachment on a City Facility, Grantee may modify or replace all or a portion of the Attachment without City approval so long as such modification or replacement results in

different internal components being substituted as part of an upgrade of Grantee's Attachment (assuming the external appearance remains the same). Provided, any said upgrade or substitution must not create a nuisance and must maintain the structural integrity of the City Facility, and Grantee will provide all necessary supporting documentation, such as a structural certification and calculations; and further provided, any excavation or any modification to or work within the City Facility itself shall require advance notice to the City. Notwithstanding the foregoing, Grantee may modify and/or replace Wireless Facilities on a Grantee or third party structure at its discretion in accordance with Applicable Laws.

8.2.2 Grantee shall make all reasonable effort to ensure the design, color, and aesthetics of the Attachment blend with and do not contrast with the City Facility to which it is to be attached.

8.2.3 In no event may Grantee or any of its subcontractors install or construct new City Facilities or modify or repair existing City Facilities except as may be expressly authorized by this Agreement or by a Supplement, or as is otherwise authorized in writing by the City.

8.2.4 Nothing in this Agreement shall be construed as a guaranty of the condition of any City Facility in connection with Grantee's Attachments or impose any obligation upon the City to repair or replace an existing City Facility in order to accommodate a request by Grantee to install an Attachment; provided, however, if City elects not to replace a City Facility, City will work with Grantee to find a new location.

8.3 **Other Specifications.** Grantee's Attachments shall also meet the specifications in Section 5.

8.4 **Violation of Specifications.** If Grantee's Attachment(s), or any part thereof, are installed, used or maintained in violation of the Specifications set forth in Section 5, and Grantee has not corrected the violation(s) within 45 days from receipt of written notice of the violation(s) from the City (or if the violation cannot be reasonably corrected in such timeframe, Grantee has not timely commenced work and diligently pursued the cure to completion), the City at its option, may unilaterally correct such conditions. Notwithstanding the foregoing, if such violation results from or is in connection with the defective or other condition of a City Facility, Grantee and/or Grantee's Attachment will not be deemed to be in violation of this Agreement until the condition of the City Facility is sufficiently repaired and, if such Attachment violation still exists, Grantee fails to correct such violation within the applicable cure periods set forth above. The City will attempt to notify Grantee in writing prior to performing such work whenever practicable. When the City reasonably believes, however, that such violation(s) pose an immediate threat to the safety of any person, interfere with the performance of the City's service obligations or pose an immediate threat to the physical integrity of City Facilities, the City may perform such work and/or take such action as it deems necessary without first giving written notice to Grantee. As soon as practicable thereafter, the City will advise Grantee of the work performed or the action taken. Grantee shall be responsible for all actual and reasonable costs incurred by the City in taking action pursuant to this Subsection.

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

8.6 **Effect of Failure to Exercise Access Rights.** If Grantee does not commence to exercise any access right granted pursuant to this Agreement by the applicable Supplement or any other written City approval (e.g., a ROW Permit) within one (1) year of the later of the approval of the applicable Supplement or other City approval, the City may terminate the Supplement or other approval and use the space scheduled for Grantee's Attachment for its own needs or for other Attaching Entities. In such instances, the City shall endeavor to make other space available to Grantee, upon written Supplement Application, as soon as reasonably possible and subject to all requirements of this Agreement, including the Make-Ready Work provisions.

9. SUPPLEMENT APPLICATION PROCEDURES

9.1 **Supplement Required.** Grantee shall not install any Attachments on any City Facilities without first completing a Supplement Application (which includes the applicable ROW Permit application) pursuant to the applicable City requirements and entering into a Supplement for such Attachment(s) with the City pursuant to this Agreement. Such application shall not be considered complete until the applicable Supplement Application Fee is submitted. Attachments to or rights to occupy or utilize City

property not covered by this Agreement, such as the lease and use of City-owned conduit, fiber optic capacity or any other City property (including, but not limited to, City offices, parks, swimming pools, soccer complex, farmstead recreational centers, arboretum or the like, as these properties are generally not available for third party use) must be separately negotiated.

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

9.1.2 Grantee shall have a copy of the approved Supplement or ROW Permit, the approved Attachment plans, and (if required) the approved traffic control plan at the job site at all times during installation or any modification requiring permitting. Provided that copies are not required for any routine maintenance not requiring permitting or during an emergency.

9.2 **Professional Certification.** Unless otherwise waived in writing by the City, as part of the Supplement Application process and at Grantee's sole expense, a qualified and experienced professional engineer, or an employee or contractor of Grantee who has been approved by the City, must participate in the Pre-Construction Survey, conduct the Post-Construction Inspection and certify that Grantee's Attachment can be and was installed on the identified City Facility in compliance with all Applicable Standards and Applicable Laws, and in accordance with the Supplement.

9.3 **City Review of Supplement Application.** Upon receipt of a properly executed Supplement Application, which shall include the Pre-Construction Survey, and detailed plans for the proposed Attachments in a form acceptable to City staff, the City will review the Supplement Application and notify Grantee if such Supplement Application is incomplete within thirty (30) days after submission identifying the specific grounds of incompletion. The City acceptance of the submitted design documents does not relieve Grantee of full responsibility for any errors and/or omissions in the engineering analysis. Unless otherwise agreed the Supplement Application process shall be consistent with the following timeline.

9.3.1 **Review Period**. In accordance with K.S.A. 66-2019(g) and 66-2019(h)(1) and (3)[1], the City shall review and respond to properly executed and complete Supplement Applications within 60 days of receipt for an existing City Facility or 150 days for a City Facility requiring a new or replacement City Facility. The City will either accept the Supplement or provide a written explanation why the Supplement Application is being denied, either in whole or in part.

9.4 **Supplement as Authorization to Attach.** The Parties shall document the Make-Ready Work required in the applicable Supplement. Upon completion of any necessary Make-Ready Work, Grantee shall be authorized to make its Attachment.

10. MAKE-READY WORK/INSTALLATION

10.1 **Make-Ready Survey.** The Grantee shall prepare a make-ready survey (the "Make-Ready Survey"), at Grantee's cost, to determine the adequacy or the capacity of the City Facility to accommodate Grantee's proposed Attachment without jeopardizing the safety (engineering or otherwise) of the City Facility or placing the City in violation of generally applicable zoning or other restrictions. Grantee shall be responsible for performing and paying all actual costs associated with the Make-Ready Survey. The City may perform a field inspection and structural analysis as part of the Make-Ready Survey. The City shall provide reasonable advance notice of such a field inspection and a representative of Grantee may be present for the inspection.

[1] Grantee reserves its right to challenge a failure to timely process this Supplement Application under the time frames and requirements specified in FCC Rules. See 47 C.F.R. § 1.6003. Grantee agrees to extend the applicable FCC shot clock to run concurrently with state law.

10.2 **Make-Ready Work.**

10.2.1 Except where the City denies a Supplement Application, whenever any City Facility to which Grantee seeks attachment or occupancy requires modification or replacement to accommodate both Grantee's Attachment and the existing attachments or equipment of the City or other Attaching Entities, Grantee will prepare the City Facility for Grantee's Attachment. All actual costs for Make-Ready Work will be borne by Grantee. (See definition for specific components of Make-Ready Work.)

10.2.2 After receiving notification that Make-Ready Work is required, if Grantee still desires to make the Attachment, Grantee may within 90 days of receiving the notice, elect by written notice to the City that Grantee or Grantee's contractors will perform all the Make-Ready Work. The contractors shall be approved by the City to work on the City Facility. Approval shall be based upon reasonable and customary criteria employed by the City in the selection of its own contract labor.

10.2.3 If Grantee submits a Supplement Application that impacts existing Attaching Entities on the requested City Facility, the City will inform Grantee, and upon request, will provide Grantee with the existing Attaching Entities' contact information so Grantee can discuss the possibility of collocation with the Attaching Entities. To the extent collocation is feasible with the existing Attaching Entities, and that their third-party equipment is affected by Grantee's request, the City will follow the procedure as described in Subsection 10.2.1, but only to the extent the existing Attaching Entities do not elect to perform the rearrangement or are not already obligated to rearrange their third-party equipment and bear the expense of such rearrangement and coordination under a pre-existing separate agreement.

10.3 **Grantee's Installation/Removal/Maintenance Work.**

10.3.1 All of Grantee's installation, removal and maintenance work shall be performed at Grantee's sole cost and expense, in a good and workmanlike manner, and must not adversely affect the structural integrity of City Facilities or other property or equipment, or other Attaching Entity's facilities or equipment attached thereto. All such work is subject to the insurance requirements of Section 23.

10.3.2 All of Grantee's installation, removal and maintenance work performed on City Facilities or in the vicinity of other City property, either by its employees or contractors, shall be in compliance with all Applicable Standards and all Applicable Laws. Grantee shall assure that any person installing, maintaining, or removing its Attachment is fully qualified and familiar with all Applicable Standards, all Applicable Laws and the provisions of this Agreement, including but not limited to, the provisions of Sections 4, 5, 6, 8, 9 and 10.

10.3.3 After completion of any installation, removal and maintenance work, Grantee shall, if applicable, provide City with updates plans and specifications for the Attachments and City Facilities including but not limited to as-builts and structural analysis.

11. INSPECTION OF ATTACHMENTS

11.1 **Inspections.** The City may conduct an inventory and inspection of Attachments at any time at City's cost and expense. Grantee shall correct all Attachments that are not found to be in compliance with Applicable Standards within sixty (60) days of notification.

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

11.3 **No Liability.** Inspections performed under this Section 11, or the failure to do so, shall not operate to impose upon the City any liability of any kind whatsoever or relieve Grantee of any responsibility, obligations or liability whether assumed under this Agreement or otherwise existing.

11.4 **Attachment Records.** Notwithstanding the above inspection provisions, upon the written request from City, Grantee is obligated to furnish the City on an annual basis an up-to-date map or list depicting the locations of Grantee's Attachments in an electronic format specified by the City.

12. RELOCATIONS

12.1 **Required Relocations of Grantee's Attachments.** If the City reasonably determines that a relocation of Grantee's Attachments is necessary in order to accomplish construction and maintenance activities directly related to improvements for the health, safety, and welfare of the public, Grantee agrees to allow such relocation or remove the affected Attachment pursuant to Subsection 15.1, and the City agrees to reasonably cooperate with Grantee to locate a replacement City Facility on which to relocate Grantee's Attachment that provides substantially similar signal coverage as the original City Facility. In such instances, the City shall require Grantee to perform such relocation or removal at its own expense within 180 days after receipt of notice from the City. If Grantee fails to relocate Grantee's Attachment within said 180-day period, the City shall have the right to relocate Grantee's Attachment using its personnel and/or contractors. The costs of such relocations shall be apportioned as specified under Section 13. The City shall not be liable for damage to Grantee's Attachment except to the extent provided in Section 22. The written advance notification requirement of this Subsection shall not apply to emergency situations, in which case the City shall provide such advance notice as is practical given the urgency of the particular emergency situation. The City shall then provide written notice of any such actions taken within 5 business days of the occurrence.

13. MODIFICATIONS AND/OR REPLACEMENTS

13.1 **Grantee's Action Requiring Modification/Replacement.** In the event any City Facility to which Grantee desires to make an Attachment is unable to support or accommodate the additional equipment in accordance with all Applicable Standards, the City will notify Grantee. If the City is willing to allow a modification or replacement of the City Facility to accommodate Grantee's Attachment, the City will notify Grantee and the Parties will discuss the necessary Make-Ready Work to provide an adequate City Facility, including but not limited to replacement of the City Facility and rearrangement or transfer of the City's equipment and fixtures. Before any modification or replacement of any City Facilities commences, plans for the same must first be approved in writing by the City and the timing for the same must be coordinated with City staff. If Grantee elects to go forward with the necessary changes, Grantee shall bear the actual cost of any Make-Ready Work, per Subsection 10.2. When applicable, the Make-Ready Work must also include the arrangement or transfer of any existing equipment of other Attaching Entities; and Grantee shall be responsible for separately entering into an agreement with the other Attaching Entities concerning the allocation of costs for the same. In such event, and before the commencement of any Make-Ready Work, Grantee shall provide the City the agreements between Grantee and the other Attaching Entities concerning the relocation or rearrangement of their attachments and the costs involved.

13.2 **Treatment of Multiple Requests for Same City Facility.** If the City receives Supplement Applications for the same City Facility from two or more prospective grantees within 60 days of the initial request, and accommodation of both requests is not possible, the City will authorize the earliest complete Supplement Application received. If it is possible to accommodate more than one Attachment request through a modification, the City will consider, but is not required to authorize, such requests. If the City approves, the prospective grantees must reach an agreement on how to allocate the applicable costs associated with such modification or replacement among such grantees.

13.3 **Allocation of Costs.** The costs for any rearrangement or relocation of Grantee's Attachment or the replacement of a City Facility (including any related costs for tree cutting or trimming) shall be allocated to the City and/or Grantee and/or other Attaching Entity and/or other third party on the following basis:

13.3.1 If the City intends to modify or replace a City Facility solely for its own requirements, it shall be responsible for the costs related to the modification or replacement of the City Facility. Grantee shall be responsible for all costs associated with any necessary modification or relocation of Grantee's Attachment. Prior to making any such modification or replacement of the City Facility the City shall provide Grantee at least 180 days' written notification of its intent in order to allow Grantee a reasonable opportunity to elect to modify, relocate or add to its existing Attachment. Should Grantee so elect, it must seek the City's written permission per this Agreement. The notification requirement of this Subsection shall not apply in the event of routine maintenance or emergency situations, in which case the City shall provide

such advance notice as is practical given the urgency of the particular emergency situation. If Grantee elects to add to or modify its Attachment, Grantee shall bear the total incremental costs incurred by the City in making the space on the City Facilities accessible to Grantee.

13.3.2 If the modification or replacement of a City Facility is necessitated by the requirements of Grantee, Grantee shall be responsible for the costs related to the modification or replacement of the Facilities and for the costs associated with the relocation or rearrangement of any other Attaching Entity's wireless facilities as well as those of the City. Grantee shall submit to the City evidence, in writing, that it has made arrangements to reimburse all affected Attaching Entities for the cost to relocate or rearrange such Entities' equipment prior to the commencement of any Make-Ready Work. The City shall not be obligated in any way to enforce or administer Grantee's responsibility for the costs associated with the relocation or rearrangement of another Attaching Entity's equipment pursuant to this Subsection.

13.3.3 If the modification or the replacement of a City Facility is the result of an additional attachment or the modification of an existing attachment sought by an Attaching Entity other than the City or Grantee, the Attaching Entity requesting the additional or modified attachment shall bear the entire cost of the modification or pole replacement, as well as the costs for rearranging or relocating Grantee's Attachment. Grantee shall cooperate with such third-party Attaching Entity to determine the costs of moving Grantee's Attachment.

13.3.4 If a City Facility must be modified or replaced for a solely private benefit that would cause relocation or adjustment of Grantee's Attachment, Grantee shall not bear the cost of the relocation or adjustment to the extent of such private benefit and Grantee shall not be obligated to commence relocation or adjustment until receipt of funds for such relocation or adjustment. Grantee shall have no liability for any delays caused by a failure to receive funds for the cost of such relocation or adjustment.

13.3.5 If a City Facility must be modified or replaced for other reasons unrelated to the use of the City Facility by Attaching Entities *(e.g., storm, accident, deterioration),* the City shall pay the costs of the modification or replacement of the City Facility and Grantee shall pay any cost related to its Attachment; provided, however, that Grantee shall also be responsible for any additional costs or expenses occasioned by or resulting from the use of a substitute pole or other City Facility previously installed by Grantee in order to accommodate Grantee's Attachment or meet structural standards attendant thereto. In the alternative, Grantee may replace the City Facility at Grantee's cost or the City may replace its City Facility with a similar City Facility which existed prior to the provision of a substitute by Grantee. Under all such circumstances, Grantee shall be responsible for the costs of rearranging or relocating its Attachment.

13.4 **City Not Required to Relocate.** No provision of this Agreement shall be construed to require the City to relocate Grantee's Attachments or to modify or replace City Facilities for the benefit of Grantee; provided, however, if City elects not to replace a City Facility, City shall cooperate with Grantee to identify a mutually agreeable alternate City Facility.

14. ABANDONMENT OR REMOVAL OF CITY FACILITIES

14.1 **Notice of Abandonment or Removal of City Facilities.** If the City desires at any time to abandon, or remove any City Facilities to which Grantee's Attachment is attached, the City shall give Grantee notice in writing to that effect at least one hundred twenty (120) days prior to the date on which it intends to abandon or remove such City Facilities. Such notice shall indicate whether the City is offering Grantee an option to acquire the City Facilities. If, following the expiration of the applicable notice period, Grantee has not yet removed and/or relocated all of its Attachments therefrom and has not elected to acquire the City Facilities pursuant to Subsection 14.2, the City shall have the right to have Grantee's Attachment removed and/or relocated from the City Facility at Grantee's expense. The City shall give Grantee 15 days prior written notice of any such removal or relocation of Grantee's Attachment.

14.2 **Option to Purchase Abandoned City Facilities.** Should the City desire to abandon any City Facility, the City, in its sole discretion, may grant Grantee the option of purchasing such City Facility in "as is, where is" condition at a reasonable rate negotiated by the parties. Grantee must notify the City in

writing within thirty (30) days of the date of the City's notice of abandonment that Grantee desires to purchase the abandoned City Facility. If Grantee elects to acquire title, then City shall promptly execute and deliver a bill of sale and assignment transferring the City Facility to Grantee in "as is, where is" condition, subject only to City's representation and warranty that City is the sole owner, and City owns the City Facility, as the case may be, free and clear of any liens, leases, licenses or other third party rights or encumbrances. Should Grantee not provide notice of its intent to purchase or should the parties fail to enter into an agreement for Grantee to purchase Grantee must remove its Attachments as required under Section 14.1. The City is under no obligation to sell Grantee the City Facilities that it intends to remove or abandon.

15. REMOVAL OF GRANTEE'S ATTACHMENTS

15.1 **Removal on Expiration/Termination.** At the expiration or other termination of this Agreement or any individual Supplement(s), Grantee shall remove its Attachment(s) from the affected City Facilities at its own expense. After removal, Grantee shall restore the City Facilities to their condition immediately prior to the date such Attachments were made, excepting normal wear and tear and damage by other parties. Provided, if the City Facility was modified or replaced in accordance with Section 13, the City may, at its option, agree to keep the modified or replacement pole in place instead of having Grantee remove it and replace it with a standard City Streetlight pole. If Grantee fails to remove such Attachments and restore the City Facilities within 60 days of expiration or termination or some greater period as allowed by the City, the City shall have the right to do so at Grantee's expense.

15.2 **Grantee Removal.** Grantee may, at any time, remove its Attachment from any City Facility, provided it gives the City at least 14 days prior written notice. Provided, the City may require Grantee to leave in place any conduit, innerduct or similar wireless facility equipment in order to prevent damage to the City Facility. After removal, Grantee shall pay for the actual cost to restore the City Facility to its condition immediately prior to the date the Attachment was made, including the cost for removal and replacement of a City Facility that Grantee installed, excepting normal wear and tear.

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

15.4 **Casualty.** In the event of damage to a City Facility due to any casualty, fire, act of God, or other harm affecting a City Facility licensed in whole or in part to Grantee pursuant to a Supplement ("Casualty Event") that cannot reasonably be expected to be repaired within sixty (60) days following such Casualty Event or which City elects not to repair, then Grantee may, at any time following such Casualty Event; (i) terminate the applicable Supplement or affected portion thereof upon fifteen (15) days' written notice to City; or (ii) submit a new Supplement Application for an alternate location equivalent to Grantee's current use of the City Facility, in which case City, upon City approval of the Supplement application, shall waive the applicable application fee and transfer all remaining rights to the new City Facility, as long as such relocation was due to a Casualty Event not caused by Grantee. If Grantee elects to terminate the Supplement, notice of termination shall cause the applicable Supplement or affected portion thereof to terminate with the same force and effect as though the date set forth in such notice were the date originally set as the expiration date of the applicable Supplement. Grantee will be entitled to collect all insurance proceeds payable to Grantee on account thereof, and to be reimbursed for any prepaid Annual Attachment Fee on a pro rata basis. If Grantee does not elect to terminate the applicable Supplement, then the Annual Attachment Fee shall fully abate during the period of repair following such Casualty Event until the date that the Attachment is returned to full on-air operation in the ordinary course of Grantee's business.

16. TERMINATION OF SUPPLEMENT

16.1 **Automatic Termination of Supplement.** Any Supplement issued pursuant to this Agreement shall automatically terminate when Grantee ceases to have authority to construct operate and maintain its Attachment on public or private property at the Site of the particular City Facility covered by the Supplement.

16.2 **Surrender of Supplement.** Grantee may terminate a Supplement at any time upon written notice to the City, and remove its Attachment from the affected City Facilities, provided, however, that before commencing any such removal Grantee must, to the extent required by Applicable Laws, obtain the City's written approval of Grantee's plans for removal, including the name of the party performing such work and the date(s) and time(s) during which such work will be completed. All such work is subject to the insurance and bond requirements of Section 23. No refund of any fees or charges will be made upon removal. However, rental fees shall cease for the Attachment at the time Grantee's Attachment is removed and, if applicable, Grantee has provided to the City the actual costs for the City Facility to be properly restored to its condition immediately prior to the date the Attachment was made, excepting normal wear and tear and damage by other parties. If Grantee terminates such Supplement pursuant to the provisions of this Section, but fails to remove its Attachments from City Facilities within 30 days thereafter, the City shall have the right to remove Grantee's Attachments at Grantee's expense.

17. UNAUTHORIZED OCCUPANCY OR ACCESS

17.1 **Penalty Fee.** If any of Grantee's Attachments are found occupying any City Facility for which no Supplement has been executed, the City, without prejudice to its other rights or remedies under this Agreement, may assess an Unauthorized Access Penalty Fee as specified in Subsection 22.2. In the event Grantee fails to pay such Fee within 30 days of receiving notification thereof, the City has the right to remove such Attachment at Grantee's expense and without liability, subject to the dispute resolution provisions of Subsection 28.10.

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

18. REPORTING REQUIREMENTS

Concurrently with Grantee's Annual Attachment Fee payment, Grantee shall report any Attachment Grantee has removed from City Facilities during the relevant reporting period. The report shall identify the City Facility from which the Attachment was removed and indicate the approximate date of removal. This requirement does not apply where Grantee is terminating a Supplement pursuant to Subsection 16.2.

19. RIGHT TO OPERATE CITY FACILITIES

The City reserves to itself the right to maintain and operate the City Facilities in such manner as will best enable it to fulfill its governmental service requirements. Grantee agrees to use City Facilities at Grantee's sole risk.

PART IV – GENERAL PROVISIONS

20. TERM

20.1 This Agreement shall be effective for an initial term of ten (10) years term beginning on the Effective Date and ending at the expiration of the tenth (10^{th}) anniversary of the Effective Date. Thereafter, this Agreement will automatically renew for up to two additional 5-year terms, unless either Party notifies the other Party of its intent to terminate the Agreement at least 90 days before the termination of the then current term. The additional term shall be deemed a continuation of this Agreement and not as a new agreement.

20.2 Upon written request of either Party, this Agreement shall be renegotiated in good faith at any time in accordance with the requirements of state law with respect to specific terms that are materially affected upon any of the following events: a final, non-appealable change in federal or state laws or orders that materially affect any rights or obligations of either Party, including but not limited to the scope of the Agreement granted to Grantee or the compensation to be received by the City hereunder. All terms in the existing Agreement shall remain in effect while the Parties are negotiating.

20.3 In the event the Parties are actively negotiating in good faith a new Agreement or an amendment to this Agreement upon the termination date of this Agreement, the Parties by written mutual agreement

may extend the termination date of this Agreement to allow for further negotiations. Such extension period shall be deemed a continuation of this Agreement and not as a new Agreement.

20.4 Even after the termination of this Agreement, Grantee's responsibility and indemnity obligations shall continue with respect to any claims or demands related to Grantee's Attachments or Wireless Facilities as provided for in this Agreement.

21. FEES

21.1 **Fees for Wireless Facilities[2] in Right-of-way.** Prior to the installation of any of Grantee's Wireless Facilities in the Right-of-way, Grantee agrees to pay the applicable Supplement Application Fee. Thereafter, Grantee agrees to pay an Annual ROW Access Fee for each of Grantee's Wireless Facilities located on:

1. An existing non-city owned structure in the Right-of-way *(e.g. an existing utility pole)*; and
2. A new non-city owned structure in the Right-of-way *(e.g., a new small cell monopole)*

The amount of the ROW Permit Application Fee and the Annual ROW Access Fee shall be the amounts specified in the City Fee Schedule (defined below) for all similarly-situated providers with small cell facilities. *(See Section 21.3 regarding the City Fee Schedule.)*

21.2 **Fees for Attachments to City Facilities.[3]** Prior to the installation of any Attachment on a City Facility, Grantee agrees to pay the applicable Supplement Application Fee. Thereafter, Grantee agrees to pay an Annual Attachment Fee for each Attachment located on a City Facility. *(The Annual Attachment Fee shall include any applicable Annual ROW Access Fee.)* Grantee also agrees to pay any other Non-Recurring Fees when applicable; and that, at the discretion of the City, Grantee may be required to pay such fees in advance. Non-Recurring Fees may include any of the following:

1. Supplement Application Fee – to reimburse the City for costs incurred for project management services, review of the ROW Permit and/or Supplement Application, and site design approval.
2. Make-Ready Work Costs – to reimburse the City for costs incurred for any Make-Ready Work done to accommodate the Attachment on the City Facility. *(Includes reasonable material, labor, engineering and administrative and overhead costs.)*
3. Inspection Fees – to reimburse the City for costs incurred with inspections of Grantee's Attachments. *(Includes reasonable material, labor, engineering and administrative and overhead costs.)*
4. Unauthorized Attachment Penalty Fee – for Attachments made without City approval. Payment of this fee does not guarantee the Attachment may remain on the City Facility.
5. Failure to Timely Transfer, Abandon or Removal Attachment Penalty Fee (holdover fee).

The amount of the Supplement Application Fee, Annual Attachment Fee, and other Non-Recurring Fees shall be the amounts specified in the City's Resolution of fees for all similarly-situated providers with small cell facilities. *(See Section 21.3 regarding City Fee Resolutions.)*

21.2.1 Attachment Supplement. The Annual Attachment Fee shall be memorialized in each individual Supplement. In the event of a modification to the City's Resolution of fee that changes the amount of the Annual Attachment Fee (subject to the notice requirement of Section 21.1), the Parties agree to enter into an amendment of the Supplement(s) to document the revised Annual Attachment Fee.

21.3 **City Fee Schedule.** With respect to the City's Supplement Application Fee and Annual ROW Access Fee for Grantee's Wireless Facilities in the Right-of-way that are not attached to City Facilities *(see Section 21.1)*, and the City's Supplement Application Fee, Annual Attachment Fee and other Non-Recurring Fees for Attachments on City Facilities in the Right-of-way *(see Section 21.2)*, the parties acknowledge and agree as follows:

---

[2] May be referred to in the City Fee Resolution as small cell facilities.
[3] May be referred to in the City Fee Resolution as city streetlight.

21.3.1 As of the date of execution of this Agreement, the City Fee Schedule, as amended by City Resolution No. 2020-07 (the "City Fee Schedule"), specifies the City's current Supplement Application Fee,[4] and the City Fee Schedule effective specifies the City's current Annual ROW Access Fee, Annual ROW Access and New Monopole Fee, Annual Attachment Fee[5] and Non-Recurring Fees.

21.3.2 After specifying the City's current Annual ROW Access Fee and Annual Attachment Fee amounts, the City Fee Schedule acknowledges the FCC's 2018 Declaratory Ruling regarding fee amounts, but disputes the FCC's authority to establish such fee limitations.[6] This said, the City Fee Schedule provides an option for a provider to only pay the FCC's "safe harbor" annual fee of $270 in lieu of these specified fee amounts, provided it first agrees in writing to pay any outstanding balance within sixty (60) days in the event the FCC Ruling or its fee limitations are vacated without any further appeal. Accordingly, Grantee hereby exercises this option and consents its condition with respect to the Annual ROW Access Fee and Annual Attachment Fee. Provided, both parties agree that Grantee will not be required to pay any outstanding balance for any period of time more than 18 months prior to the event of any such final, non-appealable order.

21.3.3 In the event the City ever seeks to amend or replace the City Fee Schedule (or any subsequent annual fee schedule)) in such a manner as would impact the fees described in this Agreement, the City shall first provide Grantee a minimum of 30 days written notice before any such fee modification takes effect with respect to Grantee's Wireless Facilities.

21.4 **Payment.**

21.4.1 Annual Fees. Grantee shall pay all applicable Annual ROW Access Fees and all Annual Attachment Fees without requirement for invoice or reminder from the City by January 1 each year. Said annual fee payments are due in advance and not in arrears. As to any new Grantee's Wireless Facilities installed by or for Grantee during any calendar year, such fee may be prorated based on the number of days in the calendar year in which the Wireless Facilities were installed and shall commence upon the first day of the month following the effective date of the applicable Supplement and/or ROW Permit for the Wireless Facilities. In such event, Grantee shall clearly identify the same and the proration amount when Grantee's payment is made.

21.4.2 Non-Recurring Fees. The Supplement Application Fee is due when an application is submitted and an application is not considered complete without payment of the fee. All other Non-Recurring Fees are due within 60 days after the City issues the invoice.

21.4.3 All invoices and other requests for payment to City under this Agreement (other than the payment of the Annual ROW Access Fee and Annual Attachment Fee) shall be timely presented in writing to Grantee and accompanied with reasonable substantiation of the costs incurred by City. Properly presented invoices shall be paid by Grantee within sixty (60) days of receipt of invoice accompanied by such substantiation.

21.4.4 All fees paid under this Agreement are compensation for the use of the Right-of-way or for the attachment to City Facilities and shall in no way be deemed a tax of any kind.

21.5 **Late Charge and Billing Dispute Resolution.** If the City does not receive payment for any fee or other amount owed hereunder within 60 days after it becomes due, Grantee shall pay interest to the City on the amount due at the rate of 10% simple interest per annum; provided, however, under no

---

[4] Referred to therein as the "ROW Permit Application Fee" or "Small Cell Application Fee/Supplement Application Fee".

[5] Referred to therein as "Annual ROW Access and Streetlight Attachment Fee."

[6] The City Fee Schedule specifically states, "The FCC issued a Declaratory Ruling on September 27, 2018, in WT Docket Nos. 17-79 and 17-84 (FCC 18-133, 33 FCC Rc'd 9088) ("FCC Ruling") in which the FCC seeks to limit attachment, franchise and/or other small cell ROW access fees to the "reasonable approximation" of a local jurisdiction's cost for processing applications and managing deployment in the right-of-way, but then also establishes a "safe harbor" annual fee of $270/site. The City disputes the FCC's authority to establish such fee limitations and notes several jurisdictions have filed legal challenges to the FCC Ruling. Given this status, until and unless a court of competent jurisdiction issues a final, non-appealable order vacating the FCC Ruling or its fee limitations, a provider may opt to pay the City only $270/site towards the Annual Fees (items 2 or 3 above) provided it first agrees in writing that, in the event the FCC Ruling or its fee limitations are vacated without any further appeal, the provider shall pay any outstanding balance for said Annual Fees within 60 days thereof."

circumstance shall interest under this Agreement exceed the maximum interest allowable under applicable Kansas law. Billing disputes will be resolved in accordance with Subsection 28.10.

21.6 **Determination of Fees and Charges of City Work.** Wherever this Agreement requires Grantee to pay for work done or contracted by the City, the City may utilize its employees or contractors, or any combination of the two, to perform such work, or to permit Grantee to perform the work. Grantee will be responsible for payment to the City for all of the actual costs of all work the City or its contractors perform pursuant to this Agreement to accommodate Grantee's Attachments. The charge for such work shall include all reasonable material, labor, engineering and administrative costs and applicable overhead costs. The City shall bill its services based upon actual costs, and such costs will be determined in accordance with the City's cost accounting systems used for recording capital and expense activities. All such invoices shall include an itemization of dates of work, location of work, labor costs per hour, persons employed and materials used and cost of materials. If Grantee was required to perform work and fails to perform such work necessitating its completion by the City, the City may charge the actual costs associated with completion of such work. When requested by Grantee, the City agrees to provide Grantee with reasonable documentation to determine actual and estimated costs.

21.7 **True Up.** Wherever the City, at its discretion, requires advance payment of estimated expenses prior to undertaking an activity on behalf of Grantee and the actual cost of activity exceeds the advance payment of estimated expenses, Grantee shall pay the City for the difference in cost. To the extent that the actual cost of the activity is less than the estimated cost, the City shall refund to Grantee the difference in cost.

21.8 **Refunds.** No fees or charges shall be refunded on account of any removal of any of Grantee's Wireless Facilities (including any Attachment) or any termination of a Supplement granted hereunder. Notwithstanding the forgoing, the City shall not continue to charge going forward for any Supplement terminated in the previous calendar year, and Grantee shall be entitled to a refund upon discovery of such a billing error.

21.9 **No Accord.** No acceptance by the City of any fee shall be construed as an accord that the amount paid is in fact the correct amount, nor shall acceptance of any payment be construed as a release of any claim of the City.

21.10 **Default for Nonpayment.** Nonpayment of any amount due under this Agreement beyond 90 days following receipt of written notice of nonpayment shall constitute a default of a material term of this Agreement as set forth in Subsection 27.1.

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

22. INDEMNITY AND HOLD HARMLESS

22.1 It shall be the responsibility of Grantee to take adequate measures to protect and defend its Wireless Facilities in the Right-of-way from harm or damage. If Grantee fails to accurately or timely locate its Wireless Facilities when requested, in accordance with the Kansas Underground Utility Damage Prevention Act, K.S.A. 66-1801 *et seq.*, and amendments thereto, it has no claim for costs or damages against the City and its authorized contractors unless such parties are responsible for the harm or damage caused by their negligence or intentional conduct. The City and its authorized contractors shall be responsible to take reasonable precautionary measures including calling for utility locations and observing marker posts when working near Grantee's Wireless Facilities.

22.2 Grantee shall indemnify and hold the City and its officers and employees harmless against any and all claims, lawsuits, judgments, costs, liens, losses, expenses, fees (including reasonable attorney fees and costs of defense), proceedings, actions, demands, causes of action, liability and suits of any

kind and nature, including personal or bodily injury (including death), property damage or other harm for which recovery of damages is sought, to the extent that it is found by a court of competent jurisdiction to be caused by the negligence of Grantee, any agent, officer, director, representative, employee or subcontractor of Grantee, while installing, repairing or maintaining Wireless Facilities in the Right-of-way.

22.3 The indemnity provided by this Section does not apply to any liability resulting from the negligence of the City, its officers, employees, contractors or subcontractors. If Grantee and the City are found jointly liable by a court of competent jurisdiction, liability shall be apportioned comparatively in accordance with the laws of this state without, however, waiving any governmental immunity available to the City under state law and without waiving any defenses of the parties under state or federal law. Likewise, the indemnity provided by this Section does not apply to any liability resulting from the negligence of any third party not associated with Grantee, or for any portion of any harm caused by the same. This Section is solely for the benefit of the City and Grantee and does not create or grant any rights, contractual or otherwise, to any other person or entity.

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

23. INSURANCE AND BOND

23.1 **Certificate of Insurance.** Grantee shall at its sole expense maintain the insurance coverage and limits required by this Section during the Term of this Agreement. Grantee agrees to procure the required insurance from an insurance company having and maintaining an A.M. Best rating of at least A-VII and deliver to the City a Certificate of Insurance evidencing the types of insurance and policy limits required.

23.2 **Required Insurance.**

23.2.1 Workers' Compensation and Employer's Liability Insurance. As required by statute, with Employer's Liability limits of $500,000 each accident, $500,000 by disease policy limits, and $500,000 by disease each employee. To the extent allowed by Applicable Laws, the policy must include a blanket waiver of subrogation in favor of the City.

23.2.2 Commercial General Liability Insurance. Written on Insurance Services Office (ISO) Form CG 00 01 or a substitute form providing equivalent coverage, with limits of:

$2,000,000	General Aggregate Limit
$1,000,000	Each Occurrence
$1,000,000	Each Occurrence - Personal Injury and Advertising Injury
$2,000,000	Products/Completed Operations Aggregate Limit

The required Commercial General Liability policy must include the City as an additional insured on a primary and non-contributory basis and a waiver of subrogation in favor of the City.

23.2.3 Business Automobile Liability insurance. With limits of $1,000,000 Combined Single Limit for each Accident for Bodily Injury and Property Damage, extending to all company owned, leased, and non-owned vehicles.

23.2.4 Umbrella/Excess Liability Insurance. Coverage is to be in excess of the employers' liability, commercial general liability, and automobile liability insurance required above with limits of $4,000,000 each occurrence, $4,000,000 aggregate.

23.3 **Notice of Cancellation.** Grantee may meet the required insurance coverage and limits with any combination of primary and umbrella/excess liability insurance. Grantee shall provide at least 30 days advance written notice of cancellation or non-renewal of any required insurance that is not replaced. Notwithstanding the foregoing, Grantee may self-insure the required insurance under the same terms and conditions as outlined above; provided, Grantee or its parent company shall have and continuously maintain a tangible net worth of at least one hundred million dollars ($100,000,000.00).

23.4 **Bond.** Grantee shall, as a material condition of this Agreement, prior to the commencement of any work and prior to any renewal thereof, deliver to the City a performance bond in the amount of

$50,000, payable to the City to ensure the appropriate and timely performance in the construction operation and maintenance of Grantee's Wireless Facilities located in the Right-of-way. The required performance bond must be with good and sufficient sureties, issued by a surety company authorized to transact business in the State of Kansas, and reasonably satisfactory to the City Attorney in form and substance.

24. ASSIGNMENT

24.1 **Assignment.** This Agreement is granted solely to Grantee and shall not be transferred or assigned without the prior written approval of the City; provided that such transfer or assignment may occur without written consent of the City to a wholly owned parent or subsidiary, or between wholly owned subsidiaries, or to an entity with which Grantee is under common ownership or control or in connection with the sale or other transfer of substantially all of Grantee's assets in the FCC market area where the City Facility or structures are located, upon written notice to the City. In the event of any transfer or assignment of either this Agreement or Grantee's business or assets, Grantee shall: timely notify the City of the successor entity; provide a point of contact for the successor entity; and advise the City of the effective date of the transfer or assignment. No assignment or transfer shall be allowed and Grantee shall remain fully liable under this Agreement until the successor entity becomes a signatory to this Agreement and assumes all obligations of Grantee arising under this Agreement. Additionally, Grantee's obligations under this Agreement with regard to indemnity, bonding and insurance shall continue until the successor entity has taken the appropriate measures necessary to assume and replace the same, the intent being that there shall be no lapse in any coverage as a result of the transfer or assignment.

24.2 **Sub-licensing.** Without the City's prior written consent, Grantee shall not sub-license or lease its rights under this Agreement to any third party, including but not limited to allowing third parties to place Attachments on City Facilities. Any such action shall constitute a default of material term of this Agreement as set forth in Subsection 27.1. Notwithstanding the foregoing, and subject to the reasonable approval of the City, the installation and use of internal space within Grantee's Attachments for third party wireless providers utilizing Grantee's Wireless Services is not subject to this Subsection. Furthermore, the use of Grantee's Attachments by third parties (including but not limited to leases of dark fiber) that involves no additional Attachment or overlashing is not subject to this Subsection.

25. DISCLAIMER

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

26. RESERVATION OF RIGHTS

26.1 In granting its consent hereunder, the City does not in any manner waive its regulatory or other rights and powers under and by virtue of the laws of the State of Kansas as the same may be amended, its Home Rule powers under the Constitution of the State of Kansas, nor any of its rights and powers under or by virtue of present or future ordinances of the City.

26.2 In granting its consent hereunder, Grantee does not in any manner waive its regulatory or other rights and powers under and by virtue of the laws of the State of Kansas as the same may be amended, or under the Constitution of the State of Kansas, nor any of its rights and powers under or by virtue of present or future ordinances of the City.

26.3 In entering into this Agreement, neither the City's nor Grantee's present or future legal rights, positions, claims, assertions or arguments before any administrative agency or court of law are in any way prejudiced or waived. By entering into the Agreement, neither the City nor Grantee waive any rights, but instead expressly reserve any and all rights, remedies, and arguments the City or Grantee may have at law or equity, without limitation, to argue, assert, and/or take any position as to the legality or appropriateness of any present or future laws, ordinances and/or rulings.

26.4 The City specifically reserves its right and authority as a public entity with responsibilities towards its citizens, and as a customer (or potential customer) of Grantee, to participate to the full extent allowed by law in proceedings concerning Grantee's rates and services to ensure the rendering of efficient Wireless Services and any other services at reasonable rates, and the maintenance of Grantee's property in good repair.

27. TERMINATION

27.1 If a Party is in default of any material term or condition of this Agreement or a Supplement, the other Party may terminate the Agreement, if such default is in relation to the Agreement as a whole, or the applicable Supplement(s) if such default is in connection with the Supplement(s). Before terminating the Supplement(s) or this Agreement, the Party will first notify the Party in default in writing of the details of such default. The Party in default shall take immediate corrective action to eliminate any such condition(s) within 60 days (or, if such default is not curable within 60 days, if the defaulting Party fails to commence that cure within 60 days or fails thereafter diligently to prosecute such cure to completion) and shall confirm in writing to other Party that the cited condition(s) has ceased or been corrected, or is in the process of being corrected. If the Parties are unable to resolve the dispute and the Party in default fails to discontinue or correct such condition(s) and/or fails to give the required confirmation, the initial Party may immediately terminate the applicable Supplement(s) or the Agreement, as applicable. In the event of termination of the Supplement(s) or the Agreement (as applicable), Grantee shall remove its Attachment(s) or Wireless Facilities pursuant to this Agreement. In such instance, Grantee shall remain liable for and pay all fees and charges accrued pursuant to the terms of this Agreement to the City until Grantee's Attachment(s) or Wireless Facilities is actually removed.

27.2 Default of any material term or condition includes, but is not limited to, any of the following circumstances:

27.2.1 Construction, operation or maintenance of Grantee's Wireless Facilities in violation of Applicable Standards or the City's regulatory provisions (per Part II).

27.2.2 Construction, operation or maintenance of Grantee's Wireless Facilities in violation of law or in aid of any unlawful act or undertaking.

27.2.3 Construction, operation or maintenance of Grantee's Wireless Facilities after any authorization required of Grantee has lawfully been denied or revoked by any governmental or private authority.

27.2.4 The expiration, termination or revocation of any other required regulatory authorization (as required by Section 4; provided, Grantee shall have a reasonable period of time to obtain the reinstatement of any such authorization.

27.2.5 Construction, operation or maintenance of Grantee's Wireless Facilities without maintaining current insurance coverage or bond as set forth in Section 23.

27.2.6 Nonpayment of any amount due under this Agreement beyond 90 days of written notice as set forth in Subsection 21.10.

27.2.7 Unauthorized occupancy or access to City Facilities. (See Section 17.)

27.2.8 Unauthorized sub-license or lease of City Facilities as set forth in Subsection 24.2.

27.2.9 Failure to eliminate interference with a City Facility as set forth in Section 5. (Termination of applicable Supplement only.)

27.3 Nothing herein shall prevent either Party from invoking any other remedy that may otherwise exist under this Agreement, at law or in equity.

28. MISCELLANEOUS PROVISIONS

28.1 **Emergency Contact.** Grantee shall maintain with the City an emergency contact who shall be available at all times to act on behalf of Grantee in the event of an emergency. Grantee's emergency contact number shall be 866-892-5327 or noc@extenetsystems.com. Failure to maintain an emergency contact shall eliminate the City's liability to Grantee for any actions that the City deems

reasonably necessary given the specific circumstances. Emergency notice by Grantee to the City may be made by telephone to the City Clerk at: (913) 385-4616or the Public Works Director at 913-385-4642 .

28.2 **Notices.** All notices, requests and demands hereunder shall be in writing and shall be effective when personally delivered to, or when mailed by certified mail, return receipt requested, or by a nationally recognized overnight courier, postage prepaid, to be effective when properly sent and received, or refused. Except where specifically provided for elsewhere, notices will be as follows:

The City: City of Prairie Village, Kansas 7700 Mission Road Prairie Village, Kansas 66208 Attn: City Clerk (913) 381-6464	**Grantee:** ExteNet Systems, LLC 3030 Warrenville Rd., Ste 340 Lisle, IL 60532 Attention: Chief Financial Officer
With a copy to: City of Prairie Village, Kansas 3535 Somerset Drive Prairie Village, Kansas 66208 Attn: Public Works Director (913) 385-4647	**With a copy to:** (same address): Attention: General Counsel And a copy emailed to: NOTICE@extenetsystems.com

Any Party may change its address or other contact information at any time by giving the other Party and persons named above written notice of said change.

The above notwithstanding the Parties may agree to utilize electronic communications such as email for notifications related to the Supplement Application and approval process and necessary relocation or City Facility modifications.

28.3 **Entire Agreement.** This Agreement supersedes all previous agreements, whether written or oral, between the City and Grantee with respect to the subject matter of this Agreement; and there are no other provisions, terms or conditions to this Agreement except as expressed herein. Notwithstanding other provisions of this Agreement, the terms and conditions of this Agreement shall not be amended, changed or altered except in writing and with approval by authorized representatives of both Parties.

28.4 **Conflict of Agreement and Supplements.** In the event of any conflict between this Agreement and any Supplement or exhibit hereto, the terms and conditions of this Agreement, as amended from time to time, shall control.

28.5 **Not Exclusive.** The City shall have the right to grant, renew and extend rights and privileges to others not party to this Agreement by contract or otherwise, to use the Right-of-way or City Facilities. Such rights shall not interfere with the rights granted to Grantee by the specific Supplements issued pursuant to this Agreement.

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

28.7 **Relationship of Parties.** Nothing in this Agreement shall be construed to create an association, joint venture, trust, or partnership, or impose a trust or partnership covenant, obligation, or liability on or with regard to either Party. Each Party shall be individually responsible for its own covenants, obligations, and liabilities under this Agreement and otherwise.

28.8 **No Third-Party Beneficiaries.** Nothing in this Agreement is intended to confer rights on any third party, as a third-party beneficiary or otherwise.

28.9 **Failure to Enforce.** Failure of either Party to take action to enforce compliance with any of the terms or conditions of this Agreement or to give notice or declare this Agreement or any authorization granted hereunder terminated shall not constitute a waiver or relinquishment of any term or condition of this Agreement, but the same shall be and remain at all times in full force and effect until terminated, in accordance with this Agreement. No waiver or relinquishment shall be deemed to have been made by either Party unless said waiver or relinquishment is in writing and signed by both the City and Grantee.

28.10 **Dispute Resolution.** Except as otherwise precluded by law, a resolution of any dispute arising out of, or related to, this Agreement shall first be pursued through good-faith negotiations in order to reach a mutually acceptable resolution. If, after pursuing good faith negotiations, the Parties are unable to resolve the dispute, then all disputes relating to this Agreement, or the breach thereof, the Parties shall be entitled to pursue all available remedies at law or equity. Each Party will bear its own costs for dispute resolution activity. Unless otherwise agreed in writing, and to the extent permitted under Applicable Laws, communication between the Parties under this Subsection will be treated as confidential information developed for settlement purposes, exempt from discovery, and inadmissible in litigation.

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

28.12 **Force Majeure.** Each and every provision hereof shall be reasonably subject to acts of God, fires, strikes, riots, floods, earthquake, acts of terrorism, war and other disasters beyond either Party's control.

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

28.14 **Survival.** Any termination of this Agreement shall not release Grantee from any liability, amount due, or other obligations hereunder, whether of indemnity or otherwise, which may have accrued or may be accruing at the time of termination.

28.15 **Severability.** If any provision or portion thereof of this Agreement is held to be invalid by any Applicable Laws or court of competent jurisdiction, such decision shall not affect the validity of the remainder, as a whole or any part thereof, other than the part declared invalid; provided, however, either Party may elect to declare the entire Agreement invalidated if the portion declared invalid is, in the judgment of the Party, an essential part of the Agreement; provided further, before any such termination, the Parties shall begin negotiate in good faith for a replacement of the invalid or unenforceable portion.

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

28.17 **Execution in Counterparts.** This Agreement may be executed in multiple counterparts, including scanned email counterpart signature, each of which shall be deemed an original, and all such counterparts once assembled together shall constitute one integrated instrument.

28.18 **Waiver of Jury Trial.** Each Party waives its right to a trial by jury on disputes arising from this Agreement.

[Remainder of Page Intentionally Left Blank. Signature Page Follows Directly]

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

CITY OF PRAIRIE VILLAGE, KANSAS

By:_____
Eric Mikkelson, Mayor

ATTEST:

By:_____
Adam Geffert, City Clerk

APPROVED AS TO LEGAL FORM:

By:_____
David E. Waters, City Attorney

EXTENET SYSTEMS, LLC

By:_____

Printed Name: Anthony Lehv

Title: Senior Vice-President and General Counsel

LIMITED LIABILITY COMPANY ACKNOWLEDGMENT

STATE OF ILLINOIS)

) ss.

COUNTY OF COOK)

BE IT REMEMBERED, that on this 14th day of NOVEMBER, 2022 before me, the undersigned, a Notary Public in and for the County and State aforesaid, came *[insert name]* ANTHONY LEHV *[insert title]* SVP & GENERAL COUNSEL of EXTENET SYSTEMS, LLC, a limited liability company duly organized and existing under and by virtue of the laws of Delaware; who is personally known to me to be the same person who executed as such officer the within instrument on behalf of said limited liability company, and such person duly acknowledged the execution of the same to be the act and deed of said limited liability company.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal the day and year last above written.

Catherine Hapanionek

Notary Public

My Appointment Expires:

10/2/24

OFFICIAL SEAL
CATHERINE HAPANIONEK
NOTARY PUBLIC - STATE OF ILLINOIS
MY COMMISSION EXPIRES:10/02/24

Exhibit A

(Form of Supplement)

SUPPLEMENT NO. ____
TO MASTER LICENSE AGREEMENT

This Supplement to Small Cell Facility Deployment and Master Right-of-Way License Agreement ("Supplement"), is made this ____ day of _____, 20__ (the "Effective Date") by and between the **CITY OF PRAIRIE VILLAGE, KANSAS** (the "City"), and **EXTENET SYSTEMS, LLC**, a Delaware limited liability company ("Grantee") (collectively the "Parties").

1. **Supplement to the Agreement.** This Supplement is a Supplement as referenced in the Small Cell Facility Deployment and Master Right-of-Way License Agreement between the City and Grantee dated _____ ____, 202_, (the "Agreement"). All of the terms and conditions of the Agreement are incorporated herein by reference and made a part hereof. In the event of a contradiction, modification or inconsistency between the terms of the Agreement and this Supplement, the terms of the Agreement shall govern. Terms used in this Supplement shall have the same meaning described for them in the Agreement unless otherwise indicated herein.

2. **Site Description and Site Plan for Attachment.** City hereby licenses to Grantee certain spaces on the City Facility located at the Site described below:

   Grantee Site Number: _____

   Property Address: _____

   City Pole Address: _____

   Electric Service Address: _____

   Site Plan: The Attachments of Grantee's Wireless Facilities are as shown on Attachment 1, attached hereto and made a part hereof.

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

4. **Fee.** As prescribed by Section 21 of the Agreement and commencing on the Effective Date of this Supplement, Grantee shall pay to the City the Annual Attachment Fee for use of the above-cited City Facility in the amount of: _____.

5. **Site Specific Terms.** *(Include any site-specific terms, e.g., replace lighting with LEDs)*

IN WITNESS WHEREOF, the City and Grantee have executed this Supplement effective the day and year first above written.

CITY OF PRAIRIE VILLAGE, KANSAS	**EXTENET SYSTEMS, LLC**
By:_____	By:_____
Printed Name:_____	Printed Name:_____
Title:_____	Title:_____

Attachment 1

(Site Plan of Facilities and Attachments)

ADMINISTRATION

Council Committee Meeting Date: November 21, 2022

Discuss the 2023 Legislative Platform

ACTION NEEDED

Provide direction to staff through motions and votes on what changes the Council would like to make for the 2023 Legislative Platform.

BACKGROUND

Each year the City Council discusses and adopts a legislative platform, which establishes the City's legislative priorities for the upcoming legislative session. This document is shared and discussed with local, state, and federal elected officials who represent Prairie Village. It is also used by staff and the City's lobbyist when determining whether the City should submit testimony on legislation.

The previous 2022 Legislative Platform is attached for the Council's review. In 2022, the Council changed the format of the platform, which included endorsing the League of Kansas Municipalities' Statement of Municipal Policy and then identifying the top priorities of the City in an additional document. Staff asked our lobbyists at Little Government Relations (LGR) to make recommendations for the changes for the 2023 platform. We also asked the City Council to individually send any requested changes for 2023 so that we could incorporate them into the council packet for review prior to the meeting. The recommended changes we received are summarized below.

- *From Staff:* Amend "Tax Lid" header to "Tax Law".

- *From LGR:* Sales Tax on Food section: Do we keep and modify to say "support immediate elimination" or remove section entirely?

- *From LGR:* The internet sales tax was resolved last session and can be removed.

- *From LGR:* "Distribution of federal funds" Section could be removed or revised to address the Bipartisan Infrastructure Law (BIL)/Infrastructure Investment and Jobs Act (IIJA) and Inflation Reduction Act (IRA). Language could be "With historic investments in infrastructure, sustainability, and clean energy projects through the Bipartisan Infrastructure Law and Inflation Reduction Act, the City of Prairie Village encourages the Legislature and state agencies to provide support, coordination, and guidance to local governments in order to maximize opportunities through these federal investments." Similar language could be added to the "Addressing the Climate Crisis as a Public Policy Priority" section.

- *From Bonnie Limbird after the adoption of the 2022 platform:* Consider the addition of language related to local fire arms issues. Recommended revision from 2020 platform: "We strongly believe the ability to govern how firearms are possessed and transported throughout our community is a matter of local control. Local government should have the ability to regulate and enforce the procession and use of weapons within City-owned facilities, public parks, municipal pools, and City-owned vehicles. We urge state legislators to amend K.S.A. 75-7c that restricts local government from enacting important gun safety measures in their communities."

- *From Bonnie Limbird:* Consider adding language regarding arts funding. Recommended language could be “The U.S. Bureau of Economic Analysis reports that the arts and culture sector contributed $4.1 billion to Kansas' economy in 2020. We support restoration of Kansas State funding for the arts. The arts industry provides jobs, generates revenue and economic activity, and enhances quality of life. The City of Prairie Village recognizes the important role individual artists and creative organizations play in building and sustaining cultural and economic vibrancy in Kansas.”

- *From Bonnie Limbird:* Consider addition language about Housing-rental Inspection. Suggested language could be “Local authority to require rental housing inspections for the safety of residents and the surrounding community.”

- *From Bonnie Limbird:* Consider adding a section on Medicaid expansion. Language could be “The City of Prairie Village supports the expansion of Medicaid to extend healthcare coverage to low-income Kansans.”

- *From Greg Shelton:* Remove the “Sales Tax on Food” section.

- *From Greg Shelton:* Consider adding specific reference to the State’s role in managing the utilization and/or allocation of funding from the Bipartisan Infrastructure Law/Federal IIJA and IRA programs.

- *From Dave Robinson:* Is the section “Legalization of Marijuana” still a suggested priority?

ATTACHMENTS

2022 Prairie Village Legislative Platform
2023 Statement of Municipal Policy from the League of Kansas Municipalities

PREPARED BY

Nickie Lee
Deputy City Administrator
Date: November 16, 2022

CITY OF PRAIRIE VILLAGE

2022 LEGISLATIVE PRIORITIES

WWW.PVKANSAS.COM

The City of Prairie Village endorses the League of Kansas Municipalities 2022 Statement of Municipal Policy. In addition, the following topics are the top legislative priorities for the City of Prairie Village in 2022:

2022 LEGISLATIVE PRIORITIES

NON-DISCRIMINATION

We strongly believe all people should be treated fairly and equally under the law. However, in Kansas, a gap currently exists in the applicable state and federal discrimination laws, leaving LGBTQ people without protection from discrimination in housing, employment, and public accommodations. While the City of Prairie Village has passed a local non-discrimination ordinance to fill this gap, we urge the State to pass legislation to extend these protections statewide.

TAX POLICY & DARK STORE THEORY

We support stable revenue sources and urge the Kansas Legislature to avoid applying any further exemptions to the ad valorem property tax base, including exceptions for specific business entities or the state/local sales tax base, as well as industry-specific special tax treatment through exemptions or property classification. The local tax burden has shifted too far to residential property taxes due to state policy changes. We do not support changes in State taxation policy that would narrow the tax base or significantly reduce available funding for key programs. These changes put Kansas counties and cities at a competitive sales tax disadvantage with Missouri. We also strongly support legislation that would require commercial properties to be appraised and valued based on their highest and best use and oppose any legislation that would allow commercial properties to utilize the "dark store theory" to appeal their assessed valuations. Municipalities rely on property tax revenue from large commercial retailers to pay for their share of essential city services. Any change in the way these properties are valued will have a detrimental impact to municipal operations and will result in the property tax burden shifting to residential property owners to make up for lost revenue.

TAX LID

We strongly oppose any state imposed limits on the taxing and spending authority of cities and counties. We believe those elected to manage the affairs of cities and counties can be most responsive to the local taxpayers and make budget and tax decisions that are most reflective of the community's needs and financial interests. State government should abide by the same taxing and spending decisions they impose on cities and counties. The legislature should address the replacement for the tax lid that was passed in 2021 that intentionally confuses the electorate and causes additional intended problems with taxing policy. The law should return to what it was before the 2021 Legislative change and to the state it was before the tax lid was imposed in 2016 and 2014. If this cannot be accomplished, the current revenue neutral rate process should be amended to include exemptions for inflation and new construction.

LEGALIZATION OF MARIJUANA

We support the legalization of marijuana and its derivatives.

SALES TAX ON FOOD

We support Governor Kelly's proposal to eliminate the state portion of sales tax on food. We do not support eliminating the City's portion of sales tax on food, as this is a major source of revenue for cities throughout Kansas, including Prairie Village, and would negatively impact the services provided by local governments throughout Kansas.

ADDRESSING THE CLIMATE CRISIS AS A PUBLIC POLICY PRIORITY

We believe that climate change poses a global economic, social, and public safety crisis. We support policy makers at all levels of government elevating sustainability and decarbonization to be included among the top line of policy priorities.

INTERNET SALES TAX COLLECTIONS

The inability of governments to collect local option sales or compensating use tax on remote sales continues to erode a viable and fair revenue source. The League supports state legislation establishing a program to help the state collect state and local sales and compensating use taxes due from in-state purchasers. Remitted taxes should be distributed using existing methods/formulas for the state and local governments. The City further supports the adoption of the safe harbor provisions as used by South Dakota to ensure constitutional compliance with the recent U.S. Supreme Court decision in South Dakota v. Wayfair, Inc et al,

DISTRIBUTION OF FEDERAL FUNDS

We support and strongly encourage fair, transparent, and equitable distribution of state and county portions of Federal ARPA and infrastructure monies amongst cities to ensure Prairie Village gets its fair share of the distribution from the recently passed funding bills in Washington, D.C.

STATE FUNDING OF PUBLIC EDUCATION

We strongly support constitutionally adequate, equitable, and responsible funding for the public school system to a level that places Kansas among the leading states in support of a "world class" education. We oppose any further reduction in school funding, including any constitutional amendment releasing the legislature from this important duty. We also urge the state government to fund special education at the level required by K.S.A. 72-3422.

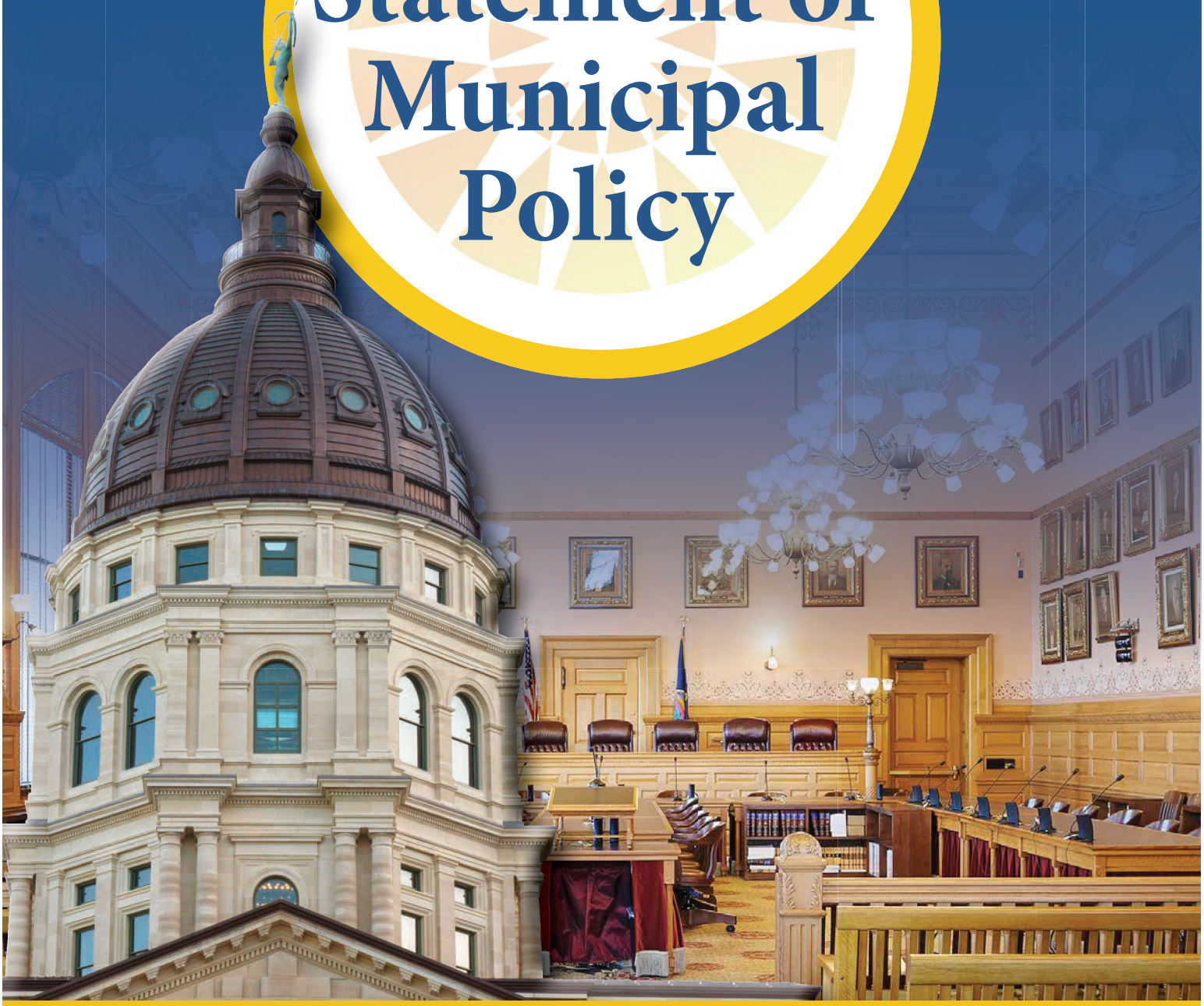
LOCAL CONTROL

Our local communities across the state are best served and residents' values and standards are best reflected when local taxing and spending are determined by local voters and taxpayers. We support the retention and strengthening of local home rule authority to allow locally elected officials to conduct the business of their jurisdiction in a manner that best reflects the desires of their constituents and results in maximum benefit to that community. This includes matters dealing with public health and safety, such as local health orders and the ability to govern possession of firearems in public spaces in the interest of community safety.

CITY OF PRAIRIE VILLAGE
7700 MISSION ROAD
PRAIRIE VILLAGE, KANSAS 66208
913-381-6464

WWW.PVKANSAS.COM

2022 Statement of Municipal Policy



THE LEAGUE OF KANSAS MUNICIPALITIES

Table of Contents

Governing Body 3

About The League 4

Legislative Priorities 5

Finance & Taxation 6

Public Safety 8

Infrastructure 10

Human Resources 14

Government Policies & Procedures 15

Federal Issues 19

City Facts 21

League Legislative Staff 22

Policy Development 22

Mission Statement

The mission of the League shall be to strengthen and advocate for the interests of the cities of Kansas to advance the general welfare and promote the quality of life of the people who live within our cities.

Governing Body

President
Jason Jones
Councilmember, Hesston

Vice President
David McDaniel
Mayor, Ellis

Immediate Past President
Sara Caylor, Mayor, Ottawa

Past Presidents
Mike Boehm, Mayor, Lenexa
Carl Gerlach, Mayor, Overland Park
Daron Hall, City Manager, Pittsburg
John McTaggart, Mayor, Edwardsville
Terry Somers, Mayor, Mount Hope

Directors
David Alvey, Mayor, Unified Government of Wyandotte County/Kansas City
Thomas Brown, Mayor, McPherson
Roy Cessna, Mayor, Garden City
Michelle De La Isla, Mayor, Topeka
Mark Govea, Mayor, Osawatomie
Ty Lasher, City Manager, Bel Aire
Christy Pyatt, City Clerk, Greensburg
Troy Tabor, Council President, Andover
Toni Wheeler, City Attorney, Lawrence
Brandon Whipple, Mayor, Wichita
J. Michael Wilkes, City Manager, Olathe

Executive Director
Erik Sartorius

About the League

Supporting Kansas Cities

The League of Kansas Municipalities is a membership association that advocates on behalf of cities, offers training and guidance to city appointed and elected officials, and has a clear purpose of strengthening Kansas communities. Since 1910, the League has been a resource for cities across Kansas and has acted as a body to share ideas, facilitate communication between members and provide information on best practices in city operations.

LEGISLATIVE PRIORITIES

The prosperity of the State of Kansas is absolutely dependent upon the prosperity of our cities. Over 83% of Kansans live in an incorporated city. In an effort to promote healthy and sustainable communities, the elected and appointed city officials of Kansas hereby establish the following as our legislative priorities for 2022:

Home Rule. Consistent with the Home Rule Amendment of the Kansas Constitution approved by voters in 1960, we support local elected officials making decisions for their communities, particularly local tax and revenue decisions.

Countywide Sales and Use Taxes. Since 1977, Kansas has successfully used a city-county revenue sharing formula for the benefit of all. The existing formula benefits both city and county taxpayers and ensures there is a fair method to distribute funds that are generated primarily in cities.

Government Competition. Local governments should continue to retain local control over the services that they provide to their residents and businesses. We recognize that free markets, under normal circumstances, are the best vehicle for allocating goods and services. However, there are circumstances where the free market either does not efficiently allocate goods and services, creates externalities that endanger public safety and welfare, or simply does not provide a service. In such instances, it falls to government to respond to the will of the people to provide the good or service. In addition, local governments provide services for the sole benefit of their residents and should continue to receive tax benefits to allow those services at a low cost.

Property Taxes. We recognize in areas of the state there is a large reliance on property taxes to fund local and state government. All property taxing authorities, including cities, counties, the state, school districts, special districts, and community colleges should be equally transparent, and have to abide by the same limitations, restrictions and requirements. Any additional transparency measures should not be burdensome or costly. We encourage the state and local governments to work on making government more efficient and recognize the need to work together on innovative approaches to reduce reliance on property taxes.

Uniform Traffic Code. We support a comprehensive review and recodification of the Uniform Traffic Code.

Mental Health. We support allocating additional resources for mental health programs. Funds should be allocated for community mental health centers and additional bed space for patients with mental health issues.

FINANCE & TAXATION

An adequate source of revenue is necessary to fund the essential services of city government. Each city is unique in both services provided and the ability to pay for such services; maximum flexibility should be granted to local governing bodies to determine the amount and source of funding for city services.

Tax/Spending Lid. Local spending and taxing decisions are best left to the local officials representing the citizens that elected them. We strongly oppose any state-imposed limits on the taxing and spending authority of cities.

Tax Policy. The League supports the long-established philosophy of balancing revenue from income, sales, and property taxes to assure the fiscal ability of the state and local governments to provide the services citizens want and need. Changes to tax policies should not be undertaken without a full understanding of the overall impact upon all taxpayers, taxing entities, and the sources and amounts of tax revenues to be generated or eliminated by such policy changes.

Property Taxes. We recognize in areas of the state there is a large reliance on property taxes to fund local and state government. All property taxing authorities, including cities, counties, the state, school districts, special districts, and community colleges should be equally transparent and have to abide by the same limitations, restrictions and requirements. Any additional transparency measures should not be burdensome or costly. We encourage the state and local governments to work to make government more efficient and recognize the need to work together on innovative approaches to reduce reliance on property taxes.

Property Tax Exemptions. We support a broad tax base and believe the existing property tax base should be protected. We encourage the legislature to resist any proposal to further exempt any specific property classification from taxation, including industry-specific exemptions. We support the current statutory definition of machinery and equipment and the exemption should not be expanded. The legislature should actively review existing exemptions to determine if they should continue or be repealed.

Property Valuation. We support appraisals based on fair-market value as historically used in Kansas. We oppose caps in property valuations as unconstitutional and inequitable.

LAVTR. The state legislature, as required by Kansas statutes, should help to relieve the burden on property taxpayers by funding the Local Ad Valorem Tax Reduction (LAVTR) program.

Taxes Paid Under Protest. Due to the effect that taxes paid under protest and large property tax exemptions can have on cities, the state and the county where the city is located should be required to notify cities when taxes, including compensating use and ad valorem taxes, are paid under protest or a large tax exemption is filed so that cities have accurate data when making budgetary decisions.

Mandatory Spending. We oppose any law that requires a city spend a certain threshold to receive and maintain state dollars. All spending decisions should remain at the local level.

Countywide Sales and Use Taxes. Since 1977, Kansas has successfully used a city-county revenue sharing formula for the benefit of all. The existing formula benefits both city and county taxpayers and ensures there is a fair method to distribute funds that are generated primarily in cities.

Sales Tax. Kansas should have a broad sales tax on all goods and services. Cities should be able to impose voter-approved local sales taxes. Sales tax exemptions should be limited to those for which the benefit outweighs the tax dollars lost.

Alternative Revenue Sources. Cities should be authorized to approve alternative revenue sources in order to maintain appropriate levels of funding for the health, safety and welfare of our citizens.

Budget Timeline. The current statutory framework for the adoption of municipal budgets makes it difficult for cities to plan for budgets that must be presented to governing bodies five months before the start of the fiscal year. We support legislation to allow the adoption of city budgets by November 30, while keeping the earlier statuatory deadlines for certification of the amount of ad valorem tax revenue needed.

Finance Policies. Cities should be allowed to set financial policies in-line with bond rating requirements and other generally accepted best practices for municipal management.

EMS/Hospital Funding. Municipal hospitals and emergency medical services (EMS) are challenged in meeting their communities' needs. We support the expansion of Medicaid in Kansas to allow such entities access to federal funding, helping cities maintain and provide critical services for their citizens. If the legislature fails to approve Medicaid Expansion, additional state funding needs to be made available to rural hospitals in order to retain businesses and their employees and sustain the health and lives of Kansans.

Unfunded Mandates. We oppose unfunded mandates. If the state or federal governments seek to promote particular policy objectives, such mandates should be accompanied by an appropriate level of funding.

City and County Revenue Sharing. The State Legislature should fund existing city and county revenue sharing programs as required by Kansas statutes.

Telecommunications Taxes. We support cities' continued ability to impose and collect taxes and fees on telecommunications providers.

Federal Loan Programs. We support changes to allow local governments to participate directly in federal loan programs.

Banking and Investment Restrictions. We support maximum banking and investment choices for local government. At a minimum, all cities, counties and school districts should have the same banking and investment authority the state has granted to itself.

Library Funding. We support Kansas statutes being modernized to reflect revenue neutral rate requirements when determining a public library's eligibility for state funding.

PUBLIC SAFETY

Cities play a critical role in the protection of the health and safety of the citizens of Kansas. Because mandated programs are costlier and less efficient, government at all levels should cooperate in the development of health and safety programs.

Law Enforcement and Public Safety. We believe cooperative efforts, rather than state and federal mandated requirements, are vital to the efficient and effective development of local law enforcement and public safety programs.

Asset Forfeiture. We support the use of asset forfeiture as an important component in reducing financial gains from criminal acts while providing civil due process. All assets forfeited, or the proceeds of the sale of the same, should remain with the local government that seizes the property.

Municipal Court. Municipal courts serve a vital role protecting an individual's right to equal protection under the law following arrest or detainment. We support the local control of, and judicial authority of, municipal courts. All assessed court funds under a municipal court order, other than restitution collected and payable to a third party and state assessments paid under K.S.A. 12-4117, shall be retained by the local municipality. We support municipalities' ability to set appropriate fines and fees.

Emergency 911 Services. Cities and counties should maintain local control of the 911 system and the 911 tax should continue to include both wireline and wireless communications. We support legislation providing flexibility for local governments to utilize these funds to provide emergency services. 911 funds should not be diverted by the legislature for other uses.

Emergency Management. Because cities play a crucial role in effective emergency management, implementation strategies must promote cooperative efforts between federal, state and local governments. Changes to the Emergency Management Act should consider the role of the city in responding to disasters.

Medical Charges. The cost of health care services for prisoners and individuals in custody is a growing concern for cities. We strongly believe the first person responsible for the payment of medical costs should be the individuals in custody. Another needed change, to begin addressing these costs, is to clarify that the entity charging for a crime is responsible in the event those costs cannot be recovered. We support the pooling of resources between all state and local law enforcement agencies.

Law Enforcement Discretion. We support local governments' discretion in establishing law enforcement vehicle pursuit policies and the ability of law enforcement officers to use discretion in determining when to make an arrest.

Service Animal Fraud. We recognize the important role service animals play for the disabled community. The use of such animals is being tainted by service animal fraud. We support strengthening and redefining the crime of service animal fraud to disincentivize individuals from asserting their animal is a service animal in order avoid vicious animal, exotic, livestock, or breed-specific ordinances.

Alcohol & CMB Regulation. We support the authority of cities to license and regulate alcoholic liquor and cereal malt beverage retailers and establishments.

Medical Marijuana. The legislature should carefully weigh the impact of medical marijuana on law enforcement and human resources. In addition, medical marijuana should be subject to existing state and local sales tax and cities should be able to levy their own excise fees and receive a portion of any state funds to offset the impact of medical marijuana. Also, cities should have the ability to opt-in to allowing dispensaries in their city. Kansas should only allow the cultivation and processing of medical marijuana and THC in licensed facilities and should not allow residential grow operations of any sort. In addition, Kansas should delay implementation to give time to study any issues that might result from the passage of medical marijuana legislation.

Firearms and Weapons. We support the local regulation of firearms and weapons.

Homeland Security. First responders at the local level serve as the front-line defense in the prevention and response to terrorism and other security risks. Local governments should be granted maximum flexibility and discretion over implementation of monies and strategies regarding homeland security.

Regulation. Any regulation should balance the costs to the benefit of the regulation. Existing regulations that no longer pass this balancing test should be repealed.

Cybersecurity. Organizations of every size constantly face cyber-related incidents. We encourage the State to provide collaborative discussions, training programs, and feasibility studies for the impact of cyber-attacks on cities. Cities will use information provided by the state government to determine best practices and policies for municipal implementation.

Scrap Metal. Cities are currently preempted from regulating scrap metal. We support a narrowing of this preemption so that cities can address issues at the local level.

Mental Health. We support allocating additional resources for mental health programs. Funds should be allocated for community mental health centers and additional bed space for patients with mental health issues.

Expanded Gaming. If the state legislature authorizes expanded gaming, cities should receive funds to offset the impact, similar to agreements for other gaming that occurs in Kansas.

INFRASTRUCTURE

Cities construct, manage, operate and maintain numerous infrastructure components that provide a high quality of life. Infrastructure involving transportation, municipal utilities, energy services, and water and environmental structures are all dependent on the ability of local officials to self-determine what's appropriate for their own communities. This self-governance relies on the expectation of cooperation from the state government and full funding as required by law under current statutory programs from both the state and federal government.

TRANSPORTATION

Connecting Links. The State should maintain KDOT's funding for connecting link programs at the FY 2020 level for cities to provide for the maintenance of state highways within city limits. We support full funding of the City Connecting Link Improvement Program (CCLIP).

City-County Highway Fund. The City-County Highway Fund is essential to maintaining local roads and bridges and should be fully funded and not be diverted for other purposes. Such funding should include the transfer of fees from the registration of out-of-state commercial vehicles, as directed by K.S.A. 9-3425i. The proceeds from any increases to the motor fuel tax rates should be allocated in accordance with current statutory provisions.

Comprehensive Transportation Program. We support full funding of the Eisenhower Legacy Transportation Program. We oppose any use of these funds to balance the State's General Fund budget. Any reduction in funding jeopardizes existing programs.

Transportation Safety. The State should work in cooperation with local governments to continue to provide safe roads and bridges within Kansas. The State should focus on all users of the transportation systems and recognize that a system that is designed for use by pedestrians, bicycles, and vehicles is safer and more economically prosperous for all Kansans.

Transportation Maintenance. Because transportation infrastructure is critical to state and local development activities, we support the continued maintenance of the transportation infrastructure in Kansas. We further support continued funding to support multimodal transportation networks, including for mass transit, biking, and walking infrastructure.

Transportation Development Districts. We support the continued ability of cities to establish transportation development districts to meet the economic development and transportation infrastructure needs in the community.

Electric Charging Station Infrastructure. We support the expansion of electric charging station infrastructure throughout the state in order to increase the pace of electric vehicle adoption and positively impact local communities.

Airport Funding. We support the continued use of state economic development dollars (EDIF funds) to enhance airport facilities and services.

Recreational Trails. We support the development of recreational trails, including rails to trails, aquatic trails, and hike-and-bike on levee trails projects, and oppose any legislation that would make such development more burdensome or costly.

Rail Service. We support existing and enhanced passenger and freight rail service in Kansas and seek a strong partnership with the state and federal government to achieve meaningful improvements.

Uniform Traffic Code. We support a comprehensive review and recodification of the Uniform Traffic Code.

Utilities

Broadband. Access to reliable broadband service is increasingly important to the economic health of Kansas cities. We support the establishment of the Broadband Deployment Grant to facilitate broadband expansion in Kansas. Guidance for the grant program and broadband-related statutes must recognize the important role local governments play in such expansion and not remove important planning and right of way authority from local governments.

Service Territory. Municipalities must retain the authority to purchase, construct, or extend the infrastructure necessary to supply the cities and their inhabitants with public utilities, including electric services. We believe in the current statutory framework which allows cities' jurisdictional limits to change over time, due to the annexation of land, including land located within the service territory of another utility provider.

Municipal Operation. We support the ability of cities to operate municipal gas, water, electric, sewer, telecommunications, broadband, solid waste, stormwater or other utility services. We further support the ability of cities to set and control the rates for locally owned and operated utilities, and support the current defined service territory statutes.

Right of First Refusal. We support municipal utilities having the ability to invest in new electric/transmission projects in order to provide reliable, affordable service to local customers. We oppose efforts prohibiting competition for transmission projects in Kansas.

Franchise Authority. We oppose any legislation restricting the current franchise authority for cities, including limits on franchise fees.

Mandates. We oppose unfunded federal and state mandates regulating the operation of municipal gas, water, electric, sewer, telecommunications, solid waste, stormwater utilities or other utility services. Any mandates passed down to cities should not be imposed without a cost-benefit analysis and should be accompanied by appropriate funding. In addition, regulations should provide for a reasonable implementation schedule.

Public Water Supply Supervision Program. We support changes to the statutory language increasing the funding stability for the Kansas Department of Health and Environment's Public Water Supply Supervision program. These changes must balance municipal cost concerns and recognize the state has a responsibility to contribute to these important public health matters. In addition, we recognize a need to update standards to meet federal clean drinking water standards.

Right-of-Way. Cities must maintain their ability to regulate the public right-of-way and recover reasonable compensation for use of the right-of-way. Kansas policy should not be dictated by overreaching federal mandates. We oppose efforts to codify, at the state level, federal directives limiting cities' powers.

Energy

Electric Utility Deregulation. Community-owned and operated municipal electric utilities make long-term power supply decisions and investments with the goal of benefiting their overall community. We support continued local control over power supply decisions.

Statewide Energy Policy. We support the development of a coordinated and comprehensive Energy Plan. Further, we support creative and cooperative implementation of renewable energy and energy efficient technologies that are environmentally sustainable and economically successful.

Energy Efficiency. Energy efficiency saves money, drives investment across all sectors of the economy, creates jobs, and reduces the environmental impact of energy use. Accordingly, we support public and private incentives to encourage energy efficiency and renewable energy.

Building Codes. We oppose any measures to preempt local building codes. Further, cities should continue to be allowed to shape local codes to incentivize net zero or net-zero ready building requirements.

Propane. We support cities' authority to protect public safety by regulating the capacity of propane units/facilities for residential or commercial purposes.

Water and Environment

Water Quality. We support a clean and safe public water supply and the protection of public health and aquatic life. We endorse regional and cooperative solutions to water quality challenges that address point and non-point source pollution while balancing municipal cost concerns.

Water Quantity. Government at all levels should aggressively pursue the conservation, protection and development of current and future municipal water supplies. We support cost-effective efforts to extend the life of reservoirs and to expand reservoir storage for use by municipal water suppliers. We support immediate state action, in consultation with municipal providers, to address over-appropriated surface and groundwater resources while respecting priority of water rights. The water rights management tools that have been developed in recent years should be modified or expanded so that they provide the same type of flexibility and authority to any water rights holder regardless of class.

Water Planning. We support increased municipal representation on the Kansas Water Authority; broad-based revenue sources and distribution for the state Water Plan Fund; and a re-evaluation of the process for adopting the annual state Water Plan Fund budget.

Infrastructure Funding. We support increased federal and state funding to assist local communities with their water, wastewater, stormwater, levee and dam infrastructure and associated security needs. In addition, we call for loan terms of up to 40 years when the useable lifespan of an improvement will exceed the term of the loan.

Stormwater Management. We endorse regional and cooperative solutions to stormwater quality and quantity challenges that address point and non-point source pollution. We further endorse state measures to incentivize and enable investment in green infrastructure (e.g., street trees, use of native plants, etc.) to support sustainable communities.

Solid Waste. The Home Rule powers of cities to dispose of and manage municipal solid waste should not be restricted. This includes local control and decision-making surrounding recycling and composting programs.

Hazardous Waste. We support a comprehensive state-local approach to provide assistance in identifying hazardous wastes and to develop programs to monitor and dispose of such wastes. We encourage state agencies to work cooperatively with local governments in the development and approval of programs to identify, monitor and dispose of hazardous waste. Further, appropriate education and training should be provided prior to the implementation of such programs.

Clean Air. We support air quality controls and a state-developed air quality plan that protects the health and safety of Kansans while balancing municipal cost concerns.

Water and Wastewater Certification. We support improved certification programs that better align the necessary skillsets for real world water and wastewater system operation with the content of the corresponding exams. We support review of water and wastewater certification to ensure validity and reliability. These certifications need to continue to be protective of the public health and environment. We encourage contracting and collaboration to help utilities acquire the knowledge, skills, abilities, and certifications needed to effectively and efficiently serve Kansas rate payers.

HUMAN RESOURCES

City employees are the foundation of effective city government. City governing bodies must have the authority to develop local personnel policies to attract and maintain a high-quality public workforce.

Workers' Compensation. We support reasonable and just benefits for employees injured within the course and scope of their public employment, and effective enforcement of the Workers' Compensation Act.

KPERS & KP&F. We support the full funding of the Kansas Public Employees Retirement System (KPERS) and Kansas Police & Fire (KP&F) retirement systems and honoring all commitments that have been made by KPERS and KP&F. The local KPERS system should remain separate from the state and school retirement system. Changes to the KPERS system should not impact a city's ability to hire and retain qualified public employees, including any undue burden on hiring KPERS retirees, or reduce benefits promised to employees.

Public Employer-Employee Relations Act (PEERA)/Collective Bargaining. We oppose any federal or state mandate requiring collective bargaining at the local level.

Personnel Mandates. We oppose state and federal mandates involving public personnel.

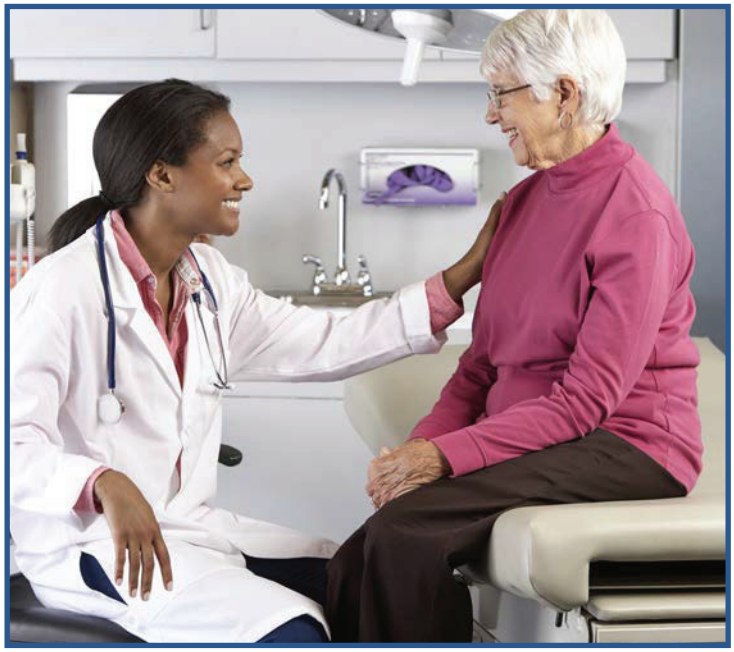
Weapons and Firearms. We support the ability of local governments to set policies regarding the carrying of weapons and firearms by municipal employees while they are engaged in their work.

Prevailing Wage. We oppose federal and state mandates requiring or prohibiting the payment of prevailing wage.

Health Care & Other Benefits. We support cooperation and active study of ways to relieve the financial burden of securing employee health care coverage, including the continued option for cities to participate in the state health care program.

Unemployment. We support reasonable and just benefits for employees who are qualified individuals under the Kansas Employment Security Law. We oppose the finding that volunteers, who are paid a nominal stipend, are considered a qualified individual. We support legislation to define "volunteer" in Kansas employment law such that it is consistent with federal law.

Ambulance Attendants. We support allowing non-certified attendants to drive ambulances for inter-facility patient transfers with one attendant providing patient care. These staff should be trained to operate emergency vehicles. We continue to support the use of certified attendants for emergency situations.



GOVERNMENT POLICIES & PROCEDURES

Abiding by the longstanding constitutional Home Rule authority of Kansas cities, there is a need to ensure local governments maintain autonomy and the authority of self-governance to create a safe and sustainable quality of life for residents. In an effort to construct appropriate policies for their community, such as economic and community development initiatives, cities should be committed to implementing procedures which ensure ethical and transparent governance from their officials.

Home Rule. Consistent with the Home Rule Amendment of the Kansas Constitution approved by voters in 1960, we support local elected city officials making decisions for their communities, particularly local tax and revenue decisions.

Government Competition. Local governments should continue to retain local control over the services that they provide to their residents and businesses. We recognize that free markets, under normal circumstances, are the best vehicle for allocating goods and services. However, there are circumstances where the free market either does not efficiently allocate goods and services, creates externalities that endanger public safety and welfare, or simply does not provide a service. In such instances, so it falls to government to respond to the will of the people to provide the good or service. In addition, local governments provide services for the sole benefit of their residents and should continue to receive tax benefits to allow those services at a low cost.

Protection of the First Amendment. The right of the people through their democratically elected and appointed officials to petition and speak to their government officials shall not be abridged. We support cities' First Amendment right of freedom of association to work together to accomplish common goals.

Police Powers. We support the authority of cities to regulate in order to protect the health, safety, and welfare of the public.

Non-Discrimination. We oppose any discrimination against persons, by reason of their race, religion, color, sex, disability, national origin, ancestry, sexual orientation, or gender identity.

City Elections. City elections should remain non-partisan and separate from state and national elections.

Filing for Office. In order to encourage a higher number of candidates to file for office, we support the filing location for city elections being available in the city clerk's office. The state should evaluate remote filing options in the future.

Filling of Vacancies. The current statutes for filling vacancies have served the state well for over fifty years. Vacancy filling should remain the responsibility of local governing bodies made up of duly elected officials.

Annexation. The ability of cities to grow is inherent in the economic growth and development of the state. Therefore, we support local jurisdictions' ability to make their own decisions regarding orderly growth through annexation.

Sign Regulation. We support the authority of local government to regulate signs in compliance with federal law.

Public Property & Rights-of-Way. We support the ability of cities to control and manage public property and rights-of-way and to impose franchise or use fees on those entities that utilize the rights-of-way.

Eminent Domain. Eminent domain is a fundamental municipal power. The authority to acquire property through condemnation proceedings is critical for public improvement projects. We support increased flexibility for local governments to use eminent domain for economic development purposes, including blight remediation, without seeking legislative approval.

Governmental Immunity. We support continued immunity for cities from tort liability and legislation strengthening the Kansas Torts Claims Act.

Interlocal Cooperation. We support the principle of voluntary cooperation among all levels of government.

City/County Consolidation. We support processes for local consolidation without undue statutory barriers. We further believe the issue of consolidation is an inherently local one and the voters should be allowed to determine whether consolidation with another unit of government occurs.

Summary Publication of Resolutions. We support legislation allowing cities to publish a summary of a resolution, with the full text of any resolution posted on the city's official website, in lieu of publication of the full resolution.

Private Cemetery Liability. We support legislation removing the requirement for cities to care for and maintain formerly private cemeteries that have been dissolved.

Community Development

Housing. The lack of quality housing across the state creates an impediment to growth and economic development. The League supports programs that encourage access to quality housing, including but not limited to, the recommendations of the State Housing Study.

Abandoned and Blighted Housing. We support legislation that streamlines and expedites the process for local governments, neighborhood organizations and private businesses to deal with the blight of abandoned, nuisance, foreclosed housing, and commercial structures to protect the rights and property values of surrounding property owners.

Housing-Rental Inspections. We support giving cities the authority to require inspections of rental housing for the safety of tenants and to protect the rights and property values of surrounding property owners.

Revitalization Tools. We support the continued use of the Neighborhood Revitalization Act, the Downtown Redevelopment Act, the Transportation Development District Act and the Community Improvement District Act to promote local neighborhood development.

Economic Development Partnerships. State and regional partnerships are vital to the sustained growth of the state and should be supported by policy and with adequate funding.

Tax Abatements. We support the authority of cities to offer tax abatements to encourage business investment in their communities.

Tax Increment Financing (TIF). We support the continued use of TIF to promote economic development. TIF laws should allow maximum flexibility and allow for efficient use by communities.

STAR Bonds. We support the ability of cities to utilize STAR bonds to promote economic development in their communities.

Land Use and Zoning. We support the ability of local officials to make land use and zoning decisions within their community, including decisions about the location, placement, size, appearance and siting of transmission and receiving facilities and any other communications facilities.

Relationships Are the Cornerstone of Effective Advocacy

1 Make Contact Prior to Legislative Session

- Eggs & Issues, town halls, etc.
- Communicate the city's agenda and priorities.
- Invite them to a League Legislative Dinner.

2 Follow the Legislative Session

- *League News*
- List servs
- News media
- *www.lkm.org*

3 Participate in Local Government Day January 26, 2022

- Make appointments to visit with your legislators in the morning.
- Invite them to the League reception.

4 Make Contact During Legislative Session

- Watch for alerts about key bills/issues.
- Follow the issue, not the bill number.
- Be specific; give your city's unique insight into the legislation.
- Don't waste time and political capital on meaningless bills that have no chance of becoming law.

5 Make Contact Following the Legislative Session

- Thank your legislator for their hard work.
- Be honest and express concern when bills negatively affect your city.

- Know your legislators on a first-name basis
- Always be respectful and avoid personal attacks
- Ask your legislator how he or she prefers to be contacted (email, phone, texts, etc.)
- Share your contact information
- Follow legislators' communications
- Sign up for emailed newsletters
- Follow legislators' Twitter accounts
- Send legislators your newsletter/updates

Tourism. We support cooperative ventures between the state and local government in Kansas to promote tourism as an industry that is vital to growth and development all across the state.

Tax credits. We support the continued availability of tax credits as a tool for economic development.

Transparency in Government

Open Meetings. All levels of government should be subject to the same open meetings requirements. These laws should not be unduly burdensome.

Open Records. All levels of government should be subject to the same open records requirements. State laws governing open records should balance the public's right of access, with the necessity of protecting the privacy of individual citizens, and the ability of public agencies to conduct their essential business functions. We support a city's ability to recoup reasonable costs associated with open records requests.

Intergovernmental Dialogue. Communication between all levels of government is critical to the successful delivery of public services to the citizens of Kansas. Representatives from cities provide facts and information crucial to intergovernmental relations, and as such, should have the same rights and responsibilities as private interest lobbyists. We support current law regarding the use of state and local public moneys to provide information and advocate on behalf of our cities and citizens. Any reporting system should not increase the administrative burden on local governments.

Body Cameras. We support the ability of local governments to determine when and how body cameras will be used by law enforcement officers. We support the establishment of reasonable regulations concerning public access to recordings, balancing the needs of law enforcement and the individuals whose images are captured in the recordings.

FEDERAL ISSUES

Local officials welcome the opportunity to work together with federal and state officials on policies impacting local communities. Federal agencies should research and understand the fiscal impact on local units of government when implementing new guidelines or laws. Cities manage their finances, infrastructure and personnel more effectively without unfunded federal mandates.

Local Control. We support local elected officials making decisions for their communities. Though the Home Rule powers granted cities in the Kansas Constitution do not affect federal powers, we call on our representatives and federal agencies to look at federal legislation and regulations with local control in mind.

Police Reform. We support the work of our local police departments to make our communities safer for all. Any federal or state proposals for police reform should be focused on providing resources for local law enforcement, incentivizing transparency, and encouraging good police practices, including equity and justice.

Federal Recovery Money for Cities. Federal funding from the CARES Act and the American Rescue Plan Act have been critical for local governments to both respond to the negative impacts of the pandemic and support the economic recovery. As cities work on plans to best help their residents, Congress should not move to take back these funds.

Advanced Refunding of Bonds. In order to allow cities to quickly recover from this current recession, we urge Congress to allow cities to issue tax exempt advance refunding municipal bonds. Cities refinancing bonds will be able to free much needed cash flow to reduce taxes or create capital investments.

Community Development Block Grants (CDBG). We support continued funding for Community Development Block Grants, Community Service Block Grants and HOME Grants. These programs' funding is an essential component of cities' strategies to fund critical community services and infrastructure needs.

Municipal Bonds. We support the removal or modification of overly burdensome and costly restrictions affecting the issuance of municipal bonds. Further, we support the continued tax-exempt status for municipal bonds.

Broadband Deployment & Municipal Oversight. Access to reliable broadband service is increasingly important to the economic health of Kansas cities. However, federal action via legislation or orders from federal agencies must recognize the key role local governments play in such expansion, and it must not remove important planning and right of way authority from local governments. Cities must be afforded the continued right to address safety, health and welfare for both their citizens and other entities with valuable infrastructure in the right of way. In addition, the right of way serves as an important resource for citizens, and the right to offset costs of management and levy taxes should not be limited.

Energy Spikes. We support federal review and investigation of the extraordinary energy price spikes seen throughout the Midwest in Winter 2021. Based on the information gathered, we encourage Congress and federal, regional and state agencies to make appropriate changes in laws and regulations governing natural gas and electricity production and sales in order to promote stability in energy prices.

Immigration Reform. We support a federal solution to immigration reform. Any immigration policy should not negatively impact local governments with additional law enforcement or administrative burdens. We support Congress continuing assistance to under-served areas with large immigrant populations, who are attempting to remain in compliance with the United States Citizenship and Immigration Services.

Medicare Reimbursement Rates. We encourage the federal government to establish reasonable reimbursement rates.

Transportation. We support consistent federal funding of the nation's surface transportation with increased support to critical regional infrastructure priorities.

Every Day Counts Initiative. We support the Federal Highway Administration's Every Day Counts initiative to enhance roadway safety, integrate automation, reduce traffic congestion, and shorten project delivery processes in order to save time, money, and resources.

Stormwater. We support simple and flexible federal regulations of municipal stormwater run-off that allow for orderly and cost-effective development. The federal government should appropriate funds for research and for the development of pilot projects on stormwater management.

Water Quality. We support a clean and safe public water supply and the protection of public health and aquatic life. We endorse federal investments and cooperative solutions that address water quality challenges and take into account municipal cost concerns.

Hazardous Waste. We urge federal agencies to work cooperatively with state and local governments in the development and approval of programs to identify, monitor and dispose of hazardous waste. Appropriate education and training should be provided prior to the implementation of such programs.

Telecommunications Data. We support the continued ability of public safety officials to access data from telecommunications companies in times of emergencies to assist investigations.

Rail Service. We support existing and enhanced passenger and freight rail service in Kansas. In many cases, this service is the only affordable alternative to highway transportation in communities. Changes to Amtrak service should not sacrifice this alternative nor the investments in the service by cities.

Railroad Quiet Zones. We urge Congress to reexamine the Train Horn Rule with the Federal Railroad Administration. Rules for implementing quiet zones should be less burdensome and allow for differences in community circumstances while continuing to protect public safety. We also request Congress provide federal funds for the purpose of establishing quiet zones and consider new technology which may enhance the safety of quiet zones while minimizing or eliminating train horn noise.

City Facts

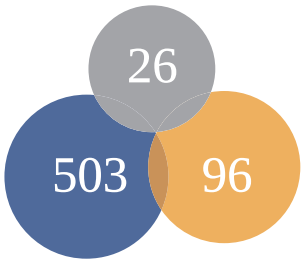
Total Number of Incorporated Cities = 625

Total Population of the State = 2,913,805

Total City Population = 2,420,761

83.08% of the state's population resides in an incorporated city.

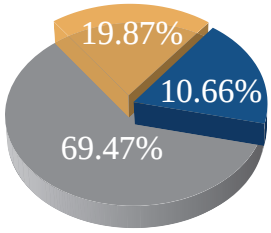
Number of Cities



Class of City

- Cities of the First Class
- Cities of the Second Class
- Cities of the Third Class

% of Total City Population



Population Group / Number of Cities

Population Group	Number of Cities
25,000 and over	16
10,000 - 24,999	19
5,000 - 9,999	26
2,000 - 4,999	58
1,000 - 1,999	72
500 - 999	95
400 - 499	31
300 - 399	32
200 - 299	64
100 - 199	99
Under 100	113

Form of Govenment / Number of Cities

Form of Govenment	Number of Cities
Mayor-Council	554
Commission	10
Commission-Manager	37
Mayor-Council-Manager	20
Modified Mayor-Council	2
Consolidated City-County	2

LEAGUE LEGISLATIVE STAFF

Erik Sartorius
Executive Director
esartorius@lkm.org
(22nd Session)

John Goodyear
General Counsel
jgoodyear@lkm.org
(4th Session)

Wendi Stark
Research Associate
wstark@lkm.org
(2nd Session)

Policy Development

Each year, the League's member cities identify common needs and goals, and the membership adopts a Statement of Municipal Policy (SMP) that is designed to help cities overcome obstacles and reach those goals. The SMP has evolved throughout the history of the League and guides the League governing body and staff during the legislative session and throughout the year.

The League's Policy Committees, which are open to representation from all cities, are charged with developing policy recommendations and proposing amendments to the SMP. During the annual business meeting (held each year at the League's annual conference), League members consider any revisions and adopt the SMP for the next year.

The SMP should be reflective of the needs of cities from across Kansas and should not benefit one city to the detriment of other cities. Each year, legislative priority items are reviewed and modified. Legislative priority items are of principal importance to the League that we advocate for every year (such as the advancement and preservation of Home Rule) or major issues impacting cities across that the state which will be under discussion during the coming legislative session.

The League Advocates for Cities

The League advocates on our members' behalf to sponsor and encourage beneficial legislation for cities and oppose legislation that would be detrimental to our members' interest.

The League Offers Guidance

Member cities can contact the League with a legal inquiry or question. Additionally, we provide sample ordinances and guidance on legislation and rulemaking from both the state and federal level.

Communications & Outreach

Since 1914, the League has published the *Kansas Government Journal*, a publication for city, county and state government officials that is printed ten times a year. The League publishes a weekly e-newsletter, researches municipal issues affecting Kansas communities and develops programs for cities to use to engage their residents and reinforce the importance of civic engagement.

Municipal Training & Education

The League offers members a variety of education and training opportunities throughout the year. Our annual conference brings together leaders in municipal government to offer innovative ideas for cities. Throughout the year, the League works with professionals in the field to train, inspire and solve problems facing municipal leaders at all levels. The League offers over 30 manuals and publications on municipal issues ranging from finance and budgeting, personnel, planning, economic development, open meetings and open records to traffic ordinances.

Contract Services

The League offers members a competitive rate to have the League engage in contract services, which include codification services, executive personnel search program (LEAPS) and personnel policies.

THE
LEAGUE
OF KANSAS MUNICIPALITIES

300 SW 8th Avenue, Suite 100
Topeka, KS 66603
(785)354.9565
www.lkm.org

A Publication of The League of Kansas Municipalities
November, 2021

THE LEAGUE OF KANSAS MUNICIPALITIES

2023 Statement of Municipal Policy

Table of Contents

Governing Body 3

About The League 4

Legislative Priorities 5

Finance & Taxation 6

Public Safety 8

Infrastructure 10

Human Resources 14

Government Policies & Procedures 15

Federal Issues 19

City Facts 21

League Legislative Staff 22

Policy Development 22

Mission Statement

The mission of the League shall be to strengthen and advocate for the interests of the cities of Kansas to advance the general welfare and promote the quality of life of the people who live within our cities.

Governing Body

President
J. Michael Wilkes
City Manager, Olathe

Vice President
Troy Tabor
Council Member, Andover

Past Presidents
Mike Boehm, Mayor, Lenexa
Sara Caylor, Commissioner, Ottawa
Daron Hall, City Manager, Pittsburg
David McDaniel, Mayor, Ellis
Terry Somers, Mayor, Mount Hope

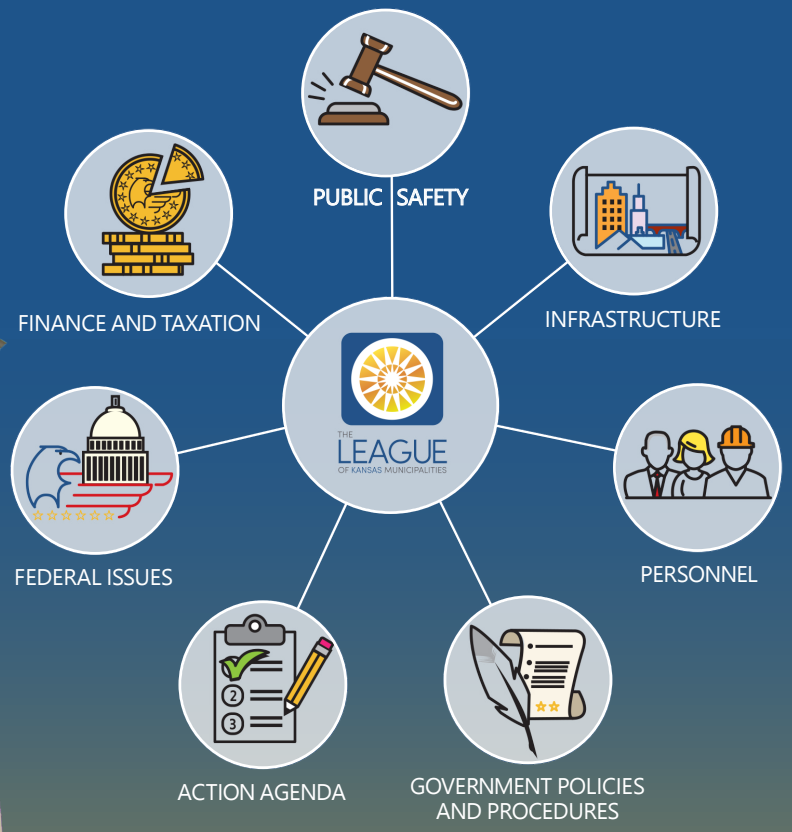
Directors
Bob Becker, Commissioner, Stockton
Thomas Brown, Mayor, McPherson
Roy Cessna, Mayor, Garden City
Branden Dross, City Manager, Herington
Tyrone Garner, Mayor, Unified Government
of Wyandotte County/Kansas City
Nick Hernandez, City Manager, Dodge City
Katie Jackson, City Attorney, Manhattan
Jenny Landers, Mayor, Otis
Amy Lange, City Manager, Concordia
Ty Lasher, City Manager, Bel Aire
Stan Luke, Mayor, Burlington
Michael Padilla, Mayor, Topeka
Christy Pyatt, City Clerk, Greensburg
Curt Skoog, Mayor, Overland Park
Austin St. John, City Administrator, Marysville
Brandon Whipple, Mayor, Wichita

Interim Executive Director
John Deardoff

ABOUT THE LEAGUE

SUPPORTING KANSAS CITIES

The League of Kansas Municipalities is a membership association that advocates on behalf of cities, offers training and guidance to city appointed and elected officials, and has a clear purpose of strengthening Kansas communities. Since 1910, the League has been a resource for cities across Kansas and has acted as a body to share ideas, facilitate communication between members and provide information on best practices in city operations.



LEGISLATIVE PRIORITIES

The prosperity of the State of Kansas is absolutely dependent upon the prosperity of our cities. Over 84% of Kansans live in an incorporated city. In an effort to promote healthy and sustainable communities, the elected and appointed city officials of Kansas hereby establish the following as our legislative priorities for 2023:

Home Rule. Consistent with the Home Rule Amendment of the Kansas Constitution approved by voters in 1960, we support local elected officials making decisions for their communities, particularly local tax and revenue decisions.

Countywide Sales and Use Taxes. Since 1977, Kansas has successfully used a city-county revenue sharing formula for the benefit of all. The existing formula benefits both city and county taxpayers and ensures there is a fair method to distribute funds that are generated primarily in cities.

Government Competition. Local governments should continue to retain local control over the services that they provide to their residents and businesses. We recognize that free markets, under normal circumstances, are the best vehicle for allocating goods and services. However, there are circumstances where the free market either does not efficiently allocate goods and services, creates externalities that endanger public safety and welfare, or simply does not provide a service. In such instances, it falls to government to respond to the will of the people to provide the good or service. In addition, local governments provide services for the sole benefit of their residents and should continue to receive tax benefits to allow those services at a low cost.

Property Taxes. We recognize in areas of the state there is a large reliance on property taxes to fund local and state government. All property taxing authorities, including cities, counties, the state, school districts, special districts, and community colleges should be equally transparent, and have to abide by the same limitations, restrictions and requirements. Any additional transparency measures should not be burdensome or costly. We encourage the state and local governments to work on making government more efficient and recognize the need to work together on innovative approaches to reduce reliance on property taxes.

Uniform Traffic Code. We support a comprehensive review and recodification of the Uniform Traffic Code.

Mental Health. We support allocating additional resources for mental health programs. Funds should be allocated for community mental health centers and additional bed space for patients with mental health issues.

Ambulance Attendants. We support allowing non-certified attendants to drive ambulances for inter- facility patient transfers with one attendant providing patient care. These staff should be trained to operate emergency vehicles. We continue to support the use of certified attendants for emergency situations.

Housing. The lack of quality housing across the state creates an impediment to growth and economic development. The League supports programs that encourage access to quality housing.

Sales Tax Revenue in STAR Bond Districts. The reduction and elimination of the state food sales tax threatens the financial success and viability of existing STAR Bond project districts that include groceries by eliminating a source of revenue pledged to repay the bonds. We support creation of a long-term funding mechanism to ensure state reimbursement of lost funds caused by the reduction and elimination of the state share of food sales tax in impacted STAR Bond districts.

Water. Access to water is paramount for the continued growth and viability of our communities. Government at all levels should aggressively pursue the conservation, protection, and development of current and future water supplies to ensure access to clean, safe, and affordable water for all Kansas residents. We support state action, in consultation with municipal providers, to address over-appropriated surface and groundwater resources.

FINANCE & TAXATION

An adequate source of revenue is necessary to fund the essential services of city government. Each city is unique in both services provided and the ability to pay for such services; maximum flexibility should be granted to local governing bodies to determine the amount and source of funding for city services.

Tax/Spending Lid. Local spending and taxing decisions are best left to the local officials representing the citizens that elected them. We strongly oppose any state-imposed limits on the taxing and spending authority of cities.

Tax Policy. The League supports the long-established philosophy of balancing revenue from income, sales, and property taxes to assure the fiscal ability of the state and local governments to provide the services citizens want and need. Changes to tax policies should not be undertaken without a full understanding of the overall impact upon all taxpayers, taxing entities, and the sources and amounts of tax revenues to be generated or eliminated by such policy changes.

Property Taxes. We recognize in areas of the state there is a large reliance on property taxes to fund local and state government. All property taxing authorities, including cities, counties, the state, school districts, special districts, and community colleges should be equally transparent and have to abide by the same limitations, restrictions and requirements. Any additional transparency measures should not be burdensome or costly. We encourage the state and local governments to work to make government more efficient and recognize the need to work together on innovative approaches to reduce reliance on property taxes.

Property Tax Exemptions. We support a broad tax base and believe the existing property tax base should be protected. We encourage the legislature to resist any proposal to further exempt any specific property classification from taxation, including industry-specific exemptions. We support the current statutory definition of machinery and equipment and the exemption should not be expanded. The legislature should actively review existing exemptions to determine if they should continue or be repealed.

Property Valuation. We support appraisals based on fair-market value as historically used in Kansas. We oppose any caps in property valuations and limitations on valuation methods that shift the property tax burden, benefiting one category of property to the detriment of all others, as unconstitutional and inequitable.

LAVTR. The state legislature, as required by Kansas statutes, should help to relieve the burden on property taxpayers by funding the Local Ad Valorem Tax Reduction (LAVTR) program.

Taxes Paid Under Protest. Due to the effect that taxes paid under protest and large property tax exemptions can have on cities, the state and the county where the city is located should be required to notify cities when taxes, including compensating use and ad valorem taxes, are paid under protest or a large tax exemption is filed so that cities have accurate data when making budgetary decisions.

Mandatory Spending. We oppose any law that requires a city spend a certain threshold to receive and maintain state dollars. All spending decisions should remain at the local level.

Countywide Sales and Use Taxes. Since 1977, Kansas has successfully used a city-county revenue sharing formula for the benefit of all. The existing formula benefits both city and county taxpayers and ensures there is a fair method to distribute funds that are generated primarily in cities.

Sales Tax. Kansas should have a broad sales tax on all goods and services. Cities should be able to impose voter-approved local sales taxes. Sales tax exemptions should be limited to those for which the benefit outweighs the tax dollars lost.

Alternative Revenue Sources. Cities should be authorized to approve alternative revenue sources in order to maintain appropriate levels of funding for the health, safety and welfare of our citizens.

Budget Timeline. The current statutory framework for the adoption of municipal budgets makes it difficult for cities to plan for budgets that must be presented to governing bodies five months before the start of the fiscal year. We support legislation to allow the adoption of City budgets by November 30.

Finance Policies. Cities should be allowed to set financial policies in-line with bond rating requirements and other generally accepted best practices for municipal management.

EMS/Hospital Funding. Municipal hospitals and emergency medical services (EMS) are challenged in meeting their communities' needs. We support the expansion of Medicaid in Kansas to allow such entities access to federal funding, helping cities maintain and provide critical services for their citizens. If the legislature fails to approve Medicaid Expansion, additional state funding needs to be made available to rural hospitals in order to retain businesses and their employees and sustain the health and lives of Kansans.

Unfunded Mandates. We oppose unfunded mandates. If the state or federal governments seek to promote particular policy objectives, such mandates should be accompanied by an appropriate level of funding.

City and County Revenue Sharing. The State Legislature should fund existing city and county revenue sharing programs as required by Kansas statutes.

Telecommunications Taxes. We support cities' continued ability to impose and collect taxes and fees on telecommunications providers.

Federal Loan Programs. We support changes to allow local governments to participate directly in federal loan programs.

Banking and Investment Restrictions. We support maximum banking and investment choices for local government. At a minimum, all cities, counties and school districts should have the same banking and investment authority the state has granted to itself.

Library Funding. We support Kansas statutes being modernized to reflect revenue neutral rate requirements when determining a public library's eligibility for state funding.

PUBLIC SAFETY

Cities play a critical role in the protection of the health and safety of the citizens of Kansas. Because mandated programs are costlier and less efficient, government at all levels should cooperate in the development of health and safety programs.

Law Enforcement and Public Safety. We believe cooperative efforts, rather than state and federal mandated requirements, are vital to the efficient and effective development of local law enforcement and public safety programs.

Asset Forfeiture. We support the use of asset forfeiture as an important component in reducing financial gains from criminal acts while providing civil due process. All assets forfeited, or the proceeds of the sale of the same, should remain with the local government that seizes the property.

Municipal Court. Municipal courts serve a vital role protecting an individual's right to equal protection under the law following arrest or detainment. We support the local control of, and judicial authority of, municipal courts. All assessed court funds under a municipal court order, other than restitution collected and payable to a third party and state assessments paid under K.S.A. 12-4117, shall be retained by the local municipality. We support municipalities' ability to set appropriate fines and fees.

Emergency 911 Services. Cities and counties should maintain local control of the 911 system and the 911 tax should continue to include both wireline and wireless communications. We support legislation providing flexibility for local governments to utilize these funds to provide emergency services. 911 funds should not be diverted by the legislature for other uses.

Emergency Management. Because cities play a crucial role in effective emergency management, implementation strategies must promote cooperative efforts between federal, state and local governments. Changes to the Emergency Management Act should consider the role of the city in responding to disasters.

Medical Charges. The cost of health care services for prisoners and individuals in custody is a growing concern for cities. We strongly believe the first person responsible for the payment of medical costs should be the individuals in custody. Another needed change, to begin addressing these costs, is to clarify that the entity charging for a crime is responsible in the event those costs cannot be recovered. We support the pooling of resources between all state and local law enforcement agencies.

Law Enforcement Discretion. We support local governments' discretion in establishing law enforcement vehicle pursuit policies and the ability of law enforcement officers to use discretion in determining when to make an arrest.

Service Animal Fraud. We recognize the important role service animals play for the disabled community. The use of such animals is being tainted by service animal fraud. We support strengthening and redefining the crime of service animal fraud to disincentivize individuals from asserting their animal is a service animal in order avoid vicious animal, exotic, livestock, or breed-specific ordinances.

Alcohol & CMB Regulation. We support the authority of cities to license and regulate alcoholic liquor and cereal malt beverage retailers and establishments. Additionally, we support changes to the common consumption statutes to allow more local control regarding the necessity of street closure.

Medical Marijuana. The legislature should carefully weigh the impact of medical marijuana on law enforcement and human resources. In addition, medical marijuana should be subject to existing state and local sales tax and cities should be able to levy their own excise fees and receive a portion of any state funds to offset the impact of medical marijuana. Also, cities should have the ability to opt-in to allowing dispensaries in their city. Kansas should only allow the cultivation and processing of medical marijuana and THC in licensed facilities and should not allow residential grow operations of any sort. In addition, Kansas should delay implementation to give time to study any issues that might result from the passage of medical marijuana legislation.

Firearms and Weapons. We support the local regulation of firearms and weapons.

Homeland Security. First responders at the local level serve as the front-line defense in the prevention and response to terrorism and other security risks. Local governments should be granted maximum flexibility and discretion over implementation of monies and strategies regarding homeland security.

Regulation. Any regulation should balance the costs to the benefit of the regulation. Existing regulations that no longer pass this balancing test should be repealed.

Cybersecurity. Organizations of every size constantly face cyber-related incidents. We encourage the State to provide collaborative discussions, training programs, and feasibility studies for the impact of cyber-attacks on cities. Cities will use information provided by the state government to determine best practices and policies for municipal implementation.

Scrap Metal. Cities are currently preempted from regulating scrap metal. We support a narrowing of this preemption so that cities can address issues at the local level.

Mental Health. We support allocating additional resources for mental health programs. Funds should be allocated for community mental health centers and additional bed space for patients with mental health issues.

INFRASTRUCTURE

Cities construct, manage, operate and maintain numerous infrastructure components that provide a high quality of life. Infrastructure involving transportation, municipal utilities, energy services, and water and environmental structures are all dependent on the ability of local officials to self-determine what's appropriate for their own communities. This self-governance relies on the expectation of cooperation from the state government and full funding as required by law under current statutory programs from both the state and federal government.

TRANSPORTATION

Connecting Links. The State should maintain KDOT's funding for connecting link programs at the FY 2020 level for cities to provide for the maintenance of state highways within city limits. We support full funding of the City Connecting Link Improvement Program (CCLIP).

City-County Highway Fund. The City-County Highway Fund is essential to maintaining local roads and bridges and should be fully funded and not be diverted for other purposes. Such funding should include the transfer of fees from the registration of out-of-state commercial vehicles, as directed by K.S.A. 9-3425i. The proceeds from any increases to the motor fuel tax rates should be allocated in accordance with current statutory provisions.

Comprehensive Transportation Program. We support full funding of the Eisenhower Legacy Transportation Program. We oppose any use of these funds to balance the State's General Fund budget. Any reduction in funding jeopardizes existing programs.

Transportation Safety. The State should work in cooperation with local governments to continue to provide safe roads and bridges within Kansas. The State should focus on all users of the transportation systems and recognize that a system that is designed for use by pedestrians, bicycles, and vehicles is safer and more economically prosperous for all Kansans.

Transportation Maintenance. Because transportation infrastructure is critical to state and local development activities, we support the continued maintenance of the transportation infrastructure in Kansas. We further support continued funding to support multimodal transportation networks, including for mass transit, biking, and walking infrastructure.

Transportation Development Districts. We support the continued ability of cities to establish transportation development districts to meet the economic development and transportation infrastructure needs in the community.

Electric Charging Station Infrastructure. We support the expansion of electric charging station infrastructure throughout the state in order to increase the pace of electric vehicle adoption and positively impact local communities.

Airport Funding. We support the continued use of state economic development dollars (EDIF funds) to enhance airport facilities and services.

Recreational Trails. We support the development of recreational trails, including rails to trails, aquatic trails, and hike-and-bike on levee trails projects, and oppose any legislation that would make such development more burdensome or costly.

Rail Service. We support existing and enhanced passenger and freight rail service in Kansas and seek a strong partnership with the state and federal government to achieve meaningful improvements.

Uniform Traffic Code. We support a comprehensive review and recodification of the Uniform Traffic Code.

Utilities

Broadband. Access to reliable broadband service is increasingly important to the economic health of Kansas cities. We support the establishment of the Broadband Deployment Grant to facilitate broadband expansion in Kansas. Guidance for the grant program and broadband-related statutes must recognize the important role local governments play in such expansion and not remove important planning and right of way authority from local governments.

Service Territory. Municipalities must retain the authority to purchase, construct, or extend the infrastructure necessary to supply the cities and their inhabitants with public utilities, including electric services. Cities should have the freedom and flexibility to grow and expand their service territories. The current statutory framework should be reviewed.

Municipal Operation. We support the ability of cities to operate municipal gas, water, electric, sewer, telecommunications, broadband, solid waste, stormwater or other utility services. We further support the ability of cities to set and control the rates for locally owned and operated utilities.

Right of First Refusal. We support municipal utilities having the ability to invest in new electric/transmission projects in order to provide reliable, affordable service to local customers. We oppose efforts prohibiting competition for transmission projects in Kansas.

Franchise Authority. We oppose any legislation restricting the current franchise authority for cities, including limits on franchise fees.

Mandates. We oppose unfunded federal and state mandates regulating the operation of municipal gas, water, electric, sewer, telecommunications, solid waste, stormwater utilities or other utility services. Any mandates passed down to cities should not be imposed without a cost-benefit analysis and should be accompanied by appropriate funding. In addition, regulations should provide for a reasonable implementation schedule.

Public Water Supply Supervision Program. We support changes to the statutory language increasing the funding stability for the Kansas Department of Health and Environment's Public Water Supply Supervision program. These changes must balance municipal cost concerns and recognize the state has a responsibility to contribute to these important public health matters. In addition, we recognize a need to update standards to meet federal clean drinking water standards.

Right-of-Way. Cities must maintain their ability to regulate the public right-of-way and recover reasonable compensation for use of the right-of-way. Kansas policy should not be dictated by overreaching federal mandates. We oppose efforts to codify, at the state level, federal directives limiting cities' powers.

Energy

Electric Utility Deregulation. Community-owned and operated municipal electric utilities make long-term power supply decisions and investments with the goal of benefiting their overall community. We support continued local control over power supply decisions.

Statewide Energy Policy. We support the development of a coordinated and comprehensive Energy Plan. Further, we support creative and cooperative implementation of renewable energy and energy efficient technologies that are environmentally sustainable and economically successful.

Energy Efficiency. Energy efficiency saves money, drives investment across all sectors of the economy, creates jobs, and reduces the environmental impact of energy use. Accordingly, we support public and private incentives to encourage energy efficiency and renewable energy.

Building Codes. We oppose any measures to preempt local building codes. Further, cities should continue to be allowed to shape local codes to incentivize net zero or net-zero ready building requirements.

Propane. We support cities' authority to protect public safety by regulating the capacity of propane units/facilities for residential or commercial purposes.

Water and Environment

Water Quality. We support a clean and safe public water supply and the protection of public health and aquatic life. We endorse regional and cooperative solutions to water quality challenges that address point and non-point source pollution while balancing municipal cost concerns.

Water Quantity. Government at all levels should aggressively pursue the conservation, protection and development of current and future municipal water supplies. We support cost-effective efforts to extend the life of reservoirs and to expand reservoir storage for use by municipal water suppliers. We support immediate state action, in consultation with municipal providers, to address over-appropriated surface and groundwater resources while respecting priority of water rights. The water rights management tools that have been developed in recent years should be modified or expanded so that they provide the same type of flexibility and authority to any water rights holder regardless of class.

Water Planning. We support increased municipal representation on the Kansas Water Authority; broad-based revenue sources and distribution for the state Water Plan Fund; and a re-evaluation of the process for adopting the annual state Water Plan Fund budget.

Infrastructure Funding. We support increased federal and state funding to assist local communities with their water, wastewater, stormwater, levee and dam infrastructure and associated security needs. In addition, we call for loan terms of up to 40 years when the useable lifespan of an improvement will exceed the term of the loan.

Stormwater Management. We endorse regional and cooperative solutions to stormwater quality and quantity challenges that address point and non-point source pollution. We further endorse state measures to incentivize and enable investment in green infrastructure (e.g., street trees, use of native plants, etc.) to support sustainable communities.

Solid Waste. The Home Rule powers of cities to dispose of and manage municipal solid waste should not be restricted. This includes local control and decision-making surrounding recycling and composting programs.

Hazardous Waste. We support a comprehensive state-local approach to provide assistance in identifying hazardous wastes and to develop programs to monitor and dispose of such wastes. We encourage state agencies to work cooperatively with local governments in the development and approval of programs to identify, monitor and dispose of hazardous waste. Further, appropriate education and training should be provided prior to the implementation of such programs.

Clean Air. We support air quality controls and a state-developed air quality plan that protects the health and safety of Kansans while balancing municipal cost concerns.

Water and Wastewater Certification. We support improved certification programs that better align the necessary skillsets for real world water and wastewater system operation with the content of the corresponding exams. We support review of water and wastewater certification to ensure validity and reliability. These certifications need to continue to be protective of the public health and environment. We encourage contracting and collaboration to help utilities acquire the knowledge, skills, abilities, and certifications needed to effectively and efficiently serve Kansas rate payers.

HUMAN RESOURCES

City employees are the foundation of effective city government. City governing bodies must have the authority to develop local personnel policies to attract and maintain a high-quality public workforce.

Workers' Compensation. We support reasonable and just benefits for employees injured within the course and scope of their public employment, and effective enforcement of the Workers' Compensation Act.

KPERS & KP&F. We support the full funding of the Kansas Public Employees Retirement System (KPERS) and Kansas Police & Fire (KP&F) retirement systems and honoring all commitments that have been made by KPERS and KP&F. The local KPERS system should remain separate from the state and school retirement system. Changes to the KPERS system should not impact a city's ability to hire and retain qualified public employees, including any undue burden on hiring KPERS retirees, or reduce benefits promised to employees.

Public Employer-Employee Relations Act (PEERA)/Collective Bargaining. We oppose any federal or state mandate requiring collective bargaining at the local level.

Personnel Mandates. We oppose state and federal mandates involving public personnel.

Weapons and Firearms. We support the ability of local governments to set policies regarding the carrying of weapons and firearms by municipal employees while they are engaged in their work.

Prevailing Wage. We oppose federal and state mandates requiring or prohibiting the payment of prevailing wage.

Health Care & Other Benefits. We support cooperation and active study of ways to relieve the financial burden of securing employee health care coverage, including the continued option for cities to participate in the state health care program.

Unemployment. We support reasonable and just benefits for employees who are qualified individuals under the Kansas Employment Security Law. We oppose the finding that volunteers, who are paid a nominal stipend, are considered a qualified individual. We support legislation to define "volunteer" in Kansas employment law such that it is consistent with federal law.

Ambulance Attendants. We support allowing non-certified attendants to drive ambulances for inter-facility patient transfers with one attendant providing patient care. These staff should be trained to operate emergency vehicles. We continue to support the use of certified attendants for emergency situations.

GOVERNMENT POLICIES & PROCEDURES

Abiding by the longstanding constitutional Home Rule authority of Kansas cities, there is a need to ensure local governments maintain autonomy and the authority of self-governance to create a safe and sustainable quality of life for residents. In an effort to construct appropriate policies for their community, such as economic and community development initiatives, cities should be committed to implementing procedures which ensure ethical and transparent governance from their officials.

Home Rule. Consistent with the Home Rule Amendment of the Kansas Constitution approved by voters in 1960, we support local elected city officials making decisions for their communities, particularly local tax and revenue decisions.

Government Competition. Local governments should continue to retain local control over the services that they provide to their residents and businesses. We recognize that free markets, under normal circumstances, are the best vehicle for allocating goods and services. However, there are circumstances where the free market either does not efficiently allocate goods and services, creates externalities that endanger public safety and welfare, or simply does not provide a service. In such instances, so it falls to government to respond to the will of the people to provide the good or service. In addition, local governments provide services for the sole benefit of their residents and should continue to receive tax benefits to allow those services at a low cost.

Protection of the First Amendment. The right of the people through their democratically elected and appointed officials to petition and speak to their government officials shall not be abridged. We support cities' First Amendment right of freedom of association to work together to accomplish common goals.

Police Powers. We support the authority of cities to regulate in order to protect the health, safety, and welfare of the public.

Non-Discrimination. We oppose discrimination against any person by reason of their race, color, religion, sex (including pregnancy, gender identity, or sexual orientation), age, national origin, ancestry, disability, military/veteran status, or genetic information.

City Elections. We oppose any action by the state or federal government that would threaten the ability of cities to hold non-partisan elections.

Filing for Office. In order to encourage a higher number of candidates to file for office, we support the filing location for city elections being available in the city clerk's office. The state should evaluate remote filing options in the future.

Filling of Vacancies. The current statutes for filling vacancies have served the state well for over fifty years. Vacancy filling should remain the responsibility of local governing bodies made up of duly elected officials.

Annexation. The ability of cities to grow is inherent in the economic growth and development of the state. Therefore, we support local jurisdictions' ability to make their own decisions regarding orderly growth through annexation.

Sign Regulation. We support the authority of local government to regulate signs in compliance with federal law.

Public Property & Rights-of-Way. We support the ability of cities to control and manage public property and rights-of-way and to impose franchise or use fees on those entities that utilize the rights-of-way.

Eminent Domain. Eminent domain is a fundamental municipal power. The authority to acquire property through condemnation proceedings is critical for public improvement projects. We support increased flexibility for local governments to use eminent domain for economic development purposes, including blight remediation, without seeking legislative approval.

Governmental Immunity. We support continued immunity for cities from tort liability and legislation strengthening the Kansas Torts Claims Act.

Interlocal Cooperation. We support the principle of voluntary cooperation among all levels of government.

City/County Consolidation. We support processes for local consolidation without undue statutory barriers. We further believe the issue of consolidation is an inherently local one and the voters should be allowed to determine whether consolidation with another unit of government occurs.

Summary Publication of Resolutions. We support legislation allowing cities to publish a summary of a resolution, with the full text of any resolution posted on the city's official website, in lieu of publication of the full resolution.

Private Cemetery Liability. We support legislation removing the requirement for cities to care for and maintain formerly private cemeteries that have been dissolved.

Community Development

Housing. The lack of quality housing across the state creates an impediment to growth and economic development. The League supports programs that encourage access to quality housing, including but not limited to, the Housing Investor Tax Credit Act, the Kansas Affordable Housing Tax Credit Act, the Kansas Rural Home Loan Guarantee Act, guaranteeing appraisals in rural counties, the Historic Kansas Act, and the Kansas Rural Housing Incentive District Act.

Rural Housing Incentive Loan Fund. We support the creation of a State low interest revolving loan fund to finance development in Rural Housing Incentive Districts.

Abandoned and Blighted Housing. We support legislation that streamlines and expedites the process for local governments, neighborhood organizations and private businesses to deal with the blight of abandoned, nuisance, foreclosed housing, and commercial structures to protect the rights and property values of surrounding property owners.

Housing-Rental Inspections. We support giving cities the authority to require inspections of rental housing for the safety of tenants and to protect the rights and property values of surrounding property owners.

Revitalization Tools. We support the continued use of the Neighborhood Revitalization Act, the Downtown Redevelopment Act, the Transportation Development District Act and the Community Improvement District Act to promote local neighborhood development.

Economic Development Partnerships. State and regional partnerships are vital to the sustained growth of the state and should be supported by policy and with adequate funding.

Tax Abatements. We support the authority of cities to offer tax abatements to encourage business investment in their communities.

Tax Increment Financing (TIF). We support the continued use of TIF to promote economic development. TIF laws should allow maximum flexibility and allow for efficient use by communities.

STAR Bonds. We support the ability of cities to utilize STAR bonds to promote economic development in their communities.

Land Use and Zoning. We support the ability of local officials to make land use and zoning decisions within their community, including decisions about the location, placement, size, appearance and siting of transmission and receiving facilities and any other communications facilities.

Relationships Are the Cornerstone of Effective Advocacy

1 Make Contact Prior to Legislative Session

- Eggs & Issues, town halls, etc.
- Communicate the city's agenda and priorities.
- Invite them to a League Legislative Dinner.

2 Follow the Legislative Session

- *League News*
- List servs
- News media
- *www.lkm.org*

3 Participate in Local Government Day January 25, 2023

- Make appointments to visit with your legislators in the morning.
- Invite them to the League reception.

4 Make Contact During Legislative Session

- Watch for alerts about key bills/issues.
- Follow the issue, not the bill number.
- Be specific; give your city's unique insight into the legislation.
- Don't waste time and political capital on meaningless bills that have no chance of becoming law.

5 Make Contact Following the Legislative Session

- Thank your legislator for their hard work.
- Be honest and express concern when bills negatively affect your city.

- Know your legislators on a first-name basis
- Always be respectful and avoid personal attacks
- Ask your legislator how he or she prefers to be contacted (email, phone, texts, etc.)
- Share your contact information
- Follow legislators' communications
- Sign up for emailed newsletters
- Follow legislators' Twitter accounts
- Send legislators your newsletter/updates

Tourism. We support cooperative ventures between the state and local government in Kansas to promote tourism as an industry that is vital to growth and development all across the state.

Tax Credits. We support the continued availability of tax credits as a tool for economic development.

Sales Tax Revenue in STAR Bond Districts. The reduction and elimination of the state food sales tax threatens the financial success and viability of existing STAR Bond project districts that include groceries by eliminating a source of revenue pledged to repay the bonds. We support creation of a long-term funding mechanism to ensure state reimbursement of lost funds caused by the reduction and elimination of the state share of food sales tax in impacted STAR Bond districts.

Transparency in Government

Open Meetings. All levels of government should be subject to the same open meetings requirements. These laws should not be unduly burdensome.

Open Records. All levels of government should be subject to the same open records requirements. State laws governing open records should balance the public's right of access, with the necessity of protecting the privacy of individual citizens, and the ability of public agencies to conduct their essential business functions. We support a city's ability to recoup reasonable costs associated with open records requests.

Intergovernmental Dialogue. Communication between all levels of government is critical to the successful delivery of public services to the citizens of Kansas. Representatives from cities provide facts and information crucial to intergovernmental relations, and as such, should have the same rights and responsibilities as private interest lobbyists. We support current law regarding the use of state and local public moneys to provide information and advocate on behalf of our cities and citizens. Any reporting system should not increase the administrative burden on local governments.

Body Cameras. We support the ability of local governments to determine when and how body cameras will be used by law enforcement officers. We support the establishment of reasonable regulations concerning public access to recordings, balancing the needs of law enforcement and the individuals whose images are captured in the recordings.

FEDERAL ISSUES

Local officials welcome the opportunity to work together with federal and state officials on policies impacting local communities. Federal agencies should research and understand the fiscal impact on local units of government when implementing new guidelines or laws. Cities manage their finances, infrastructure and personnel more effectively without unfunded federal mandates.

Local Control. We support local elected officials making decisions for their communities. Though the Home Rule powers granted cities in the Kansas Constitution do not affect federal powers, we call on our representatives and federal agencies to look at federal legislation and regulations with local control in mind.

Police Reform. We support the work of our local police departments to make our communities safer for all. Any federal or state proposals for police reform should be focused on providing resources for local law enforcement, incentivizing transparency, and encouraging good police practices, including equity and justice.

Federal Recovery Money for Cities. Federal funding from the CARES Act and the American Rescue Plan Act have been critical for local governments to both respond to the negative impacts of the pandemic and support the economic recovery. As cities work on plans to best help their residents, Congress should not move to take back these funds.

Federal Bipartisan Infastructure Law (BIL). Federal funding from the Bipartisan Infrastructure Law (BIL) will be important for local governments to support critical city services and economic recovery. The League supports funding to municipal programs that enhance a better quality of life for all residents.

Advanced Refunding of Bonds. In order to allow cities to quickly recover from this current recession, we urge Congress to allow cities to issue tax exempt advance refunding municipal bonds. Cities refinancing bonds will be able to free much needed cash flow to reduce taxes or create capital investments.

Community Development Block Grants (CDBG). We support continued funding for Community Development Block Grants, Community Service Block Grants and HOME Grants. These programs' funding is an essential component of cities' strategies to fund critical community services and infrastructure needs.

Municipal Bonds. We support the removal or modification of overly burdensome and costly restrictions affecting the issuance of municipal bonds. Further, we support the continued tax-exempt status for municipal bonds.

Broadband Deployment & Municipal Oversight. Access to reliable broadband service is increasingly important to the economic health of Kansas cities. However, federal action via legislation or orders from federal agencies must recognize the key role local governments play in such expansion, and it must not remove important planning and right of way authority from local governments. Cities must be afforded the continued right to address safety, health and welfare for both their citizens and other entities with valuable infrastructure in the right of way. In addition, the right of way serves as an important resource for citizens, and the right to offset costs of management and levy taxes should not be limited.

Energy Spikes. We support federal review and investigation of the extraordinary energy price spikes seen throughout the Midwest in Winter 2021. Based on the information gathered, we encourage Congress and federal, regional and state agencies to make appropriate changes in laws and regulations governing natural gas and electricity production and sales in order to promote stability in energy prices.

Immigration Reform. We support a federal solution to immigration reform. Any immigration policy should not negatively impact local governments with additional law enforcement or administrative burdens. We support Congress continuing assistance to under-served areas with large immigrant populations, who are attempting to remain in compliance with the United States Citizenship and Immigration Services.

Medicare Reimbursement Rates. We encourage the federal government to establish reasonable reimbursement rates.

Transportation. We support consistent federal funding of the nation's multimodal transportation with increased support to critical regional infrastructure priorities.

Every Day Counts Initiative. We support the U.S. Department of Transportation's Every Day Counts initiative to enhance roadway safety, integrate automation, reduce traffic congestion, and shorten project delivery processes in order to save time, money, and resources.

Stormwater. We support simple and flexible federal regulations of municipal stormwater run-off that allow for orderly and cost-effective development. The federal government should appropriate funds for research and for the development of pilot projects on stormwater management.

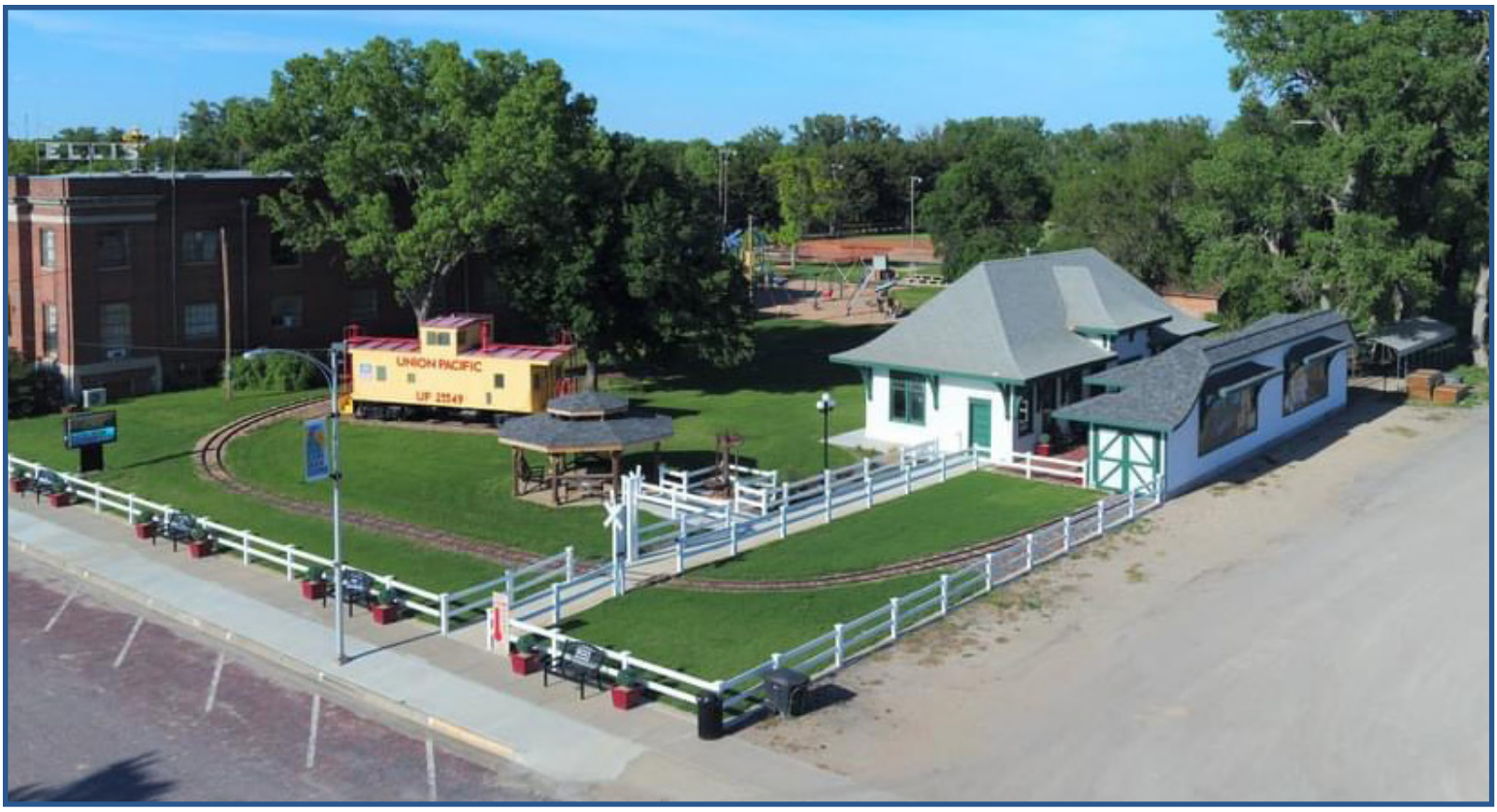
Water Quality. We support a clean and safe public water supply and the protection of public health and aquatic life. We endorse federal investments and cooperative solutions that address water quality challenges and take into account municipal cost concerns.

Hazardous Waste. We urge federal agencies to work cooperatively with state and local governments in the development and approval of programs to identify, monitor and dispose of hazardous waste. Appropriate education and training should be provided prior to the implementation of such programs.

Telecommunications Data. We support the continued ability of public safety officials to access data from telecommunications companies in times of emergencies to assist investigations.

Rail Service. We support existing and enhanced passenger and freight rail service in Kansas. In many cases, this service is the only affordable alternative to highway transportation in communities. Changes to Amtrak service should not sacrifice this alternative nor the investments in the service by cities.

Railroad Quiet Zones. We urge Congress to reexamine the Train Horn Rule with the Federal Railroad Administration. Rules for implementing quiet zones should be less burdensome and allow for differences in community circumstances while continuing to protect public safety. We also request Congress provide federal funds for the purpose of establishing quiet zones and consider new technology which may enhance the safety of quiet zones while minimizing or eliminating train horn noise.



City Facts

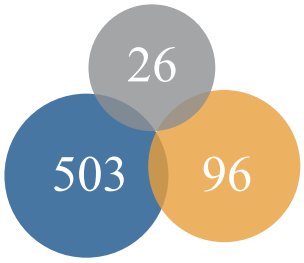
Total Number of Incorporated Cities = 625

Total Population of the State = 2,913,805

Total City Population = 2,420,761

83.08% of the state's population resides in an incorporated city.

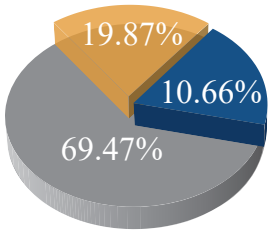
Number of Cities



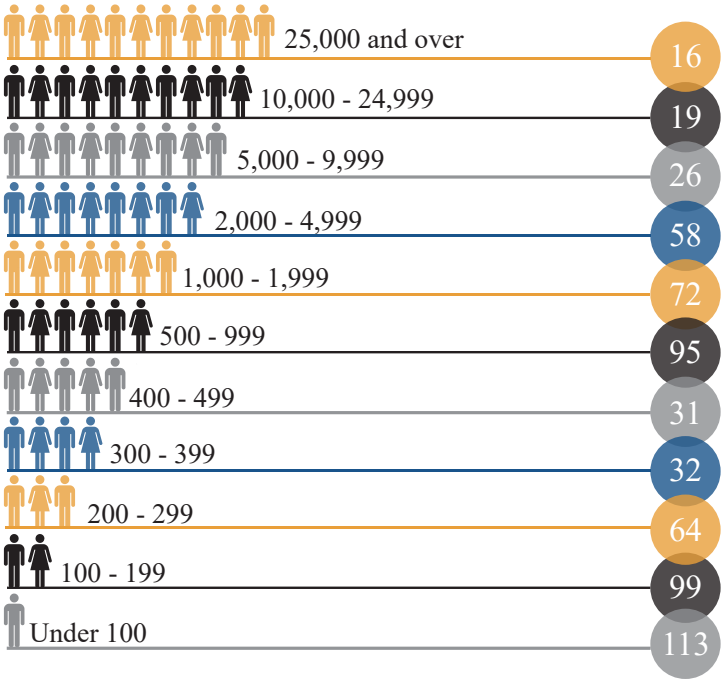
Class of City

- Cities of the First Class
- Cities of the Second Class
- Cities of the Third Class

% of Total City Population



Population Group / Number of Cities



Form of Govenment	Number of Cities
Mayor-Council	554
Commission	10
Commission-Manager	37
Mayor-Council-Manager	20
Modified Mayor-Council	2
Consolidated City-County	2

LEAGUE LEGISLATIVE STAFF

Spencer Duncan
Director of Government Affairs
sduncan@lkm.org
(20th Session)

John Goodyear
General Counsel
jgoodyear@lkm.org
(5th Session)

Wendi Stark
Research Associate
wstark@lkm.org
(3rd Session)

Policy Development

This *Statement of Municipal Policy* was developed by city officials through the League's policy committees. There are three policy committees that are focused in specific areas: Finance & Taxation, Public Officers & Employees, and Utilities & Environment. The fourth committee, the Legislative Policy Committee, reviews the entire *Statement* and the recommendations of the three specific committees. The *Statement* is then submitted to the Governing Body and is ultimately adopted by the Convention of Voting Delegates at the League's Annual Conference. For more information about the League policy committees or process, check out the League website at *www.lkm.org* or contact us at (785) 354-9565.

The League Advocates for Cities

The League advocates on our members' behalf to sponsor and encourage beneficial legislation for cities and oppose legislation that would be detrimental to our members' interest.

The League Offers Guidance

Member cities can contact the League with a legal inquiry or question. Additionally, we provide sample ordinances and guidance on legislation and rulemaking from both the state and federal level.

Communications & Outreach

Since 1914, the League has published the *Kansas Government Journal*, a publication for city, county and state government officials that is printed ten times a year. The League publishes a weekly e-newsletter, researches municipal issues affecting Kansas communities and develops programs for cities to use to engage their residents and reinforce the importance of civic engagement.

Municipal Training & Education

The League offers members a variety of education and training opportunities throughout the year. Our annual conference brings together leaders in municipal government to offer innovative ideas for cities. Throughout the year, the League works with professionals in the field to train, inspire and solve problems facing municipal leaders at all levels. The League offers over 30 manuals and publications on municipal issues ranging from finance and budgeting, personnel, planning, economic development, open meetings and open records to traffic ordinances.

Contract Services

The League offers members a competitive rate to have the League engage in contract services, which include codification services, executive personnel search program (LEAPS) and personnel policies.

THE
LEAGUE
OF KANSAS MUNICIPALITIES

300 SW 8th Avenue, Suite 100
Topeka, KS 66603
(785)354.9565
www.lkm.org

A Publication of The League of Kansas Municipalities
October, 2023

ADMINISTRATION

Council Committee of the Whole Meeting Date: November 21, 2022
Council Meeting Date: December 5, 2022

COU2022-75: Consider Potential Adjustments to Property Tax Rebate Program

RECOMMENDATION

Consider modifying income guidelines for year two of the property tax rebate program to provide City property tax refunds to a larger group of eligible homeowners.

BACKGROUND

In 2022, the Governing Body voted to allocate $20,000 from the City's general fund to a property tax rebate program designed to alleviate some of the burden of home ownership due to rising property values. The program offers financial assistance in the form of a property tax relief grant to low-income residents in need. Like similar programs in other Johnson County cities, staff used the U.S. Department of Housing and Urban Development's "Very Low Income" guidelines to determine eligibility. Only property owners that are Prairie Village residents, are current on payment of their property taxes and special assessments, live in their own home, and meet the income guidelines are eligible for the program.

The application period opened on January 10, 2022. Over the subsequent months, a total of 33 applications were received. Staff was able to refund $14,015.94 of the allocated money to 28 homeowners. Five applicants did not qualify for refunds because their income did not meet the program's limits.

Since nearly $6,000.00 of the budgeted funds remain unused, staff has considered modifying the program to increase eligibility among residents in 2023. One way to accomplish this would be to change the maximum income allowed to qualify for the program. Along with the "very low income" guidelines, which represent 50% of the area median family income (MFI), HUD also provides "low income" calculations, which represent 80% of the MFI. To serve more residents, the income limits of the program could be raised from "very low" to "low", or a different set of values could be used.

The chart below shows income limits for 50% of the area MFI ("very low"), 80% of the area MFI ("low"), and a third option showing income at 65% of the MFI:

HUD Income Limits - FY 2021
Kansas City Metro Area Median Family Income: $86,600

Household Size	Very Low (50% MFI)	Low (80% MFI)	Option 3 (65% MFI)
1	$30,350	$48,550	$39,450
2	$34,650	$55,450	$45,050
3	$39,000	$62,400	$50,700
4	$43,300	$69,300	$56,300
5	$46,800	$74,850	$60,825
6	$50,250	$80,400	$65,325
7	$53,700	$85,950	$69,825
8+	$57,200	$91,500	$74,350

Staff recommends proceeding with option #3 for 2023, and reevaluating program performance at the end of the year. If the governing body decides to increase income limits, the planned $20,000 budget for the program in 2023 could be increased to $30,000 if a significant number of applications are received.

PREPARED BY

Adam Geffert
City Clerk
Date: November 16, 2022

MAYOR'S ANNOUNCEMENTS
Monday, November 21, 2022

Thanksgiving observed – City offices closed	11/24/2022 – 11/25/2022	
Holiday tree lighting	12/01/2022	6:00 p.m.
Gingerbread house decorating party	12/04/2022	1:30 p.m.
City Council	12/05/2022	6:00 p.m.
Planning Commission	12/06/2022	6:00 p.m.

==========

INFORMATIONAL ITEMS
November 21, 2022

1. Ad Hoc Civic Center Committee meeting minutes – May 19, 2022
2. Arts Council meeting minutes – September 10, 2022
3. Diversity Committee meeting minutes – October 13, 2022

Civic Center Ad Hoc Committee
Prairie Village City Hall
7700 Mission Road, Prairie Village, KS 66208
May 19, 2022 | 4:00 p.m.

Meeting Minutes

I. Introductions

Ian Graves welcomed the committee and members of the public to the meeting. Committee members in attendance: Chair Ian Graves; Vice-Chair Bonnie Limbird; City Council Representative Dave Robinson; Parks and Recreation Committee representative Randy Knight; citizen appointee Lauren Ozburn; citizen appointee James Senter. Also in attendance: Mayor Eric Mikkelson, Wes Jordan, City Administrator; Jamie Robichaud, Deputy City Administrator; Nickie Lee, Finance Director; Keith Bredehoeft, Public Works Director; Meghan Buum, Assistant City Administrator; Tim Schwartzkopf, Assistant City Administrator

II. Approval of Meeting Minutes – March 30, 2022

James Senter moved to approve the minutes. The motion was seconded by Lauren Ozburn and approved unanimously.

III. Update from YMCA Community Meeting/Request to Consider Partnership – Mark Hulet

Mark Hulet recapped the YMCA community meeting held on May 12 at Meadowbrook Park Clubhouse. The meeting was attended by 178 attendees, the majority of whom were Prairie Village residents and Y members. Following the meeting, an informal survey was sent out and returned by approximately 80 attendees. Results were favorable to a potential partnership between the City and the Y.

Mr. Hulet would like the committee to consider formalizing the City's and the Y's collaboration through a Memorandum of Understanding. Mr. Graves responded that this discussion has gained traction in the community that might lead to future partnerships through Johnson County or others, and any agreement would need to remain flexible. Bonnie Limbird asked Mr. Hulet about existing partnerships or overlap between Johnson County Parks and Recreation and the Y. Mr. Hulet responded that more research may have to be done in that area. Committee members discussed the County's children's services department, after care programs, and 50+ programs as well as the importance of complimentary rather than competitive services.

Wes Jordan recommends that staff have the ability to explore opportunities with not only the Y but also Johnson County, the Shawnee Mission School District, or others.

Mr. Graves moved to direct staff to do due diligence and explore an MOU with the Y and other potential partners, such as the County and School District, to bring forward to City Council for consideration. Ms. Limbird seconded the motion and it passed unanimously.

IV. Consider Updated Market Sustainability Research Proposal – Ian Graves

Mr. Graves stated the purpose of an updated survey is to authenticate the results of the 2019 survey in a post-COVID environment to gauge community interest prior to investing a significant amount of staff time on this project. Mr. Jordan stated that Wiese recommended an almost exact duplicate of the survey, minus the questions regarding the Johnson County Library. While the library is still a potential partner, they have a different timeline and funding source, which makes the survey results less relevant to them. He outlined various costs and proposals provided by Wiese.

Ms. Limbird stated her desire to move forward with the $27,500 option to understand if the community pulse has shifted. Mr. Hulet stated that if the survey is approved expediently, survey results could be expected back in late August or early September. Mayor Mikkelson asked Mr. Hulet if the Y would be a financial partner in the survey. Mr. Hulet stated that the Y would be willing to share the costs of the survey should an MOU be put in place.

Mr. Graves moved to recommend staff present a proposal to the City Council for a survey study at the $27,500 level, as well as the proposed cost for postcard campaign for an informal internet survey. Ms. Limbird seconded the motion and it passed unanimously.

V. General Discussion – Ian Graves

Mr. Graves stated he continues to hear from residents that a community center concept is something that they desire to see in the City. He shared his hope to see vibrant community spaces continue to have a place in Prairie Village. He opened the meeting for comment from the ad-hoc committee.

Mr. Graves asked Mr. Jordan what steps needed to be taken prior to another committee meeting. Mr. Jordan stated the committee will need to outline next steps should the survey results return positive results, including concept design, establishing a proposed budget, and public input.

Ms. Ozburn stated that she'd like to see the committee begin to prepare a community engagement plan, pending the survey results. Mr. Graves stated that the committee could plan next steps based on various potential outcomes of the survey. Mr. Jordan suggested a meeting at some point following the June 22 City Council meeting to allow staff time to work through the MOU and survey proposals.

Mr. Graves moved to adjourn the meeting. Ms. Limbird seconded the motion and it passed unanimously. The meeting adjourned at 5:12 p.m.

PRAIRIE VILLAGE ARTS COUNCIL | MEETING MINUTES
MPR, City Hall
Friday, September 9, 2022 4:00 PM

BUSINESS MEETING

Bonnie Limbird called the meeting to order at 5:24 pm. Council members present were Trudy Williams, Inga Selders, Bonnie Limbird, and Abby Margariel. Not in attendance: Jessie Cartwright and Laurel Thomas.. (We are currently at a committee size of seven.) Staff member, Nickie Lee, was also in attendance.

Abby and Inga moved and seconded respectively to approve the **Agenda.** The agenda was approved unanimously.

Public Participation none

Bonnie recorded these minutes.

Inga moved to approve the **Consent Agenda.** A second is not required for consent agenda. The Consent Agenda was unanimously approved with the modification of removing Trudy's name from the "attended" list on the meeting summary.

Bonnie and Inga gave a **City Council Update.** Bonnie and Inga report on recent public happenings with the Ad Hoc Housing and Diversity committees

Current Year Financial Update: No real movement since last update. November's report will include final State of the Arts costs.

Old Business:
none

New Business:
Consider **approving the mileage cost for SotA 2022 juror from Russell, KS** of $310. Bonnie explained that Shannon Trevethan came from Russell (247 mi each way) to view our show in person for the final awards, and we haven't previously (or in a while) had out of town jurors come to judge in person, so this either hasn't come up before or it has fallen off the radar. The $310 was calculated using the 2022 standard mileage rate at 247 miles times round-trip. The committee was in full agreement that we should do this, and were so thankful for her time. Inga made the motion, and Abby seconded it. No further discussion. Approved unanimously.

The meeting was adjourned at 4:37 PM.

PLANNING COMMITTEE AS A WHOLE

EVENT REPORTS

Sept/Oct - State of the Arts 2022 @RGE, winners travel to MBPC in Oct - Bonnie & Shelly
Shelly led the install which went until about 2:00-ish even with outside volunteers. Several prospective committee members attended to help also, McKay Stangler, Reese Naftel, and Justin Begnaud. All have followed up with continued interest. Abby thought McKay would be a great addition. She didn't get a chance to chat much with Justin or Reese. Bonnie will follow up with Shelly to get her thoughts, then Bonnie and Inga will set up times to sit down with each of the gentlemen to talk more.

Additionally, we might consider scheduling SotA to NOT fall the same weekend as JazzFest going forward. This was the first time we held the reception in September instead of October, and it did create a lot of work and extra coordination for City staff. Once we move our receptions to Wednesdays it may be even less of an issue. Abby will also check if the Westport Art Fair has their 2023 date set yet, because we lost several of our artist attendees at the reception due to the first night of the Fair.

The juror was here this week to award the cash prizes, but couldn't stay due to family travel and dog care issues. She put together a beautiful show, though, and she may participate in a gallery show here next year if it works out.

Barb has cut all the checks and printed all the certificates, except for People's Choice since that is TBD still.

PLANNING AHEAD

Sep 10th - JazzFest - Shelly

- Shelly is working on the backdrop and will bring it and the blow-up instruments to the booth Saturday.
- Trudy is doing setup of the booth, so Bonnie will get all of the supplies to her.

Nov/Dec – Stemp/Nye/Charpentier

- Shelly and Laurel are still coordinating.

MARKETING

- KCUR spots for SotA ran this week. Bonnie didn't hear any of them this time around.
- Nancy wrote a blog post about the PVAC+Images show at Meadowbrook, so that went out in the PVAC newsletter this week. She also is working on one for SotA with the winners and reception info.

ONGOING/FUTURE MEETING ISSUES

- New Volunteers - Bonnie had a casual coffee with a personal friend about possibly joining PVAC. She is a current member of GuildIt and already very involved in the art community. She also is a marketing professional and could help us with our newsletter and social media. She is going to think about it over the next month or so. Bonnie will follow up with her before our November meeting.

The Planning Committee as a Whole meeting ended around 5:15 PM.

END

Diversity Committee Meeting
October 13, 2022

In attendance: Chair Inga Selders, Vice-Chair Cole Robinson, John McKinney, George Williams, Dennis Solis, Karen Heath, Chi Nyugen, Melissa Brown

Approval of the agenda- 1st George, 2nd Melissa - passes unanimously

Chair Remarks - PV Seen - huge success, thank you to Etienne, Chi and Hazel

Approval of meeting minutes - 1st John, 2nd George - all approve, Melissa abstain

Civil Service Board - George- Oct 27th meeting for interviews
Citizens Advisory Board - George - November 3rd

PV Seen - Chi - Success at Porter Park.. 5 stations were set up with different themes. Each station was inclusive for all kids. Well-received and children had fun at different sensory areas. Also had a ball pit. Sensory pool with 50,000 Orbeezs in it. Approximately 30 attendees. Learning opportunity around promotion - need to get into schools sooner so that folks can get it on their calendar.

MLK Celebration - George - Starting to put together speakers and deciding on theme

Interpretive Panel Update - No update

PV History Page Update - Making progress and collaborating. Draft is beginning to form. Melissa - is this the right time to push this forward?

Village Voice/ Social Media Update - no updates

Old business

Discussion of public comment. The following are the drafted rules for public comment:

*Public Participation will take place following “Roll Call”

* Participants will be limited to 3 minutes, with a limit of 30 minutes of public comment, first come, first serve

* Comments during Public Participation will be limited to items that related to diversity, equity and inclusion

* Participants may submit comments in writing one business day prior to the meeting. These comments will be distributed to Committee members prior to the meeting. Comments can be sent to Tim Schwartzkopf: tschwartzkopf@pvkansas.com

* Written comments will be part of the public record

* Committee members should not engage in a back and forth dialog during Public Participation. If a committee member would like to address a topic brought up during Public Participation they can move to amend the “Approval of Agenda” so that the topic can be added.

* Code of Conduct – Public Participants will be respectful of committee members. Bigoted or hateful comments will not be tolerated. Anyone in violation of this will be asked to leave the meeting.

Finalize 3rd panel topic and volunteers -

“Diversity in General” wins the vote - Prairie Village for Everyone as a possible theme
Decided to table it to November

Coffee with the Community - Do we want to get the ball rolling now?

Will the objective of the coffee be to have people get together to have different discussions of diversity? Will it be an educational opportunity where folks listen to a presentation and learn about another culture or diverse experience?

Should we tie the coffee to the town hall? Start with a larger event and then have it work down to some smaller events?

WIDE - Welcoming, inclusive, diversity and equity as a motif for these discussions

Next meeting:

Looking to move the date of the meeting to November 10 or 15th to avoid Election Day.

No additions to next meeting plans

Move to adjourn: 1st John and 2nd Chi