The public may attend the meeting in person or view it online at
http://pvkansas.com/livestreaming

COUNCIL MEETING AGENDA
CITY OF PRAIRIE VILLAGE
Council Chambers
Monday, March 4, 2024
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**

Women's History Month proclamation

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 March 4. 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 – February 20, 2024
2. Consider approval of expenditure ordinance #3035
3. Consider interlocal agreement with Johnson County for Mission Road, 63rd Street to 67th Street (MIRD0009)
4. Consider interlocal agreement with Johnson County for Nall Avenue, 75th Street to 79th Street (NAAV0007)

IX. **COMMITTEE REPORTS**

COU2024-19 Parks and Recreation Committee – Consider approval of parks branding document and park sign
Melissa Prenger

X. **MAYOR'S REPORT**

XI. **STAFF REPORTS**

XII. **OLD BUSINESS**

XIII. **NEW BUSINESS**

COU2024-17 Consider additional funding for property tax rebate program
Adam Geffert

COU2024-18 Consider 2025–2029 County Assistance Road System (CARS) program
Melissa Prenger

COU2024-20 Consider construction management services agreement with McCown Gordon for municipal complex improvements (BG510003)
Melissa Prenger

COU2024-21 Consider agreement with Project Advocates for owner's representative services for city hall improvements project (BG510003)
Melissa Prenger

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

2025 Budget goals and objectives
Jason Hannaman

XV. **ANNOUNCEMENTS**

XVI. **ADJOURNMENT**

If any individual requires special accommodations – for example, qualified interpreter, large print, reader, hearing assistance – in order to attend the meeting, please notify the City Clerk at 913-385-4616, no later than 48 hours prior to the beginning of the meeting.
If you are unable to attend this meeting, comments may be received by e-mail at cityclerk@pvkansas.com.

CITY OF PRAIRIE VILLAGE
Proclamation

Women's History Month

March 2024

Whereas, American women of every race, class, and ethnic background have made historic contributions to the growth and strength of Prairie Village, Kansas, and our nation in countless recorded and unrecorded ways; and

Whereas, American women have played and continue to play critical economic, cultural, and social roles in every sphere by constituting a significant portion of the labor force working inside and outside of the home; and

Whereas, American women have played a unique role throughout the history of the nation by providing the majority of the volunteer labor force; and

Whereas, American women were particularly important in the establishment of early charitable, philanthropic, and cultural institutions, including the Prairie Village Foundation; and

Whereas, American women of every race, class, and ethnic background served as early leaders in the forefront of every major progressive social change movement; and

Whereas, American women have served our country courageously in the military; and

Whereas, American women have been leaders, not only in securing their own rights of suffrage and equal opportunity, but also in the abolitionist movement, the emancipation movement, the industrial labor movement, the civil rights movement, and other movements, especially the peace movement, which helped create a more fair and just society for all; and

Whereas, women have played and continue to play significant roles in leadership positions in the City of Prairie Village, as staff members, elected officials, and on City committees; and

Whereas, despite these contributions, the role of American women in history has been consistently overlooked and undervalued, in the literature, teaching and study of American history,

Now, therefore, I, Eric Mikkelson, Mayor of the City of Prairie Village, do hereby proclaim that March is designated as "Women's History Month", and call upon the residents of Prairie Village to observe March as Women's History Month with appropriate programs, ceremonies, and activities.

_____

Mayor Eric Mikkelson

_____

Adam Geffert, City Clerk

PRAIRIE VILLAGE
KANSAS

CITY COUNCIL
CITY OF PRAIRIE VILLAGE
FEBRUARY 20, 2024

The City Council of Prairie Village, Kansas, met in regular session on Tuesday, February 20, at 6:00 p.m. Mayor Mikkelson presided.

ROLL CALL

Roll was called by the City Clerk with the following councilmembers in attendance: Cole Robinson, Terry O'Toole, Inga Selders, Ron Nelson, Lori Sharp, Lauren Wolf, Dave Robinson, Tyler Agniel, Greg Shelton, Ian Graves, and Terrence Gallagher. Staff present: Byron Roberson, Chief of Police; Keith Bredehoeft, Director of Public Works; City Attorney Alex Aggen, Hunter Law Group; Wes Jordan, City Administrator; Nickie Lee, Deputy City Administrator; Tim Schwartzkopf, Assistant City Administrator; Jason Hannaman, Finance Director; Adam Geffert, City Clerk.

PLEDGE OF ALLEGIANCE

APPROVAL OF AGENDA

Mr. Gallagher made a motion to approve the agenda as presented. Mr. Graves seconded the motion, which passed 11-0.

INTRODUCTION OF STUDENTS AND SCOUTS

No students or scouts were present.

PRESENTATIONS

None.

PUBLIC PARTICIPATION

- Connie Carlyle, 7200 Canterbury Street, thanked the council for its consideration of reducing pickleball noise at Windsor Park.
- Leon Patton, Ward 5, shared his thoughts on various housing proposals.

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 – February 5, 2024

2. Consider appointment of committee members
3. Consider purchase request for police vehicles

Ms. Selders requested that item #2 be removed for further discussion.

Mr. Gallagher made a motion to approve items #1 and #3 of the consent agenda. A roll call vote was taken with the following votes cast: "aye": C. Robinson, O'Toole, Selders, Nelson, Sharp, Wolf, D. Robinson, Agniel, Shelton, Graves, Gallagher. The motion passed 11-0.

Ms. Selders asked why new Planning Commission appointee Melissa Temple was selected when she did not appear to have a background in architecture, design, or land use. Mayor Mikkelson stated that not all members of the commission had experience in those fields, and added that Ms. Temple's project management experience in the technology sector would be valuable on the Planning Commission.

After further discussion, Mr. Graves made a motion to approve consent agenda #2. The motion was seconded by Mr. O'Toole and passed 11-0.

COMMITTEE REPORTS

Parks and Recreation Committee

- Consider temporary changes to the pickleball court configuration in Windsor Park

  Ms. Wolf stated that at its January 16, 2024, meeting, the City Council considered the purchase of sound dampening materials for the pickleball courts located in Windsor Park. At that time, the matter was referred back to the Parks and Recreation Committee for further discussion of possible solutions to mitigate sound and traffic impacts on the neighborhood. The committee recommended the temporary removal of three nets from the courts to observe and study the impact of a court reduction prior to making a final recommendation on permanent mitigation efforts. Ms. Wolf stated that temporarily leaving nets on only two courts was also an option.

  Mr. Bredehoeft provided background on how the court design was originally determined, and shared slides showing which courts would be temporarily closed. He noted that with six courts, it was possible for 24 people to be playing pickleball at the same time, and suggested that a potential remedy was to leave two pickleball courts and replace the other four with a tennis court. He added that if approved, the evaluation period would run through June.

  Ms. Wolf said that the Parks and Recreation Committee was in favor of keeping pickleball in some capacity at Windsor Park permanently, either through a reduced number of courts, sound mitigation, or a combination of the two.

Mr. O'Toole stated that he favored temporarily leaving nets on two pickleball courts to effectively simulate what could be put in place as a permanent solution.

Ms. Sharp stated that it would be important to survey surrounding residents during the evaluation period to determine how effective the temporary solution had been.

Mr. Gallagher made a motion to temporarily remove nets from three pickleball courts at Windsor Park per the Parks and Recreation Committee's recommendation. Mr. Dave Robinson seconded the motion.

After further discussion, Mr. Gallagher withdrew his motion. Mr. Dave Robinson made a motion to temporarily remove nets from four pickleball courts at Windsor Park, leaving two open courts. Mr. Nelson seconded the motion, which passed 11-0.

Environmental Committee

- Consider mattress removal and reuse agreement with Sleepyhead Beds

Mr. Shelton said that in 2022, the Environmental Committee piloted a mattress pickup and recycling program with Sleepyhead Beds. The collection took place in conjunction with the annual large item trash pickup with mattresses collected on the Friday before each Saturday pickup date. In the first year, 460 mattresses were diverted from the Johnson County landfill. In 2023, 279 mattresses were collected.

Mr. Shelton noted that Sleepyhead Beds was a charitable organization founded in 2010 that took gently used, donated beds and bedding and distributed them to Kansas City area children and families in need, free of charge. He added that in 2022 and 2023, mattresses that were not in reusable condition were broken down so their components could be recycled by Avenue of Life. Unfortunately, Avenue of Life was no longer offering the service, and as a result, Sleepyhead Beds would only collect mattresses in good, reusable condition moving forward. Unusable mattresses would be left for the trash hauler to collect.

Residents can let the City know if they will be putting out mattresses during the pickup and indicate how many and what condition they are in, which can be done online at http://pvkansas.com/pickupmymattress until three days before the pickup. City staff will then provide a list to Sleepyhead Beds, who will visit each of the City's four pickup areas the Friday before trash crews will be in the area on Saturdays between April 20 and May 11.

Mr. Shelton made a motion to approve the mattress removal and reuse agreement with Sleepyhead Beds in conjunction with the annual large item trash pickup. Ms. Wolf seconded the motion, which passed 11-0.

PRAIRIE VILLAGE
KANSAS

MAYOR'S REPORT

- The Mayor shared information about events that had taken place since the prior council meeting:
  - The annual Mayor's Prayer Breakfast in Kansas City, MO
  - A council work session on February 10
  - The Belinder Elementary School's "Leader in Me" program event
  - A Johnson County / Wyandotte County Mayors meeting in Lenexa
  - MARC and UCS Board meetings
- The Mayor noted the following upcoming events:
  - A public feedback session for the proposed updates to City Hall and the justice center on Tuesday, March 26.
- The Mayor also noted the following:
  - Staff continued to monitor bills in Topeka that could affect the City
  - The Chiefs' Super Bowl victory parade, and the shooting after the event that killed well-known Johnson County resident Lisa Lopez-Galvan. He noted that several Prairie Village police officers were present at the event and assisted with the evacuation of attendees within Union Station.

STAFF REPORTS

- Chief Roberson provided an overview of the asset forfeiture trust fund program and shared details of circumstances in which assets were seized by the police department.

- Mr. Jordan provided an update on the petition case, noting that briefs were due by the end of the following week, and that a resolution was unlikely for several months.

OLD BUSINESS

None.

NEW BUSINESS

COU2024-12 Consider approval of the appointment of the assistant city attorney

Mayor Mikkelson stated the city attorney request for qualifications closed on January 12, 2024, with eight responses. After applications were received, the Mayor appointed a committee to assist in the review and interview process. Committee members included councilmembers Ron Nelson and Lauren Wolf, as well as staff members Wes Jordan, Nickie Lee, Meghan Buum, Tim Schwartzkopf, and Capt. Ivan Washington.

The selection committee reviewed the applications and provided feedback to the Mayor, after which five finalists were interviewed. At the conclusion of the meeting, Lauber

Municipal Law was the committee's selection for assistant city attorney with Jeffery Deane designated as the primary attorney and Madison Touchstone in an assisting role. Mayor Mikkelson noted that the assistant city attorney generally only served when the city attorney had a conflict.

Mr. Deane and Ms. Touchstone introduced themselves and stated that they looked forward to working with the City.

Mr. Nelson made a motion to approve the appointment of Jeffrey Deane of Lauber Municipal Law as the assistant city attorney. The motion was seconded by Ms. Wolf and passed 11-0.

After approval, Mayor Mikkelson swore in Mr. Deane.

COU2024-06 Consideration of updated code of ethics

Mr. Aggen stated that the code of ethics, codified in Section 1-212 of the municipal code, had not been updated since 2008. Based on recent issues involving allegations raised under the code of ethics, City staff undertook a review of the code as well as those of neighboring municipalities in an effort to both clarify and strengthen it. He noted that the proposed updates aimed to provide clearer expectations and a broader variety of enforcement mechanisms for potential violations.

At its January 16, 2024, meeting, the Council Committee of the Whole (CCoW) requested further review of the "Late Case Interest" section. Mr. Aggen noted that the updates were meant to clarify that a former member of the governing body could always exercise their free speech and opinion, but, for one year after termination of service on the governing body, were not to act as a "principal or agent" for another person in a specific proceeding, contract, or claim which arose during the term of the former member or in which the former member personally participated.

The goal of the ethical restriction for a one-year period was to avoid an appearance of impropriety. While discussion was raised concerning longer-term restrictions, including potentially scaling based on duration of service, this change was not meant to unfairly restrict members who professionally may regularly serve as a principal or agent, but provide a minimum standard to demonstrate to citizens that members of the governing body make their decisions without thought of an immediate turnaround for potential gain.

The CCoW recommended that the proposed updates be evaluated by the newly sworn-in city attorney prior to final approval. Mr. Aggen said that he had reviewed the history of the updates and the specific language used, and felt they addressed meaningful changes resulting from concerns of the governing body and were consistent with what the law allowed. He noted that the updates also incorporated elements from other cities while still seeking to ensure a cohesive and understandable code of ethics.

Ms. Sharp asked how the late case interest provisions could be enforced once a council member no longer served. Mr. Aggen said the language was primarily meant to set an expectation of behavior that councilmembers were willing to abide by, rather than focus on enforcement or punishment. Ms. Sharp stated that she felt the section still limited the free speech of former councilmembers.

Mr. Dave Robinson asked what would happen if a complaint was received against the Mayor, city administrator or city attorney, who would typically be reviewing received complaints. Mr. Aggen said that independent counsel could be used in such situations.

Mr. Dave Robinson made a motion to approve the updates to the code of ethics as presented. The motion was seconded by Mr. Graves. A roll call vote was taken with the following votes cast: "aye": C. Robinson, O'Toole, Selders, Nelson, Wolf, D. Robinson, Agniel, Shelton, Graves, Gallagher; "nay": Sharp. The motion passed 10-1.

COU2024-13 Consider resolution clarifying the council's intent that the public have an opportunity to vote for a community center

Ms. Selders stated that she and Ms. Sharp sought to affirm that if the council were to move forward with the consideration of a community center, it would be the intent of the council for approval of the project and its funding to be decided by a public vote. She noted that City staff had developed a resolution stating this and that she and Ms. Sharp had made edits that they felt more clearly stated their objective, which was included in the meeting packet as a "red line" version.

Ms. Selders made a motion to approve the "red line" version of Resolution 2024-01, but to omit the phrase "preferably at a special election this calendar year" from the last sentence. The motion was seconded by Ms. Sharp.

Mayor Mikkelson noted that an additional edited version had been provided by Mr. Shelton to councilmembers prior to the meeting. Mr. Shelton said that he felt the version he developed was a more precise accounting of what the council was doing and what steps would come next.

Mr. Gallagher stated that the language in the proposed resolution implied that a public vote would be held even if council were to vote against pursuing the construction of a community center. Mr. Aggen noted that the sentence stating "the governing body agrees that a decision of the magnitude should be and will be decided by a public vote" suggested a vote would be held regardless of the council's decision.

Ms. Selders withdrew her original motion, and made a new motion to approve the red line version of Resolution 2024-01 with the following changes:

- Omitting of the phrase "preferably at a special election this calendar year" from the last sentence of the final recital
- Changing the phrase "Whereas, the governing body agrees that decision of this magnitude should be and will be decided by a public vote" in the fourth recital to "Whereas, the governing body desires to affirm its intention concerning whether the matter would be decided by a public vote."
- Changing the phrase "the addition of a community center shall only be decided by a public vote" in the first recital to "the addition of a community center would be intended to be decided by public vote".
- Changing the phrase "the governing body of the City of Prairie Village will put the decision regarding the funding and approval of the currently considered new community center to a public vote" to "the governing body of the City of Prairie Village intends to put the decision regarding the funding and approval of the currently considered new community center to a public vote."

The motion was seconded by Ms. Sharp. A roll call vote was taken with the following votes cast: "aye": C. Robinson, O'Toole, Selders, Sharp, D. Robinson, Agniel. "nay": Nelson, Wolf, Shelton, Graves, Gallagher. The motion passed 6-5.

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

COUNCIL COMMITTEE OF THE WHOLE
COU2024-16 2025 Budget calendar

Mr. Hannaman said that staff created a budget planning calendar each year to schedule activities that must be completed to create and develop the annual budget. He noted that the calendar contained some flexibility if needed, but that staff intended for the presented timeline to be followed. The 2025 budget calendar, similar to the 2024 calendar, would allow for the City to meet all statutory deadlines as well as submit the budget for the Government Finance Officers Association (GFOA) award program.

Mr. Hannaman noted that this would be the third year operating under the full requirements of Senate Bill 13, which included a notification to residents from the county clerk in August regarding the revenue neutral rate, if applicable. The calendar included two separate scenarios: one scenario that exceeded the revenue neutral rate and one which did not exceed the rate. Mr. Hannaman added that the revenue neutral rate was equivalent to the tax rate in mills that would generate the same property tax in dollars as the previous tax year using the current tax year's total assessed valuation. He noted that Johnson County would provide the City with the revenue neutral rate in June 2024, and that the current 2024 budget did exceed the revenue neutral rate.

Ms. Wolf made a motion to approve the 2025 budget calendar as presented. Mr. Graves seconded the motion, which passed 11-0.

Council work session discussion

Mr. Dave Robinson provided a summary of the work session that was held on February 10, and noted that discussion had been held about holding another session in the fall. Mayor Mikkelson asked councilmembers to consider whether they were interested in meeting again.

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

ANNOUNCEMENTS

Announcements were included in the council meeting packet.

ADJOURNMENT

Mayor Mikkelson declared the meeting adjourned at 8:32 p.m.

Adam Geffert
City Clerk

CITY TREASURER'S WARRANT REGISTER

DATE WARRANTS ISSUED: Warrant Register Page No. 1

March 4, 2023 **Copy of Ordinance** Ordinance Page No. ____
3035

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			
29845-29846	1/4/2024	2,790.86	
29847-29902	1/5/2024	84,852.54	
29903-29913	1/12/2024	199,378.69	
29914	1/16/2024	650.00	
29915-30045	1/22/2024	1,588,971.98	
30046-30059	1/26/2024	37,878.93	
Payroll Expenditures			
1/12/2024		469,041.10	
1/26/2024		486,205.85	
		-	
Electronic Payments			
Electronic Pmnts	1/4/2024	6,115.09	
	1/9/2024	11,514.12	
	1/10/2024	61.90	
	1/11/2024	4,682.42	
	1/16/2024	1,136.03	
	1/23/2024	2,939.26	
	1/24/2024	1,100,000.00	
	1/26/2024	623.50	
	1/27/2024	55848.67	
	1/30/2024	5,915.57	
TOTAL EXPENDITURES:			4,058,606.51
Voided Checks	Check #	(Amount)	
Suburban Lawn & Garden	29890	(118.20)	
James Ward	29913	(650.00)	
TOTAL VOIDED CHECKS:			(768.20)
GRAND TOTAL CLAIMS ORDINANCE			**4,057,838.31**

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

Passed this 4th day of March 2024.
Signed or Approved this 4th day of March 2024.

ATTEST: _____ *City Treasurer*

ATTEST: _____ *Finance Director*

Payroll Date:	1/12/2024
Total Amount ADP Debited From PV Accounts	$ 354,531.00
M,N-(K) KPERS Employer	$ 22,593.54
(K) KPERS Employee	$ 13,212.55
(G) KPERS Employee Buy Back	
(34) KPERSL Employee Life Insurance	$ 181.32
M,N-(L) 457ER Employer	$ 21,315.38
(L) DC457 Employee Contribution	$ 44,329.66
(LI) CITYPD Employer Contribution	$ 1,412.74
(457) Roth Employee Contribution	$ 5,928.02
(P) POLPEN Police Pension Employee	$ 5,536.89
	$ 469,041.10

Payroll Date:	1/26/2024
Total Amount ADP Debited From PV Accounts	$ 397,182.96
M,N-(K) KPERS Employer	$ 23,697.51
(K) KPERS Employee	$ 13,858.15
(G) KPERS Employee Buy Back	
(34) KPERSL Employee Life Insurance	$ 181.32
M,N-(L) 457ER Employer	$ 21,778.25
(L) DC457 Employee Contribution	$ 15,457.99
(LI) CITYPD Employer Contribution	$ 1,412.74
(457) Roth Employee Contribution	$ 7,226.77
(P) POLPEN Police Pension Employee	$ 5,410.16
	$ 486,205.85

Payroll Date:	
Total Amount ADP Debited From PV Accounts	
M,N-(K) KPERS Employer	
(K) KPERS Employee	
(G) KPERS Employee Buy Back	
(34) KPERSL Employee Life Insurance	
N-(L) 457ER Employer	
(L) DC457 Employee Contribution	
(I) (LI) CITYPD Employer Contribution	
(457) Roth Employee Contribution	
(P) POLPEN Police Pension Employee	
	$ -

Accounts Payable

Checks by Date - Summary by Check Date



Check No	Vendor No	Vendor Name	Check Date	Void Checks	Check Amount
29845	2723	Insight Public Sector Inc	01/04/2024	0.00	2,387.54
29846	3515	Wasabi Holding Inc.	01/04/2024	0.00	403.32
			Total for 1/4/2024:	0.00	2,790.86
ACH	311	ADP Electronic Debit	01/05/2024	0.00	6,115.09
29847	78	Affinis Corp	01/05/2024	0.00	2,413.27
29848	2265	All City Management Services Inc	01/05/2024	0.00	2,608.20
29849	1618	Arrowhead Scientific Inc	01/05/2024	0.00	1,063.25
29850	300	Athco	01/05/2024	0.00	2,200.00
29851	3089	Bob Allen Ford Inc	01/05/2024	0.00	166.32
29852	790	Cellco Partnership	01/05/2024	0.00	288.77
29853	3110	City Wide Maintenance Company Inc	01/05/2024	0.00	9,985.00
29854	3719	CuraLinc LLC	01/05/2024	0.00	1,930.04
29855	2007	Michelle DeCicco	01/05/2024	0.00	1,461.00
29856	158	Delta Dental of Kansas	01/05/2024	0.00	6,247.51
29857	1131	Disko Promotions Inc	01/05/2024	0.00	495.02
29858	245	Easy Ice LLC	01/05/2024	0.00	245.25
29859	2874	EE Reimbursement	01/05/2024	0.00	152.73
29860	256	Electronic Technology Inc	01/05/2024	0.00	760.80
29861	3695	GHA Technologies Inc	01/05/2024	0.00	250.00
29862	384	GT Distributors	01/05/2024	0.00	81.00
29863	2129	Imaging Office Systems Inc	01/05/2024	0.00	128.75
29864	3725	Infinity Signs	01/05/2024	0.00	384.00
29865	8	Information Network of Kansas	01/05/2024	0.00	185.40
29866	3710	Integrated Opening Solutions, LLC	01/05/2024	0.00	4,336.80
29867	2316	Integrity Locating Services LLC	01/05/2024	0.00	6,265.00
29868	3472	J Webb Inc	01/05/2024	0.00	47.50
29869	66	KA-Comm Inc	01/05/2024	0.00	115.60
29870	1168	Kaw Valley Engineering Inc	01/05/2024	0.00	360.00
29871	258	Key Equipment & Supply Co	01/05/2024	0.00	8,670.85
29872	3506	Kimley-Horn and Associates Inc	01/05/2024	0.00	4,200.00
29873	205	Lawson Products	01/05/2024	0.00	98.01
29874	213	Legal Record	01/05/2024	0.00	37.51
29875	1608	Lightning Grand Services Inc	01/05/2024	0.00	433.45
29876	3302	Linde Gas & Equipment inc	01/05/2024	0.00	79.49
29877	2039	MJV-A LLC	01/05/2024	0.00	41.00
29878	281	Motorola Inc	01/05/2024	0.00	855.40
29879	100	O'Dell Service Company Inc	01/05/2024	0.00	515.99
29880	808	Otis Elevator Co	01/05/2024	0.00	5,501.04
29881	190	Pitney Bowes Lease	01/05/2024	0.00	117.00
29882	2744	Pro Circuit Inc	01/05/2024	0.00	1,124.00
29883	3545	Quality Plumbing Inc	01/05/2024	0.00	3,019.04
29884	3726	Brian Rathsam	01/05/2024	0.00	192.00
29885	1007	Rejis Commission	01/05/2024	0.00	2,796.14
29886	3727	RLS Architechs	01/05/2024	0.00	230.50
29887	73	SBCO	01/05/2024	0.00	2,366.50

Check No	Vendor No	Vendor Name	Check Date		Void Checks	Check Amount
29888	72	Staples Business Advantage	01/05/2024		0.00	346.85
29889	1433	Sturgis Materials Inc	01/05/2024		0.00	412.38
29890	374	Suburban Lawn & Garden Inc	01/05/2024	VOID	118.20	0.00
29891	172	Sumner One	01/05/2024		0.00	1,463.17
29892	279	Sunflower Equipment LLC	01/05/2024		0.00	696.20
29893	2597	The Employer's Resource	01/05/2024		0.00	2,100.00
29894	1740	Time Warner Cable	01/05/2024		0.00	122.54
29895	2240	Karen L Torline	01/05/2024		0.00	1,383.00
29896	2047	United Rentals (North America) Inc	01/05/2024		0.00	854.00
29897	304	Vance Brothers	01/05/2024		0.00	205.03
29898	1042	Verizon Wireless	01/05/2024		0.00	3,111.40
29899	20	Tara Wakefield	01/05/2024		0.00	107.47
29900	111	WaterOne	01/05/2024		0.00	1,380.94
29901	3720	White Cap LP	01/05/2024		0.00	67.23
29902	99	Work Zone Inc	01/05/2024		0.00	35.00
			Total for 1/5/2024:		118.20	90,849.43
ACH	9	Evergy - KCPL - ACH	01/09/2024		0.00	11,514.12
			Total for 1/9/2024:		0.00	11,514.12
ACH	1248	Bluefin Payment Systems	01/10/2024		0.00	61.90
			Total for 1/10/2024:		0.00	61.90
ACH	9	Evergy - KCPL - ACH	01/11/2024		0.00	4,682.42
			Total for 1/11/2024:		0.00	4,682.42
29903	2330	Allied Services LLC	01/12/2024		0.00	165,119.82
29904	3731	Egress Software Technologies Inc	01/12/2024		0.00	7,000.60
29905	2898	Evergy - KCPL	01/12/2024		0.00	234.35
29906	3728	Bill Hillix	01/12/2024		0.00	40.00
29907	2129	Imaging Office Systems Inc	01/12/2024		0.00	6,462.50
29908	84	Johnson County Wastewater	01/12/2024		0.00	449.80
29909	41	Kansas Gas Service	01/12/2024		0.00	190.34
29910	2958	Midwest Shredding Service LLC	01/12/2024		0.00	80.00
29911	3170	SBRK Finance Holdings Inc	01/12/2024		0.00	19,143.28
29912	1740	Time Warner Cable	01/12/2024		0.00	8.00
29913	3415	James Ward	01/12/2024	VOID	650.00	0.00
			Total for 1/12/2024:		650.00	198,728.69
ACH	310	Kansas Department of Revenue - "online pa	01/16/2024		0.00	124.34
ACH	945	UMB Bank ACH	01/16/2024		0.00	1,011.69
29914	3378	Trudy Williams	01/16/2024		0.00	650.00
			Total for 1/16/2024:		0.00	1,786.03
29915	78	Affinis Corp	01/22/2024		0.00	7,405.00
29916	2265	All City Management Services Inc	01/22/2024		0.00	6,607.44
29917	3205	American Messaging Services LLC	01/22/2024		0.00	18.83
29918	534	Arbor Masters Tree & Landscape	01/22/2024		0.00	9,962.50
29919	3114	ArchiveSocial Inc	01/22/2024		0.00	5,988.00
29920	726	Association of Public-Safety Communicatic	01/22/2024		0.00	375.00

Check No	Vendor No	Vendor Name	Check Date	Void Checks	Check Amount
29921	2955	Background Solutions LLC	01/22/2024	0.00	1,590.00
29922	3346	Terryl Belden	01/22/2024	0.00	500.48
29923	3645	Benson Method	01/22/2024	0.00	2,818.75
29924	407	Berry Companies Inc	01/22/2024	0.00	591.87
29925	3588	Robert H. Bliss	01/22/2024	0.00	896.96
29926	114	Blue Valley Public Safety Inc	01/22/2024	0.00	5,310.00
29927	3089	Bob Allen Ford Inc	01/22/2024	0.00	404.87
29928	2311	Boelte-Hall LLC	01/22/2024	0.00	5,412.67
29929	3329	Margaret Chase	01/22/2024	0.00	652.72
29930	2512	Clark Enersen Partners Inc	01/22/2024	0.00	40,000.00
29931	3370	Combes Construction LLC	01/22/2024	0.00	110,308.02
29932	1672	Comcate Software Inc	01/22/2024	0.00	8,144.49
29933	3511	Nora Cooper	01/22/2024	0.00	2,520.00
29934	189	Crafco Inc	01/22/2024	0.00	1,645.00
29935	367	Croft Trailer Supply Inc	01/22/2024	0.00	239.50
29936	2024	Custom Lighting Services LLC	01/22/2024	0.00	22,914.31
29937	3523	Daikin TMI LLC	01/22/2024	0.00	10,794.00
29938	3730	Discover Products Inc.	01/22/2024	0.00	40.00
29939	3534	William Duckett	01/22/2024	0.00	482.80
29940	813	Eastern Kansas Government Finance Office	01/22/2024	0.00	200.00
29941	245	Easy Ice LLC	01/22/2024	0.00	75.21
29942	1118	EE Reimbursement	01/22/2024	0.00	16.00
29943	119	EE Reimbursement	01/22/2024	0.00	16.00
29944	1339	EE Reimbursement	01/22/2024	0.00	16.00
29945	1401	EE Reimbursement	01/22/2024	0.00	16.00
29946	2342	EE Reimbursement	01/22/2024	0.00	16.00
29947	2344	EE Reimbursement	01/22/2024	0.00	418.80
29948	2367	EE Reimbursement	01/22/2024	0.00	16.00
29949	2457	EE Reimbursement	01/22/2024	0.00	16.00
29950	2458	EE Reimbursement	01/22/2024	0.00	16.00
29951	2743	EE Reimbursement	01/22/2024	0.00	32.00
29952	2976	EE Reimbursement	01/22/2024	0.00	16.00
29953	2979	EE Reimbursement	01/22/2024	0.00	16.00
29954	3099	EE Reimbursement	01/22/2024	0.00	16.00
29955	3394	EE Reimbursement	01/22/2024	0.00	108.00
29956	3668	EE Reimbursement	01/22/2024	0.00	16.00
29957	3721	EE Reimbursement	01/22/2024	0.00	16.00
29958	3722	EE Reimbursement	01/22/2024	0.00	16.00
29959	491	EE Reimbursement	01/22/2024	0.00	16.00
29960	256	Electronic Technology Inc	01/22/2024	0.00	8,667.90
29961	2980	Enterprise FM Trust	01/22/2024	0.00	2,183.65
29962	3335	Ron Errigo	01/22/2024	0.00	512.69
29963	2584	Susan Farrell	01/22/2024	0.00	729.14
29964	2666	Fiber Platform LLC	01/22/2024	0.00	700.00
29965	88	First Call	01/22/2024	0.00	567.02
29966	2112	Forensic Psychology Associates Inc	01/22/2024	0.00	1,000.00
29967	268	George Butler Associates Inc	01/22/2024	0.00	1,800.00
29968	3314	GJO Holdings INC	01/22/2024	0.00	21,000.00
29969	1898	Global Retail Investors LLC	01/22/2024	0.00	225,000.00
29970	1899	Global Retail Investors LLC	01/22/2024	0.00	225,000.00
29971	86	Goodyear Auto Service Center	01/22/2024	0.00	1,217.25
29972	384	GT Distributors	01/22/2024	0.00	591.02
29973	2832	H&H Roofing and Restoration LLC	01/22/2024	0.00	750.00
29974	344	Hampel Oil Inc	01/22/2024	0.00	743.85
29975	3632	Holmes Murphy and Associates	01/22/2024	0.00	11,250.00
29976	2723	Insight Public Sector Inc	01/22/2024	0.00	2,440.90
29977	383	International Association of Chiefs of Polic	01/22/2024	0.00	190.00

Check No	Vendor No	Vendor Name	Check Date	Void Checks	Check Amount
29978	1230	J&J Printing Inc	01/22/2024	0.00	297.75
29979	3542	Jacquita James	01/22/2024	0.00	763.05
29980	511	Johnson County Mental Health Center	01/22/2024	0.00	12,318.77
29981	84	Johnson County Wastewater	01/22/2024	0.00	63.75
29982	3732	K&M Office Products Inc	01/22/2024	0.00	4,009.65
29983	3333	Frank Kalich	01/22/2024	0.00	521.33
29984	50	Kansas Association of City/County Manage	01/22/2024	0.00	600.00
29985	338	Kansas City Metropolitan Crime Commissi	01/22/2024	0.00	4,000.00
29986	757	Kansas Department of Revenue	01/22/2024	0.00	150.00
29987	41	Kansas Gas Service	01/22/2024	0.00	1,173.93
29988	194	Kansas Mayors Association	01/22/2024	0.00	50.00
29989	2335	Kansas One-Call System Inc	01/22/2024	0.00	478.80
29990	1168	Kaw Valley Engineering Inc	01/22/2024	0.00	5,705.00
29991	1688	KC Custom Signs	01/22/2024	0.00	987.50
29992	3557	Kevin D. Kennedy	01/22/2024	0.00	660.50
29993	3359	Janet Kerns	01/22/2024	0.00	521.53
29994	258	Key Equipment & Supply Co	01/22/2024	0.00	2,137.31
29995	2891	Woonli Khiew	01/22/2024	0.00	607.44
29996	3344	Richard Knoll	01/22/2024	0.00	423.21
29997	3541	Ian Kozlowski	01/22/2024	0.00	631.86
29998	97	Lawrence Pest Control Company Inc	01/22/2024	0.00	290.00
29999	205	Lawson Products	01/22/2024	0.00	277.20
30000	549	Leads On Line LLC	01/22/2024	0.00	3,022.00
30001	145	Robin A. Lewis	01/22/2024	0.00	1,366.00
30002	3729	LexisNexis Risk Data Management LLC	01/22/2024	0.00	3,240.00
30003	2994	Stuart J Little	01/22/2024	0.00	3,125.00
30004	3189	Donna Merkel	01/22/2024	0.00	480.92
30005	2196	Alan B Mestdagh	01/22/2024	0.00	1,085.00
30006	2039	MJV-A LLC	01/22/2024	0.00	25.99
30007	627	Susan Myers	01/22/2024	0.00	708.94
30008	3597	Cheryl Sue Navarre	01/22/2024	0.00	575.87
30009	2824	Robert Nelson	01/22/2024	0.00	644.29
30010	814	NGLIC National Guardian Life Insurance C	01/22/2024	0.00	889.68
30011	3528	Nicole Nicoll	01/22/2024	0.00	626.61
30012	3733	P&A Administrative Services Inc.	01/22/2024	0.00	900.00
30013	3700	Debra Payne	01/22/2024	0.00	642.35
30014	277	PB Hoidale Co Inc	01/22/2024	0.00	2,231.64
30015	3714	Pfefferkorn Engineering & Environment	01/22/2024	0.00	28,139.31
30016	2141	Pre-Paid Legal Services Inc	01/22/2024	0.00	349.85
30017	3545	Quality Plumbing Inc	01/22/2024	0.00	3,286.00
30018	1220	Denise Ray	01/22/2024	0.00	546.40
30019	1562	Rosehill Gardens	01/22/2024	0.00	57,655.17
30020	2379	Albert Rubin	01/22/2024	0.00	549.34
30021	3327	Rush Truck Centers of Missouri Inc	01/22/2024	0.00	836.06
30022	73	SBCO	01/22/2024	0.00	129.47
30023	2565	Snap-On Inc	01/22/2024	0.00	69.64
30024	3435	Spencer Fane LLP	01/22/2024	0.00	9,902.00
30025	72	Staples Business Advantage	01/22/2024	0.00	724.63
30026	3254	Staples Inc	01/22/2024	0.00	29.69
30027	3328	Mary Stapleton	01/22/2024	0.00	475.65
30028	3520	David Stolberg	01/22/2024	0.00	321.48
30029	3332	Sherry Streufert	01/22/2024	0.00	588.31
30030	279	Sunflower Equipment LLC	01/22/2024	0.00	24.55
30031	2246	Superior Bowen Asphalt Company LLC	01/22/2024	0.00	473,746.42
30032	3522	Target Solutions Learning	01/22/2024	0.00	8,220.20
30033	3530	Michael D Torres	01/22/2024	0.00	480.08
30034	3183	TriTech Software Systems	01/22/2024	0.00	11,262.68

Check No	Vendor No	Vendor Name	Check Date	Void Checks	Check Amount
30035	1258	TurnKey Mobile Inc	01/22/2024	0.00	472.00
30036	3103	TWAS Topco LP	01/22/2024	0.00	328.00
30037	573	United States Postal Service	01/22/2024	0.00	3,250.00
30038	2820	V F Anderson Builders LLC	01/22/2024	0.00	162,891.15
30039	304	Vance Brothers	01/22/2024	0.00	4,406.40
30040	3539	Theresa Maureen Wallerstedt	01/22/2024	0.00	671.89
30041	3349	Shirley Waring	01/22/2024	0.00	615.90
30042	3515	Wasabi Holding Inc.	01/22/2024	0.00	405.59
30043	836	Weather Or Not	01/22/2024	0.00	10,568.00
30044	269	WW Grainger Inc	01/22/2024	0.00	91.89
30045	3576	Ada Young	01/22/2024	0.00	660.72
			Total for 1/22/2024:	0.00	1,588,971.98
ACH	1153	Merchant Services/Elavon/ETS Corp-Court	01/23/2024	0.00	2,188.47
ACH	841	Elavon	01/23/2024	0.00	55.25
ACH	841	Elavon	01/23/2024	0.00	695.54
			Total for 1/23/2024:	0.00	2,939.26
ACH	1288	BMO Harris Bank NA- ACH	01/24/2024	0.00	1,100,000.00
			Total for 1/24/2024:	0.00	1,100,000.00
ACH	216	Health Equity/WageWorks	01/26/2024	0.00	142.92
ACH	216	Health Equity/WageWorks	01/26/2024	0.00	142.92
ACH	945	UMB Bank ACH	01/26/2024	0.00	51.82
ACH	216	Health Equity/WageWorks	01/26/2024	0.00	142.92
ACH	216	Health Equity/WageWorks	01/26/2024	0.00	142.92
30046	78	Affinis Corp	01/26/2024	0.00	2,137.86
30047	1029	American Rigger's Supply Inc	01/26/2024	0.00	62.56
30048	534	Arbor Masters Tree & Landscape	01/26/2024	0.00	575.00
30049	11	AT&T 5001	01/26/2024	0.00	1,929.82
30050	300	Athco	01/26/2024	0.00	1,205.55
30051	3706	Berkebile Nelson Immenschuh McDowell i	01/26/2024	0.00	14,810.24
30052	790	Cellco Partnership	01/26/2024	0.00	288.83
30053	171	Clark's Tool and Equipment	01/26/2024	0.00	9.40
30054	605	Columbia Capital Management LLC	01/26/2024	0.00	7,148.92
30055	88	First Call	01/26/2024	0.00	316.90
30056	268	George Butler Associates Inc	01/26/2024	0.00	2,027.50
30057	66	KA-Comm Inc	01/26/2024	0.00	5,493.13
30058	3168	Music Supply Inc	01/26/2024	0.00	1,235.00
30059	2744	Pro Circuit Inc	01/26/2024	0.00	638.22
			Total for 1/26/2024:	0.00	38,502.43
ACH	945	UMB Bank ACH	01/27/2024	0.00	55,848.67
			Total for 1/27/2024:	0.00	55,848.67
ACH	311	ADP Electronic Debit	01/30/2024	0.00	5,915.57
			Total for 1/30/2024:	0.00	5,915.57

Check No	Vendor No	Vendor Name	Check Date	Void Checks	Check Amount
			Report Total (232 checks):	768.20	3,102,591.36

PUBLIC WORKS DEPARTMENT

Consent Agenda: March 4, 2024

CONSIDER INTERLOCAL AGREEMENT WITH JOHNSON COUNTY FOR MISSION ROAD, 63RD STREET TO 67TH STREET (MIRD0009)

RECOMMENDATION

Move to approve the interlocal agreement with Johnson County for improvements to Mission Road, 63rd Street to 67th Street (MIRD0009).

BACKGROUND

The Governing Body approved the City of Prairie Village annual County Assistance Road System (CARS) Program submittal at the May 1, 2023, City Council meeting which included the joint Mission Road, 63rd Street to 67th Street Improvement Project. This project is co-funded by the City of Mission Hills. The Johnson County Board of Commissioners has approved our submittal for funding.

An Interlocal Agreement has been received from Johnson County for execution by both Cities. The agreement has been executed by the City of Mission Hills. This agreement will limit the County share to 50% of the project's construction costs or $259,000. The County's funding for this project comes from the (CARS) Program.

This project is a part of the 2024 CIP.

FUNDING SOURCE

Funding is available in the CIP project MIRD0009.

ATTACHMENTS

1. Interlocal Agreement with Johnson County (320001 401)

PREPARED BY

Melissa Prenger, City Engineer February 28, 2024

Agreement among Johnson County, Kansas, the City of Mission Hills, Kansas, and the City of Prairie Village, Kansas, for the Public Improvement of Mission Road from 63rd Street to 67th Street (320001401)

THIS AGREEMENT, made and entered into this _____ day of _____, 202_, by and among the Board of County Commissioners of Johnson County, Kansas ("Board"), the City of Mission Hills, Kansas ("Mission Hills"), and the City of Prairie Village, Kansas ("Prairie Village"). Mission Hills and Prairie Village are collectively referred to as the "Cities".

WITNESSETH:

WHEREAS, the parties have determined that it is in the best interests of the general public in making certain public improvements to Mission Road from 63rd Street to 67th Street (the "Project"); and

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

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

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

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

WHEREAS, the governing body of Mission Hills did approve and authorize its Mayor to execute this Agreement by official vote of said body on the 11th day of December, 2023.

WHEREAS, the governing body of Prairie Village did approve and authorize its Mayor to execute this Agreement by official vote of said body on the _____ day of _____, 202_.

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

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

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

   a. The estimated cost of the Project ("Project Costs"), a portion of which is reimbursable under this Agreement is Six Hundred Seventeen Thousand Dollars ($617,000).

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

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

      i. The Board shall provide financial assistance for the Project in an amount up to but not exceeding Fifty Percent (50%) of the Project Costs. However, the Board's financial obligation under this Agreement shall be limited to an amount not to exceed Two Hundred Fifty Nine Thousand Dollars ($259,000). For purposes of this Agreement, Project Costs shall not include any portion of costs which are to be paid by or on behalf of any state or federal governmental entity or for which the Cities may be reimbursed through any source other than the general residents or taxpayers of the Cities. Further, it is understood and agreed by the parties hereto that the Board shall not participate in, nor pay any portion of, the Costs incurred for or related to the following:

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

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

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

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

3. **Financing**

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

construed as limiting the ability of the Board to finance its portion of the costs and expenses of the Project through the issuance of bonds or any other legally authorized method.

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

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

a. Cause the making of all contracts, duly authorized and approved, for retaining consulting engineers to design and estimate the necessary costs and expenses of the Project Costs.

b. Submit a copy of the plans and specifications for the Project to the Public Works Director for review prior to any advertisement for construction bidding, together with a statement of estimated Project Costs which reflects the Board's financial obligation under the terms of this Agreement. The Public Works Director or his designee shall review the plans and specifications for the Project and may, but shall not be obligated to, suggest changes or revisions to the plans and specifications.

c. If required by applicable state or federal statutes, solicit bids for the construction of the Project by publication in the official newspaper of the City of Mission Hills. If the Project is located in more than one city, then the Project Administrator shall be responsible for determining proper publication. In the solicitation of bids, the appropriate combination of best bids shall be determined by the Project Administrator.

d. Cause the making of all contracts and appropriate change orders, duly authorized and approved, for the construction of the Project.

e. Submit to the Public Works Director a statement of actual costs and expenses, in the form of a payment request, with attached copies of all invoices and supporting materials, on or before the tenth day of each month following the month in which costs and expenses have been paid. The Public Works Director shall review the statement or payment request to determine whether

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

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

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

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

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

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

> The Project Contractor shall defend, indemnify and save the Board of County Commissioners of Johnson County, Kansas and the City harmless from and against all liability for damages, costs, and expenses arising out of any claim, suit, action or otherwise for injuries and/or damages sustained to persons or property by reason of the negligence or other actionable fault of the Project Contractor, his or her sub-contractors, agents or employees in the performance of this contract.
>
> The Board of County Commissioners of Johnson County, Kansas shall be named as an additional insured on all policies of insurance issued to the Project Contractor and required by the terms of his/her agreement with the City.

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

   a. The Board shall not pay any costs for acquisition of real property in connection with the Project.

   b. Each City shall be responsible for the acquisition of any real property, together with improvements thereon, located within such City's corporate boundaries, which is required in connection with the Project; such real property acquisition may occur by gift, purchase, or by condemnation as authorized and provided by the Eminent Domain Procedure Act, K.S.A. 26-201 et seq. and K.S.A. 26-501 et seq., and any such acquisition shall comply with all federal and state law requirements.

6. **Duration and Termination of Agreement**

a. The parties agree that this Agreement shall remain in full force and effect until the completion of the Project, unless otherwise terminated as provided for in Paragraph 6.b. hereinbelow. The Project shall be deemed completed and this Agreement shall be deemed terminated upon written certification to each of the parties by the Project Administrator that the Project has been accepted as constructed. The Project Administrator shall provide a copy of the Project Administrator's certification to both the Public Works Director and the Finance Director within thirty (30) days of the Project Administrator's determination that the Project is complete.

b. It is understood and agreed that the Public Works Director shall review the status of the Project annually on the first day of March following the execution of this Agreement to determine whether satisfactory progress is being made on the Project. In the event that the Public Works Director determines that satisfactory progress is not being made on the Project due to one or both of the Cities' breach of this Agreement by not meeting the agreed upon project deadlines or otherwise not complying with the terms of this Agreement, the Public Works Director is authorized to notify the City that has breached the Agreement that it shall have thirty (30) days from receipt of such notification to take steps to cure the breach (the "Cure Period"). It is further understood and agreed that the Board shall have the option and right to revoke funding approval for the Project and terminate this Agreement should the Board find, based upon the determination of the Public Works Director, that satisfactory progress is not being made on the Project and that the Cities have not taken sufficient steps to cure the breach during the Cure Period. Should the Board exercise its option as provided herein, it shall send written notice of the same to the Cities and the Board shall have no further liability or obligation under this Agreement.

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

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

Board of County Commissioners of Johnson County, Kansas

Mike Kelly, Chairman

Attest:

Lynda Sader
Deputy County Clerk

Approved as to form:

Robert A. Ford
Assistant County Counselor

City of Mission Hills, Kansas

David W. Dickey, Mayor

Attest:

City Clerk

Approved as to form:

City Attorney

City of Prairie Village, Kansas

Eric Mikkelson, Mayor

Attest:

City Clerk

Approved as to form:

City Attorney

PUBLIC WORKS DEPARTMENT

Consent Agenda: March 4, 2024

CONSIDER INTERLOCAL AGREEMENT WITH JOHNSON COUNTY FOR NALL AVENUE, 75th STREET TO 79TH STREET (NAAV0007)

RECOMMENDATION

Move to approve the interlocal agreement with Johnson County for improvements to Nall Avenue, 75th Street to 79th Street (NAAV0007).

BACKGROUND

The Governing Body approved the City of Prairie Village annual County Assistance Road System (CARS) Program submittal at the May 1, 2023, City Council meeting which included the Nall Avenue, 75th Street to 79th Street Improvement Project. The Johnson County Board of Commissioners has approved our submittal for funding.

An Interlocal Agreement has been received from Johnson County for execution by Prairie Village. This agreement will limit the County share to 50% of the project's construction costs or $668,000. The County's funding for this project comes from the (CARS) Program.

This project is a part of the 2024 CIP.

FUNDING SOURCE

Funding is available in the CIP project NAAV0007.

ATTACHMENTS

1. Interlocal Agreement with Johnson County (320001 404)

PREPARED BY

Melissa Prenger, City Engineer February 28, 2024

Agreement between Johnson County, Kansas, and the City of Prairie Village, Kansas, for the Public Improvement of Nall Avenue from 75th Street to 79th Street (320001404)

THIS AGREEMENT, made and entered into this _____ day of _____, 202_ by and between the Board of County Commissioners of Johnson County, Kansas ("Board") and the City of Prairie Village, Kansas, ("City").

WITNESSETH:

WHEREAS, the parties have determined that it is in the best interests of the general public in making certain public improvements to Nall Avenue from 75th Street to 79th Street (the "Project"); and

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

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

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

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

WHEREAS, the governing body of the City did approve and authorize its Mayor to execute this Agreement by official vote on the _____ day of _____, 202_.

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

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

2. **Estimated Cost and Funding of Project**
    a. The estimated cost of the Project ("Project Costs"), a portion of which is reimbursable under this Agreement, is One Million Four Hundred Forty Five Thousand Dollars ($1,445,000).
    b. Project Costs include necessary costs and expenses of labor and material used in the construction of the Project and construction inspection and staking for the Project.
    c. The Project Costs shall be allocated between the parties as follows:
        i. The Board shall provide financial assistance for the Project in an amount up to but not exceeding Fifty Percent (50%) of the Project Costs. However, the Board's financial obligation under this Agreement shall be limited to an amount not to exceed Six Hundred Sixty Eight Thousand Dollars ($668,000). For purposes of this Agreement, Project Costs shall not include any portion of costs which are to be paid by or on behalf of any state or federal governmental entity or for which the City may be reimbursed through any source other than the general residents or taxpayers of the City. Further, it is understood and agreed by the parties hereto that the Board shall not participate in, nor pay any portion of, the Costs incurred for or related to the following:
            1. Land acquisition, right-of-way acquisition, or utility relocation;
            2. Legal fees and expenses, design engineering services, Project administration, or financing costs;

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

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

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

3. **Financing**

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

b. The City shall pay its portion of the Project Costs with funds budgeted, authorized, and appropriated by the governing body of the City.

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

a. Cause the making of all contracts, duly authorized and approved, for retaining consulting engineers to design and estimate the Project Costs.

b. Submit a copy of the plans and specifications for the Project to the Johnson County Public Works Director for review, prior to any advertisement for construction bidding, together with a statement of estimated Project Costs which reflects the Board's financial obligation under the terms of this Agreement. The Public Works Director or his designee shall review the copy of the plans and specifications for the Project and may, but shall not be obligated to, suggest changes or revisions to the plans and specifications.

c. If required by applicable state or federal statutes, solicit bids for the construction of the Project by publication in the official newspaper of the City. In the solicitation of bids, the appropriate combination of best bids shall be determined by the City.

d. Cause the making of all contracts and appropriate change orders, duly authorized and approved, for the construction of the Project.

e. Submit to the Public Works Director a statement of actual costs and expenses in the form of a payment request, with attached copies of all invoices and supporting materials, on or before the tenth day of each month following the

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

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

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

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

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

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

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

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

   a. The Board shall not pay any costs for acquisition of real property in connection with the Project.

   b. The City shall be responsible for the acquisition of any real property, together with improvements thereon, located within the City's corporate boundaries, which is required in connection with the Project; such real property acquisition may occur by gift, purchase, or by condemnation as authorized and provided by the Eminent Domain Procedure Act, K.S.A. 26-201 et seq. and K.S.A. 26-501 et seq., and any such acquisition shall comply with all federal and state law requirements.

6. **Duration and Termination of Agreement**

a. The parties agree that this Agreement shall remain in full force and effect until the completion of the Project, unless otherwise terminated as provided for in Paragraph 6.b. herein below. The Project shall be deemed completed and this Agreement shall be deemed terminated upon written certification to each of the parties by the Project Administrator that the Project has been accepted as constructed. The City shall provide a copy of the Project Administrator's certification to both the Public Works Director and the Finance Director within thirty (30) days of the Project Administrator's determination that the Project is complete.

b. It is understood and agreed that the Public Works Director shall review the status of the Project annually on the first day of March following the execution of this Agreement to determine whether satisfactory progress is being made on the Project by the City. In the event that the Public Works Director determines that satisfactory progress is not being made on the Project due to the City's breach of this Agreement by not meeting the agreed upon project deadlines or otherwise not complying with the terms of this Agreement, the Public Works Director is authorized to notify the City that it shall have thirty (30) days from receipt of such notification to take steps to cure the breach (the "Cure Period"). It is further understood and agreed that the Board shall have the option and right to revoke funding approval for the Project and terminate this Agreement should the Board find, based upon the determination of the Public Works Director, that satisfactory progress is not being made on the Project and that the City has not taken sufficient steps to cure the breach during the Cure Period. Should the Board exercise its option as provided herein, it shall send written notice of the same to the City and the Board shall have no further liability or obligation under this Agreement.

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

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

Board of County Commissioners of Johnson County, Kansas

Mike Kelly, Chairman

Attest:

Lynda Sader
Deputy County Clerk

Approved as to form:

Robert A. Ford
Assistant County Counselor

City of Prairie Village, Kansas

Eric Mikkelson, Mayor

Attest:

City Clerk

Approved as to form:

City Attorney

PUBLIC WORKS DEPARTMENT

Council Meeting Date: March 4, 2024

COU2024-19 CONSIDER APPROVAL OF PARKS BRANDING DOCUMENT AND PARK SIGN

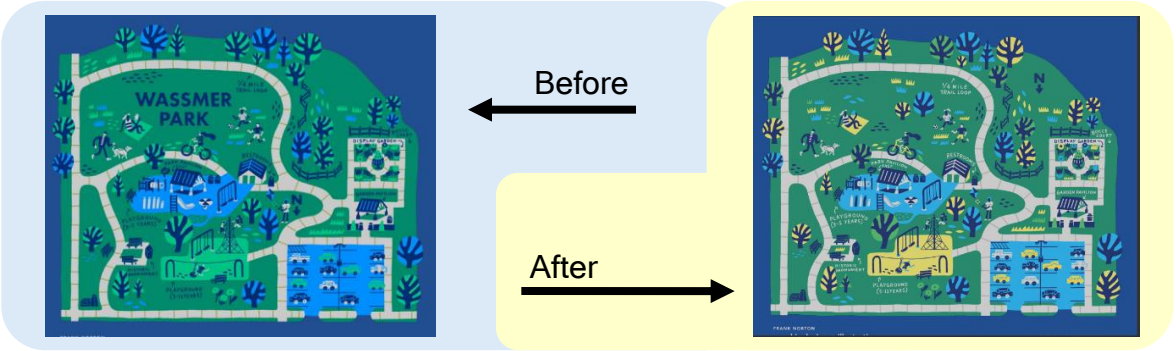
RECOMMENDATION

Authorize staff to move forward with design of park signs with selected option.

BACKGROUND

At the November 6, 2023 Council Meeting, the Governing Body approved moving forward with the new park signage using the graphic art of Frank Norton. However, there was some question as to whether or not the blue background provided the optimal signage for those with color blindness. Steps have been taken to check the sign layout for color accessibility.

First, the artist changed the design to include a color that provides more contrast within the map and confirmed the new color palette with a tool to check for color accessibility.



Second, staff used “Contrast Checker”, another online tool which checks for text contrast. The text contrast provides satisfactory results with both white background/blue text and blue background/white text.

Third staff looked at the graphic component using the Contrast Checker by comparing blue and white backgrounds.





PREPARED BY

Melissa Prenger, City Engineer February 28, 2024

The tool showed that the graphics check on the blue background failed to provide the desired contrast ratio while the white background passed the check.

A comparison of the full sign is shown below:





The new sign with a white background was brought before the Parks and Recreation Committee and was approved to move forward to Council.

ATTACHMENTS

1. Revised 2023 Parks Branding and Signage document

PREPARED BY

Melissa Prenger, City Engineer February 28, 2024



2023
PRAIRIE VILLAGE

PARKS BRANDING AND SIGNAGE

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Photos courtesy of residents of Prairie Village found via Google park searches and Prairie Village staff.

SUMMARY

The approved 2023 Parks CIP included the construction of universal signage in all Prairie Village parks. As part of the process for the universal signage, BBN Architects brought forth concepts for the sign construction and the sign content.

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

The intent of this document is to recognize a set of characteristics that should be implemented with future park improvements or new park designs. Currently, the Prairie Village Parks System includes 13 parks ranging in size from 1 acre to 19.7 acres, each with their own role within the community. Given this diversity, this document's intent is to find a "common thread" that will establish a cohesive identity between these parks despite their inherent differences.

PARK BRANDING

The most versatile characteristic within these guidelines is the color palette. This originated in the design of the first restroom building but can be applied to any element with a painted finish. There are numerous opportunities to incorporate the color palette in ways that are unique to each park yet consistent to Prairie Village as a whole.

COLORS

The “Prairie Village Blue” colors are currently defined in the style guide as:



Primary logo color:
Pantone 2945c
or #004C97

Secondary logo color:
Pantone 294c
or #002F6C

The following park elements are expected to conform to this color palette:

- site furnishings and play equipment
- painted materials within the interior and exterior of the restroom



FONTS

Signage and park literature provides an opportunity to create branding with the standard font as provided in the style guide:

- Primary font used with logo:
  ROBOTO REGULAR
- **Graphic design heading font:**
  League Spartan
- Graphic design body font:
  Glacial Indifference

PARK SIGNS

Concepts for the sign construction were brought to the Parks and Recreation for recommendation to the Governing Body. The recommended concept complements the restroom and shelter building materials. These signs are in addition to the monument signs currently in place at the parks. Details for the sign construction and materials are in the appendix.



MONUMENT SIGN

The existing monument signs (shown to the right) identify each park within the system and should continue to serve as a strong unifying element.

SMALL PARK/SECONDARY SIGN

Small signs are anticipated to be used at the smaller neighborhood parks and as secondary signs in the larger parks where there are multiple points of entry.

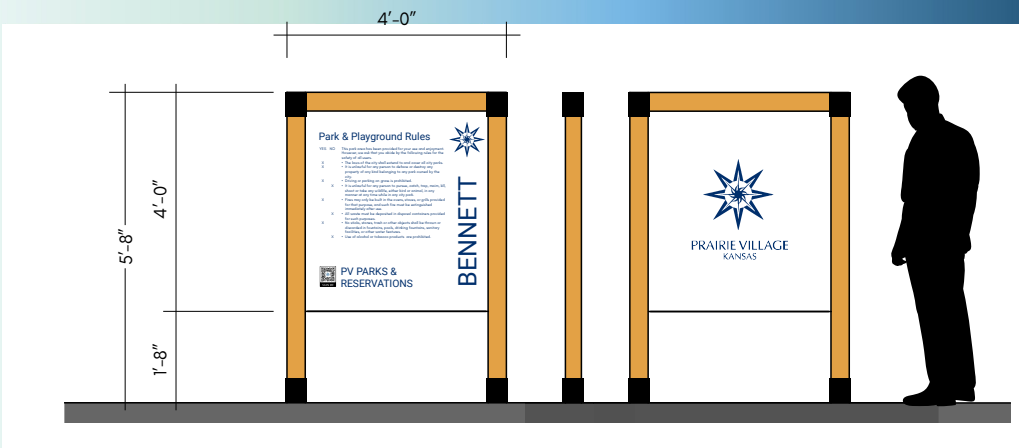


Figure 1: small sign

LARGE PARK SIGN

Large signs are anticipated to be used at the larger parks where the City has more designated amenities such as:

- pavilion rental
- practice fields
- ball fields
- tennis courts

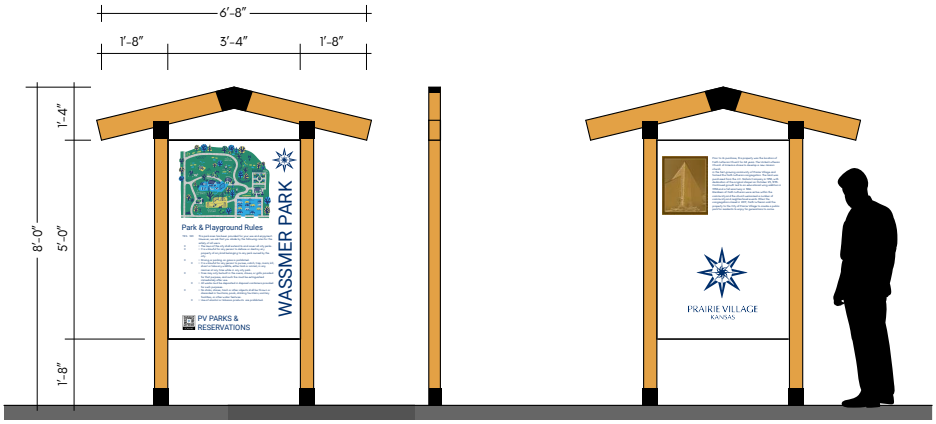


Figure 2: large sign

SUPPLEMENTARY PARK SIGNS

Often there are supplementary park signs on single posts. These are advisory signs (when thunder roars get indoors) or signs informing the public of required codes (leashes required). In the past, these signs have been installed on wood posts and traffic signal posts. This creates a lack of visual uniformity that distracts from the park signage aesthetic.

The Parks and Recreation Committee recommended moving to a standard installation for permanent park signs as shown below:

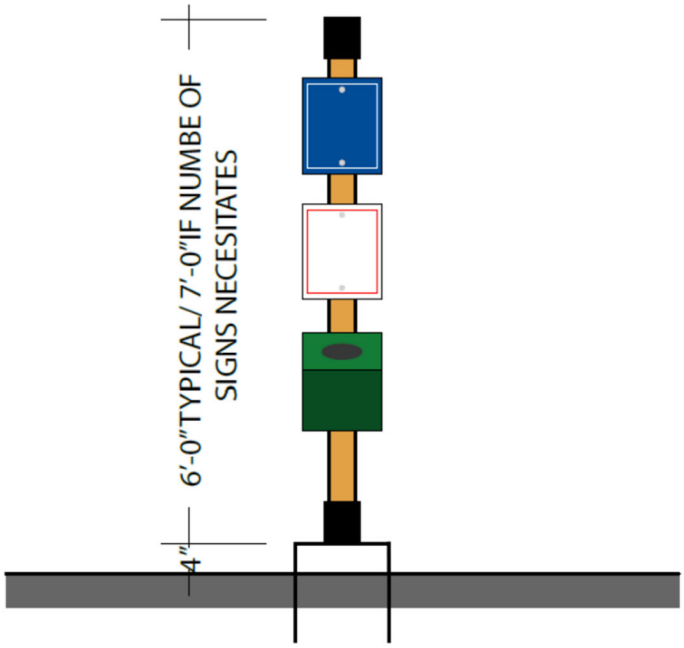


Figure 3: supplementary sign

PARK FEATURES

SHELTERS

Materials and colors of the shelters should be consistent to provide a branding opportunity. Currently, the shelters come in a variety of custom and pre-fabricated styles. Characteristics such as the standing seam metal roofs and the exposed wood decking underneath the shelters help to brand these various shelters as a Prairie Village standard. Future shelters should include one or more of the following items:

- materials should be limited to clear cedar with a #580 Teak stain color (produced by Sikkens).
- Column bases shall be cast-in-place concrete and the metal structural connections shall be painted (black).
- The roofing material shall be standing seam metal in a dark bronze color.

The shelters should have seating that is friendly to all users. The 4 seat square picnic table is easy to get in and out of for those with mobility issues and a 3 seat option is available for those in wheelchairs.





PLAYGROUNDS

Google search “why playgrounds are important” and there are immediate results citing social development, cognitive skills and critical thinking. Playgrounds are a way to make a unique statement to each park creating a different play experience for our park users.

Branding in these areas can be achieved by inserting the Prairie Village blue color on benches or individual play items.

Playgrounds can be themed or just thematic. The inclusive play set at Harmon is a themed “Treehouse” playset and the playset at Taliaferro is constructed in nature colors of green and brown to create a thematic feel of nature among the many trees of the park.

On the other hand, Franklin Park has a blue playset (shown below) to incorporate branding while the park amenities such as benches and tables are a more traditional green.


FRANKLIN


TALIAFERRO


WASSMER

RESTROOMS

Restrooms have been constructed in six parks in Prairie Village. Currently they are in Franklin, Harmon, Porter, Taliaferro, Windsor and Wassmer.

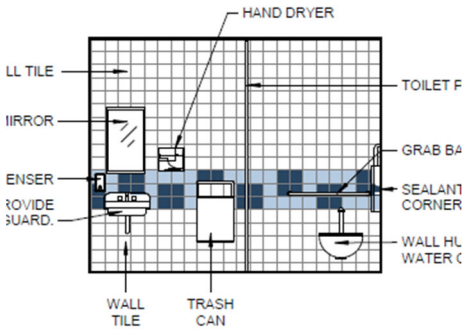
A majority of these restroom have been designed and constructed in either a similar style or color palette. These restrooms have incorporated the “PV Blue” in one or more elements to establish branding. Any new construction of restroom facility should follow this established theme:

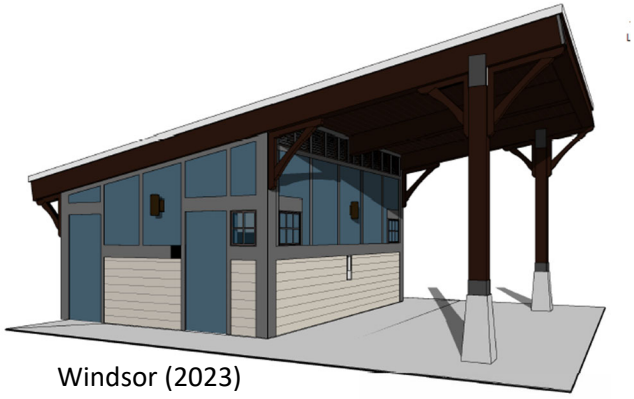
- a combination of fiber cement lap siding, panels, and trim.
- decorative wood brackets shall be included under the roof overhang.
- all painted materials shall conform in general with the color palette included in this document.
- every restroom equipped with a bottle filler incorporated within the building’s exterior.

The “PV Blue” should be reflected in the restroom’s interior within the tile pattern or toilet partitions.



Porter





Windsor (2023)



Taliaferro

LIGHTING

Park structures shall include lighting suited for its intended purpose (i.e. security, architectural, evening use). Color temperatures shall be 4K for a warm appearance. The fixtures themselves shall be cylindrical and painted black.

PARK FURNISHINGS

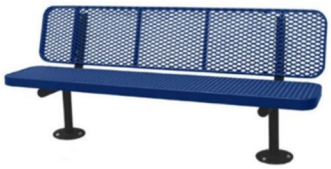
Although there is no system-wide expectation for every park to have the same bench, picnic table, trash receptacle, etc., furnishings should be the same in manufacturer, style, and color, within each park.

Ease of maintenance and the longevity of the material's appearance are of highest importance. To that end, materials such as powder coated expanded metal are encouraged. The color of the furnishings shall conform with this document's color palette.

As examples, Wassmer Park with blue restroom and blue play items utilized a wood tone for the furnishings. Taliaferro Park with the cream and black restroom utilized the blue expanded metal furnishings.



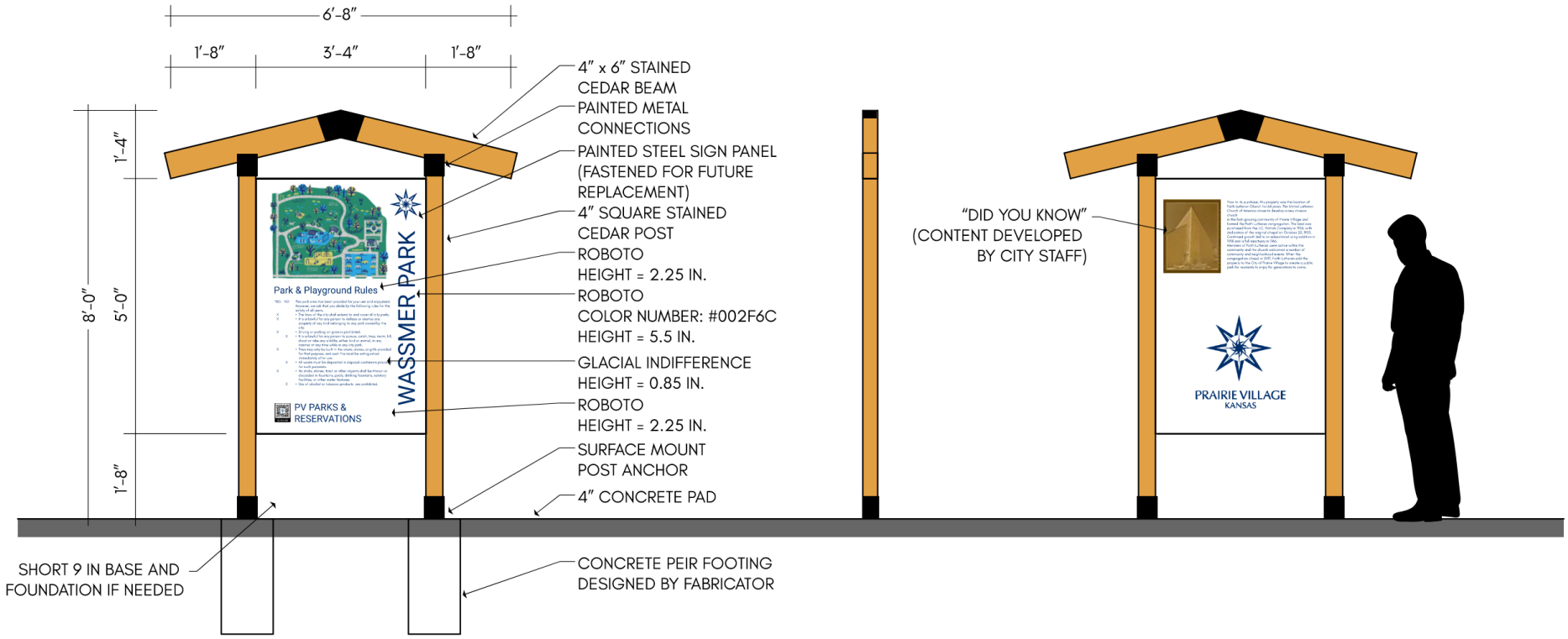






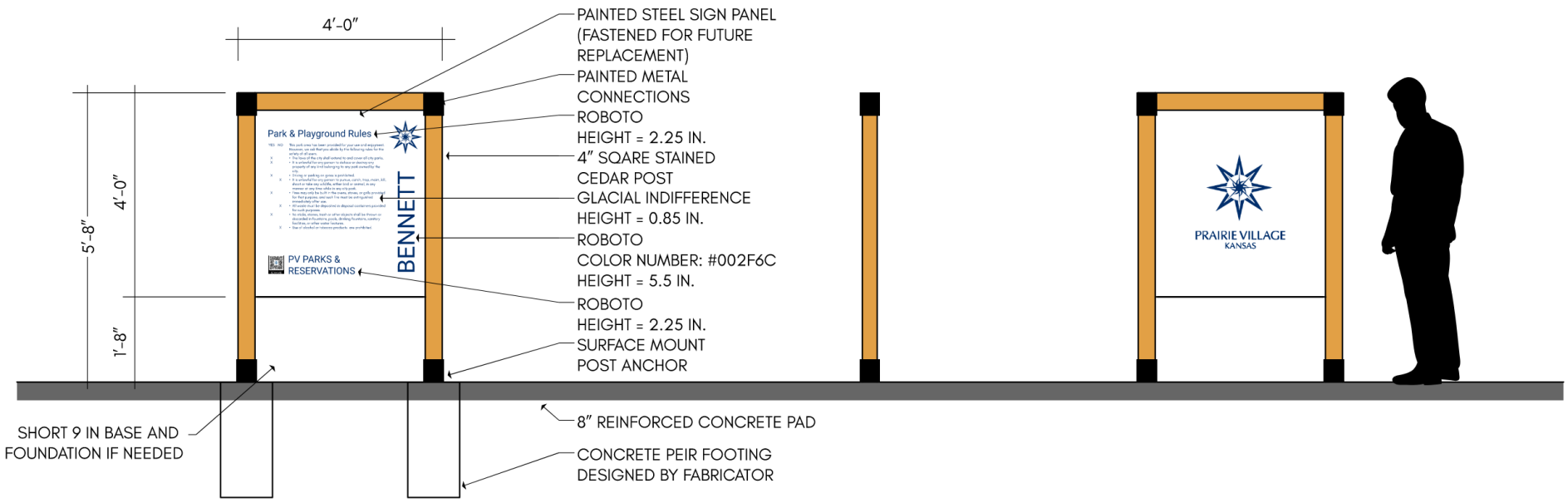
APPENDIX

Park signage and supplementary sign specifications.



LARGE INFORMATION SIGN

Large Parks: Harmon/Santa Fe Trail, Porter, Franklin, & Wassmer Parks

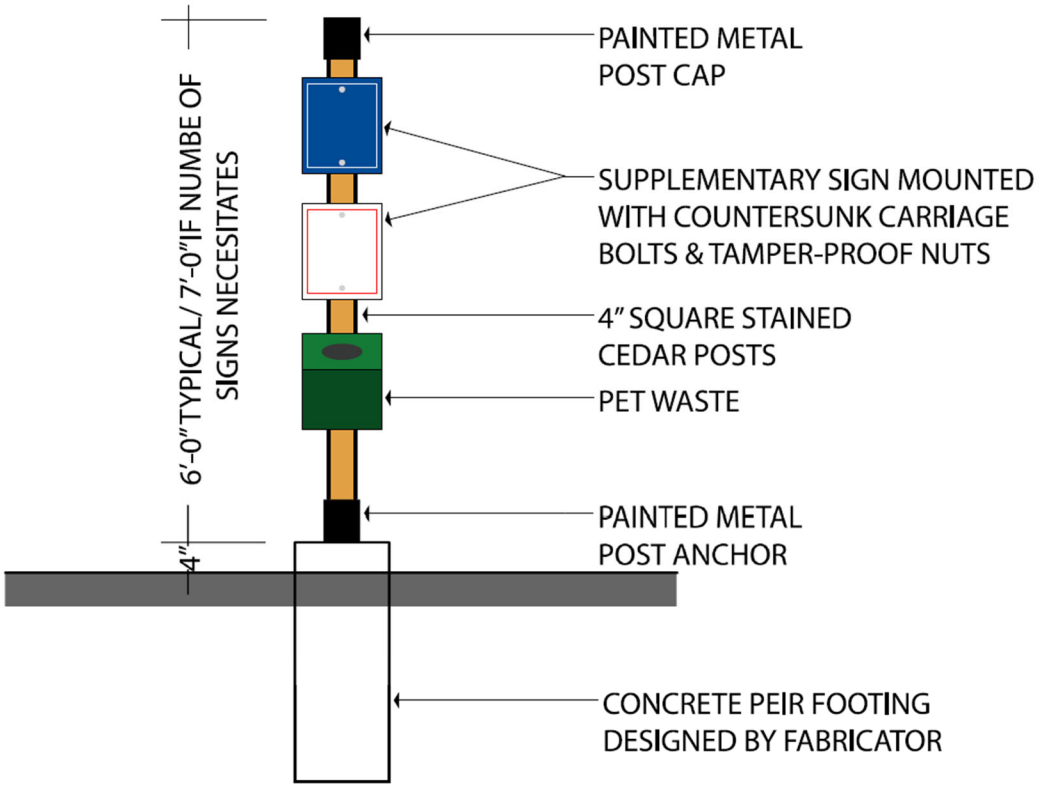


SMALL INFORMATION SIGN

Small Parks: McCrum, Bennett, Windsor, Shaffer, Taliaferro, & Weltner

Secondary Signs: Franklin, Porter & Harmon (x2)

Parks With No Signs: Brenizer & Schliffke



SUPPLEMENTARY SIGN POST

ADMINISTRATION

Council Meeting Date: March 4, 2024

COU2024-17: Consider additional funding for the 2024 property tax rebate program

RECOMMENDATION

Approve an additional $5,000.00 for the 2024 property tax rebate program.

BACKGROUND

In November 2021, the City Council voted to allocate $20,000 from the City's 2022 general fund to a property tax rebate program designed to alleviate some of the burden of home ownership due to rising property values. Only property owners that are Prairie Village residents living in owner-occupied homes, are current on payment of their property taxes and special assessments and meet income guidelines are eligible for the program. Applicants must also live in a home that is appraised by the county at or below the previous year's average property value in the City (in 2023, this amount is $496,424).

Initially, income limits were based on data provided by the U.S. Department of Housing and Urban Development's (HUD) "very low income" guidelines, which represent 50% of the regional median family income for a household of four people. For 2023, income guidelines were increased to 65% of the median family income in an effort to assist a larger number of residents. In 2022, rebates were issued to 28 households totaling $14,015.94. In 2023, the response from residents was significantly larger, and staff asked for an additional $5,000 in funding to accommodate as many applicants as possible. In total, rebates were issued to 53 households, totaling $29,201.53 (note that along with the $25,000 allocated by Council, an additional $6,000 in unused funds was rolled over from 2022).

In December 2023, the Council voted to allocate $25,000 to the program again in 2024, and keep income limits at 65% of the Kansas City metro area median family income. Along with $1,798.47 in rollover funds from the 2023 budget allocation, the available funding for 2024 totaled $26,798.47. At its February 5 meeting, the Council voted to allocate an additional $5,000.00 to the program as the fund had been almost completely expended, and applications were continuing to be received.

As of February 28, $394.34 remains in the fund, with one rebate of $579.86 pending additional funding. 52 households have been issued refunds thus far in 2024, for a total $31,404.13.

PREPARED BY

Adam Geffert
City Clerk
Date: February 28, 2024

PUBLIC WORKS DEPARTMENT

Council Meeting: March 4, 2024

COU2024-18 CONSIDER 2025-2029 COUNTY ASSISTANCE ROAD SYSTEM (CARS) PROGRAM

RECOMMENDATION

Staff recommends approval of the 2025-2029 County Assistance Road System (CARS) program.

BACKGROUND

In order to receive CARS funds, the City must submit an application containing a list of streets and the estimated costs. The following streets are recommended for the five-year CARS program, 2025-2029. It should be noted that the City is committing to fund and construct only the 2025 Program Year with this annual submittal. Out year projects are used by the County to forecast funding needs.

The CARS funding is typically set to 50% of the project's eligible costs of construction related items, including testing, observation and construction. The City is responsible for funding design and the remaining construction costs. Cities are generally guaranteed to have their first priority project. Projects are added or funding reduced based on the available funding in the overall program.

The Public Works Department compiled the list of possible projects below. The work will include, where necessary, full depth pavement repair, curb and gutter replacement, sidewalk repair, new sidewalk, new ADA ramps, milling/overlaying the pavement or UBAS.

Program Year		Street Segment	From	To	CARS Eligible Costs	CARS Request
2025	1U	75th Street	State Line	Mission	$651,000	$325,500
	2	63rd Street	Roe	Nall	$815,000 w/ Mission	$407,500
2026	1U	Roe Avenue	63rd Street	83rd Street	$1,110,000	$555,000
2027	1	83rd Street	City Limit	Nall	$1,630,000	$815,000
	2U	Nall Avenue	63rd Street	67th Street	$355,000 w/ Mission	$177,500
2028	1	75th Street	Mission	Nall	$3,100,000	$1,550,000
2029	1U	Roe Avenue	83rd Street	95th Street	$610,000	$305,000

FUNDING SOURCE

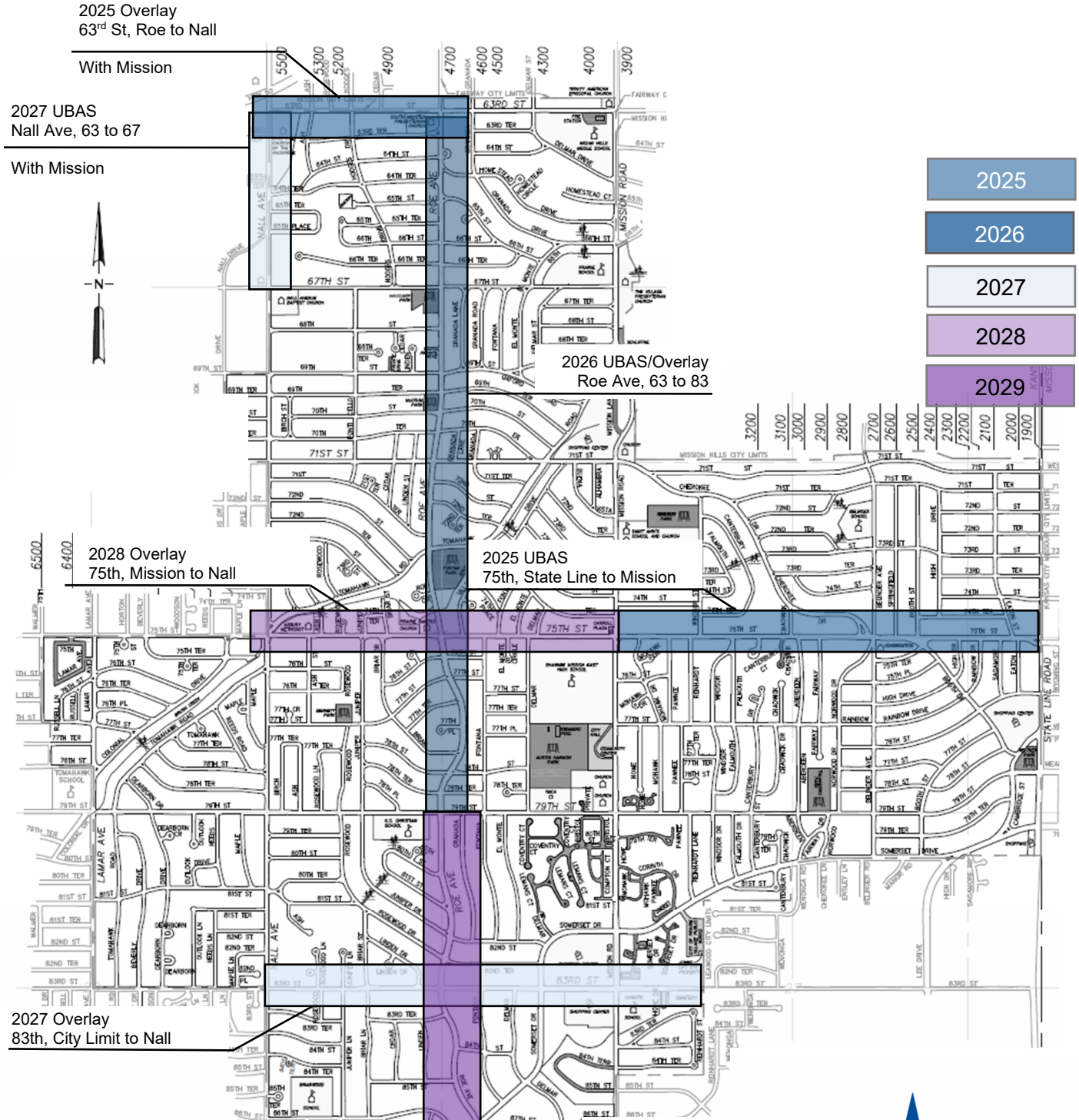
Funding will be programmed in the CIP.

ATTACHMENTS

1. Map of Project Locations

PREPARED BY

Melissa Prenger, City Engineer February 27, 2024



PRAIRIE VILLAGE, KANSAS

2025-2029 CARS PROGRAM

PUBLIC WORKS DEPARTMENT

Council Meeting: March 4, 2024

COU2024-20 CONSIDER CONSTRUCTION MANAGEMENT SERVICES AGREEMENT WITH MCCOWN GORDON FOR THE MUNICIPAL COMPLEX IMPROVEMENTS (BG510003)

RECOMMENDATION

Move to approve the agreement with McCown Gordon Construction for Construction Management Services for the Municipal Complex Improvements (BG510003) in the amount of $45,000.

BACKGROUND

Conceptual layouts for the Municipal Complex Improvements were presented to the City Council on November 23, 2023, where staff was authorized to move forward with implementing a new construction concept for City Hall, addition onto the Police Department for Court and renovations within the Police Department. The Design Team is currently wrapping up Schematic Design.

On February 27, 2024, the selection process was completed for the Construction Manager at Risk (CMR) contract and McCown Gordon Construction was selected. The Selection Committee consisted of Council Members Cole Robinson, Tyler Agniel (Proposal), Greg Shelton (Interview) along with Wes Jordan, Tim Schwartzkopf, Ivan Washington, and Melissa Prenger. Four proposals were submitted and after the initial ranking of the proposals three firms were interviewed. McCown Gordon Construction excelled in all aspects and their sustainable building experience was outstanding. McCown Gordon completed the Public Works Facility construction, delivering it on time and within budget.

The Preconstruction Services fee will be $45,000 and will allow McCown Gordon to serve as a consultant during the design phase of the project. They will assist the Design Team in the development of the design and cost estimating of the improvements. This contract also establishes the Construction Managers fee at 2.5% of the final construction cost. This percentage aligns with industry standards for similar buildings and is lower than the percentage fee assigned to the Public Works Facility.

This approval is for the preconstruction services only. As the team completes the preconstruction/design development part of the project, the contractor, architect, and City will agree on final construction costs for this project. Construction costs will be approved as change orders to this contract.

FUNDING SOURCE

Funding for the preconstruction services will be from the ARPA funds in the amount of $45,000. Funding for the construction costs will be set up at the time of approval.

ATTACHMENTS

1. Agreement with McCown Gordon Construction

PREPARED BY

Melissa Prenger, City Engineer February 28, 2024

CITY OF PRAIRIE VILLAGE, KANSAS CONTRACT BETWEEN

CITY OF PRAIRIE VILLAGE, KANSAS

AND

McCOWN GORDON CONSTRUCTION LLC

MUNICIPAL COMPLEX IMPROVEMENTS
BG510003

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

Construction Manager:

McCown Gordon Construction LLC
850 Main Street
Kansas City, Missouri 64105
816-960-1111 phone
816-960-1182 fax

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CITY OF PRAIRIE VILLAGE, KANSAS

AGREEMENT BETWEEN
CITY OF PRAIRIE VILLAGE, KANSAS
AND CONSTRUCTION MANAGER

MUNICIPAL COMPLEX IMPROVEMENTS (BG510003)

THIS AGREEMENT is made and entered into this _____ day of _____, 2024, by and between the **City of Prairie Village, Kansas**, (the "City"), and McCown Gordon Construction LLC (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: **MUNICIPAL COMPLEX IMPROVEMENTS**; 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 **FORTY-FIVE THOUSAND AND 00/100 Dollars ($45,000)** payable upon execution of GMP Change Order No. 1.

Reference **Exhibit C**, attached hereto and incorporated by reference herein, Preconstruction Scope & Fee, for further clarification.

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 2.5**%** 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 2.5**%** 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	Construction Manager's Preconstruction and Construction Fee Proposal
Exhibit D	Form of Affidavit of Partial Payment and Release of Claims/Affidavit of Partial Payment and Waiver of Liens and Release of Claims
Exhibit E	Form of Bill of Sale
Exhibit F	Form of Bailment Agreement
Exhibit G	Form of Affidavit of Partial Payment and Release of Claims/Affidavit of Final Payment and Waiver of Liens and Release of Claims
Exhibit H	Insurance Requirements
Exhibit I	Form of Performance Bond
Exhibit J	Form of Statutory Payment 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:_____
Alex Aggen
City Attorney

CONSTRUCTION MANAGER:

McCown Gordon Construction LLC

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 the construction of a new City Hall, demolition of the existing City Hall; subsequent construction of new Court offices and Court Room on the site and renovations in the Police Department.

New City Hall facility to be approximately18,000 gsf. The new structure will house: public interaction lobby, offices, conference space, work space, Council Chambers and art gallery.

New Court facilities to be approximately 6,000 gsf. The new structure will house: public interaction lobby, offices, and Court Room. This area will be constructed after City Hall has relocated to new facilities.

Police Department renovations include renovation of existing MPR wing to create offices and new evidence area, renovation of basement of existing MPR wing to remove unused facilities, and basement of Police Department to facilitate efficient use of space and accommodate growth.

All personnel will be in place in the existing facilities during the construction of the new City Hall.

The project will also create secure parking in the Police Department lot to include covered parking and new parking constructed for designated employee parking.

Sustainable design is very important to the City of Prairie Village. To that end, constructing a LEED Certification Platinum level will be the project goal for the City Hall Construction and LEED Certification Gold level will be the project goal for renovations/construction at the new PD/Court construction.

EXHIBIT B

GENERAL CONDITIONS TO CONSTRUCTION MANAGER AGREEMENT

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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 attached as exhibit A in change order 1. Scope of work performed at the Construction Manager's prinicipal 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 <u>Final Completion and Final Payment</u>.

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 provide 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 fall outside the parameters of Normal Weather Conditions, and including any delays resulting from the COVID-19 pandemic or any similar event (as described further below), which (a) adversely impact the critical path of the Work; and (b) cannot be reasonably avoided or mitigated through ordinary construction planning and operations, and (c) 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, the COVID-19 pandemic or any similar event, or otherwise provided, however, such hindrances and delays could be anticipated by Construction Manager at the time of the GMP Change Order is executed. 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

8.36.5 Notwithstanding the foregoing or anything in this Agreement to the contrary, Construction Manager acknowledges and agrees that the Work, and the performance thereof, may be subject to current and future governmental orders or directives regarding safety protocols related to the COVID-19 pandemic or any similar event, and the Construction Manager agrees that Work shall be performed in accordance with same, including but not limited to directives regarding social distancing, hygiene, and other efforts to slow the spread of the COVID-19 or any similar event. Failure of Construction Manager to comply with such orders or directives shall be deemed an event of default under this Agreement, and City shall not be responsible for any increase in the Contract Sum or the Contract Time related to City's enforcement of such orders or directives, or Construction Manager's failure to comply with such orders or directives. If Work on the Critical Path is delayed due to the COVID-19 pandemic, or

any similar event, reasons outside the control of Construction Manager, an equitable adjustment in the Contract Sum and/or the Contract Time shall be made to the Agreement as the City may reasonably decide.

8.37 Remedies for Default by Construction Manager.

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 Termination of the Agreement for the Convenience of the City.

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.

8.38.5 The Contractor may terminate the Contract because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents..

8.39 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.

8.40 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.

8.41 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.

8.42 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.

8.43 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.

8.44 **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.

8.45 **Temporary Facilities.**

8.45.1 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.

8.45.2 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.

8.45.3 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.

8.45.4 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.

8.46 **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.

8.47 **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.

8.48 **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.

8.49 **Safety of Persons and Property.**

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

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

8.49.1.2 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

8.49.1.3 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.

8.49.2 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".

8.49.3 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.

8.49.4 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.

8.49.5 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

8.49.6 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.

8.49.7 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.

8.49.8 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.

8.49.9 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.

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

8.50 Safety Program.

8.50.1 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.

8.50.2 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.

8.51 Handling of Emergencies, Emergency Plan.

8.51.1 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.

8.51.2 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.

8.52 Weekends, Holiday, and Night Work.

8.52.1 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.

8.52.2 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.

8.53 Approval of Equals.

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

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

8.53.1.2 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.

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

8.54 **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.

8.55 **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.

8.56 **Borrow and Waste Areas.**

8.56.1 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.

8.56.2 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.

8.57 **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.

8.58 **Federal Lobbying Activities.**

8.58.1 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.

8.58.2 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.

8.58.3 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.

8.59 **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.

8.60 **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.

8.61 **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.

8.62 **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.

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

8.64 Warranty.

8.64.1 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.

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

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

8.66 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.

8.67 Environmental Matters.

8.67.1 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:

8.67.1.1 "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.

8.67.1.2 "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.

8.67.1.3 "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.

8.67.1.4 "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.

8.67.2 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.

8.67.3 Notice to the City/Stop Work.

8.67.3.1 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.

8.67.3.2 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.

8.67.3.3 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.

8.67.3.4 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.

8.67.4 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.

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

8.68 **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.

8.69 **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.

8.70 **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

CONSTRUCTION MANAGER'S HOURLY RATE SCHEDULE

EXHIBIT D

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 E

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 F

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 G

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 H

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 I

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 **MUNICIPAL COMPLEX IMPROVEMENTS (BG510003)**, 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 J

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

MUNICIPAL COMPLEX IMPROVEMENTS (BG510003)

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:	**SURETY:**
_____	_____
By:_____	By:_____
Name:_____	Name:_____
Title:_____	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.

PUBLIC WORKS DEPARTMENT

Council Meeting Date: March 4, 2024

COU2024-21 CONSIDER AGREEMENT WITH PROJECT ADVOCATES FOR OWNERS REPRESENTATIVE SERVICES FOR THE CITY HALL IMPROVEMENTS PROJECT (BG510003)

RECOMMENDATION

Move to approve the agreement with Project Advocates for Owners Representative Services for the City Hall Improvements Project BG510003 in the amount of $150,000.

SELECTION OF OWNERS REPRESENTATIVE

At the April 17, 2023, Council meeting the Governing Body directed Staff to move forward with selection of an owner's representative, essentially a project manager specializing in building construction, for the Community Center Project. Qualified firms were interviewed, and the top ranked firm was selected. The timing of both projects along with the quality of firms represented, and the finite number of firms offering these services, presents an opportunity to eliminate duplicating this process by selecting the second ranked firm, Project Advocates, to assist with the City Hall Improvements Project.

BACKGROUND

The City Hall Improvements Project has been through the initial phases, including:

Feasibility Study	(2020)
Facility Assessment	(2022)
Programming	(2022)
Concept Development/Approval	(2023)

Current Phase:

Schematic Design (April 2024)

The design team is on track to bring Schematic Design (SD) to Council in April for approval. SD will go to the Planning Commission prior to the Council presentation to ensure the project is meeting/exceeding standards set by the City for development.

As the project moves out of Schematic Design, it is appropriate to develop more concise cost estimates and refine the layout. Since construction of a building is a different type of project than the city normally manages, having assistance from project managers that specialize in this area of construction will help make this a successful project.

This agreement with Project Advocates is for assistance to City staff in the area of budget analysis, cost development and FFE procurement and management to include installation.

FUNDING SOURCE

ARPA funds of $150,000.

ATTACHMENTS

1) Professional Services Agreement with Project Advocates.

PREPARED BY

Melissa Prenger, City Engineer February 28, 2024

AGREEMENT FOR OWNER'S REPRESENTATIVE

For

PROJECT MANAGEMENT SERVICES

Of

City Hall Improvements BG510003

THIS AGREEMENT, made at the Prairie Village, Kansas, this _____ day of _____, by and between the City of Prairie Village, Kansas, a municipal corporation with offices at 7700 Mission Road, Prairie Village, Kansas, 66208, hereinafter called the "**City**", and Project Advocates, LLC , a limited liability company with offices at 5821 W. 137th St., Overland Park, KS 66223, hereinafter called the "**Consultant**".

WITNESSED, THAT WHEREAS, the City has determined a need to retain a professional engineering firm to provide project management services for the budget review, scheduling, logistics, and FF&E Procurement and Installation Oversight CITY HALL IMPROVEMENTS BG510003, hereinafter called the "**Project**",

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

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

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

Article I City Responsibilities

A. **Project Definition** The City has approved funding allocations for a new City Hall with related sitework and renovations to the existing Police Headquarters located at 7700 Mission Rd in Prairie Village. The Project is not to exceed $30 million in total project costs.

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

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

violation or infringement of any law or third-party rights that the Consultant observes. City shall indemnify Consultant for any infringement claims resulting from Consultant's use of such content, materials or documents.

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

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

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

G. The City has funded the Project.

Article II Consultant Responsibilities

A. **Owner's Representative/Project Management Services** The Consultant shall provide oversight of all related scope of services in the first phase of the Project to which this Agreement applies as hereinafter provided.

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

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

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

Article III Scope of Services

SCOPE OF SERVICES

A. General Conditions of the Agreement between the City and Consultant

1. The Consultant shall report to the City's designated Project Manager who will have primary management responsibility for the Project and shall coordinate all Project matters with the assistance of the Consultant.
2. The Consultant shall utilize Virtual Project Manager, City's design and construction project management software, to prepare, maintain, and organize all Project documents and records for the Project. The City will provide Virtual Project Manager training for the Consultant.
3. The Consultant shall assist the City in ensuring compliance with the City's standard contracting protocol.
4. The Consultant shall represent the City in its communications with the Architect, CM, and City Consultant(s).
5. The Consultant shall be proactive in its efforts to assist the City and show leadership during completion of the services.

6. The Consultant shall make themselves available to the City by telephone or meetings in a timely fashion for follow-up discussion so not to delay the project.

B. General Services. The following services shall be required.

1. The Architect for the Project is Clark & Enersen located at 2020 Baltimore Ave., Suite 300, Kansas City, MO 64108.

2. Meetings with Architect. The Consultant shall attend and assist the City at Project design meetings with the Architect. The Consultant shall request the Architect prepare meeting minutes if the Architect has not submitted the meeting minutes in a timely fashion. The Consultant shall (a) review the meeting minutes for accuracy, (b) report discrepancies in the minutes to the City, and (c) follow up with the Architect to issue revised meeting minutes. The Consultant shall monitor the City's "action items" shown on the meeting minutes and ensure the items are completed by the City so as not to delay the project.

3. Other Project Meetings. The Consultant shall schedule, attend, and conduct meetings with the City, Consultants, Architect, and City's designees as necessary during the development of the Project, and shall provide minutes from such meetings to the City.

4. Community Engagement. The Consultant shall assist the city in regard to community engagement including planning and attendance of public meetings, assistance with third-party public relations consultants, and cohesive messaging. Consultant will work closely with the city and its partners in the development of this plan.

5. Project Budget. The Consultant shall assist the City with review of the Project budget by others subject to City input and approval. Project budget shall include all costs for the development of the Project including, but not limited to, professional fees including architectural and engineering fees, construction costs, utility main extensions, utility connection fees, off-site easement and right of way acquisition, and furniture, fixtures, and equipment. Assist the City with review of project estimates.

6. Construction Estimating. The Consultant will provide review of construction budget estimates as related to the proposed design. Consultant shall review three (3) construction estimate at Schematic Design, Design Development, and an estimate check at Construction Documents during the duration of this phase.

7. ~~Monthly Reports. The Consultant shall furnish monthly reports to the City's including but not limited to (a) status of the Project; (b) development of Project budget; (c) progression of the Project schedule; (d) revisions to the Project schedule or Project budget made during the period covered by the report; (e) outstanding issues requiring action or approval by City.~~

8. ~~Payment of Invoices. The Consultant shall process payment of all invoices from the City's Consultants, and/or contractors. All invoices will be submitted through the City's project management software, Virtual Project Manager.~~

9. Vendors. The Consultant shall assist the City with identifying, and selecting, ~~and negotiating contracts with~~ other required vendors (the "Vendors") for the Project as related to the FF&E procurement. The Consultant shall advise the City and make recommendations concerning (a) scope of services provided by each required vendor and (b) fees. ~~The Consultant shall be responsible for administration of the contracts with each selected vendor. Vendors may also include "Consultants", such as professionals that perform consulting services for various programming elements for the Project.~~

10. Value Engineering. The Consultant shall assist the City with review of value engineering items, constructability issues, construction feasibility, and alternate designs or materials presented for consideration by the Architect or CMc. During their review, The Consultant shall consider availability of materials and labor, time requirements for installation and construction, and

factors relating to costs including possible cost reductions and economies if and when necessary to reconcile the Project budget, program, and schedule.

11. ~~Review of Drawings and Specifications. The Consultant shall assist the City with reviewing the conceptual drawings from the Project by the Architect. The Consultant shall review background information relevant to the Project, including pre-design space studies, proposed building program components and utilization, environmental investigations, and remediation reports, building system analysis reports, applicable City/State/Federal regulations, and Americans with Disabilities Act requirements. The Consultant shall meet with the City to discuss review comments and transmit all comments (The Consultant and City) to the Architect in electronic format. The Consultant shall assist the City with coordination of drawings and specifications prepared by the Architect and drawings and specifications prepared by other Project Consultants hired by the City. The Consultant shall not assume any of the Architect's responsibility for design. The Consultant shall also review and comment on floor plan, room uses and sizes, and ADA compliance.~~

Article IV Time Schedule

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

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

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

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

~~Selected Option Budget Review~~	~~December, 2023~~
FF&E Procurement & Management	April 2024 – February 2025
Budget, schedule, & logistics review at SD, DD, CD check	April 2024 – February 2025
Construction oversight	Excluded
FF&E Installation Oversight	February 2026 – March 2026

Article V Compensation

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

Consultant Lump Sum Services:	
FF&E Procurement & Management	286 hours, $64,107
Budget, schedule, & logistics review at SD, DD, CD check	238 hours, $50,284
Construction oversight	Excluded
FF&E Installation Oversight	156 hours, $35,608
TOTAL NOT TO EXCEED	$150,000

B. **Invoices** The compensation will be invoiced by phase, detailing the position, hours and appropriate hourly rates (which include overhead and profit) for Consultant's personnel classifications and the Direct Non-Salary Costs. Payments are due net 30 days. Payment for Consultant's services shall not be dependent upon City financing, grants, donations, or reimbursements from any financial institution or entities.

C. **Direct Non-Salary Costs** The term "Direct Non-Salary Costs" shall include the Consultant payments in connection with the Project to other consultants, transportation, and reproduction costs. The Lump Sum amounts above include local travel and miscellaneous costs. Should other significant expenses be anticipated, only with the City's prior approval, payments will be billed to the City at actual cost + 15% administration. Transportation, including use of –vehicle or automobile will be charged at the IRS rate in effect during the billing period. Reproduction work and materials will be charged at actual cost + 15% for copies submitted to the City.

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

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

Article VI General Provisions

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

   The Consultant is not required to design or specify the Project within the requirements defined for compliance or to ascertain that the Project Documents and Contracts are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Consultant shall promptly report to the City and Designer any nonconformity discovered by or made known to the Consultant.

B. **Reuse of Consultant Documents:** All documents including the plans and specifications provided or furnished by the Consultant pursuant to this Agreement are instruments of service in respect of the Project. The Consultant shall retain an ownership and property interest upon payment therefore

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

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

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

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

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

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

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

H. **Termination** This Agreement may be terminated by either party upon seven days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party; provided, however, the nonperforming party shall have 14 calendar days from the receipt of the termination notice to cure the failure in a manner acceptable to

the other party. In any such case, the Consultant shall be paid the reasonable value of the services rendered up to the time of termination on the basis of the payment provisions of this Agreement.

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

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

. In recognition of the relative risks and benefits of the project to both the City and the Consultant, the City agrees, to the fullest extent permitted by law, to limit the liability of the Consultant from the City and any sub-consultants to the City, Designer, and to all other parties involved in the project for any and all claims, losses, costs, damages of any nature whatsoever or claims expenses from any cause or causes, so that the total aggregate liability of the Consultant and their sub-consultants to all those named shall not exceed 50% of the total fee amount agreed in Article V.A. Such claims and causes include negligence, professional errors or omissions, strict liability, breach of contract or warranty.

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

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

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

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

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

P. **Non Discrimination** The Consultant agrees that it shall abide by the Prairie Village Non Discrimination Code (Section 5-801 et seq) and shall not discriminate against any person in the performance of Work under the present contract because of race, religion, color, sex, sexual orientation, gender identity, disability, age, national origin, or ancestry. If the City determines that

the Consultant has violated any applicable provision of any local, state or federal law, or has discriminated against any person because of race, religion, color, sex, sexual orientation, gender identity, disability, age, national origin, or ancestry, such violation and/or discrimination shall constitute a breach of contract and the City may cancel, terminate or suspend this agreement in whole or in part.

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

City:	**Consultant:**
City of Prairie Village, Kansas	**Project Advocates, LLC**
By: _____ Eric Mikkelson, Mayor	By _____ Radd C. Way - Principal
Address for giving notices:	Address for giving notices:
City of Prairie Village Department of Public Works 3535 Somerset Drive Prairie Village, Kansas 66208	Project Advocates 5821 W. 137th St. Overland Park, KS 66223
Telephone: 913-385-4640 Email: publicworks@pvkansas.com	Telephone: 913-522-0080 Email: Radd@Project-Advocates.com
ATTEST:	APPROVED AS TO FORM BY:
_____ Adam Geffert, City Clerk	_____ Alex Aggen, City Attorney

EXHIBIT A
COMPENSATION

Project compensation will be billed pro rata monthly ~~hourly~~ as related to the following scope categories:

- ~~Site/Program Design Oversight – Attend and assist the city at design meetings, provide meeting minutes as necessary, and review and development of action items. Includes solicitation of other vendors necessary for the development of project documents~~

- ~~Project Budget Management – Assist the city with review of the project budget by others for the one (1) selected optional design, review monthly invoices.~~

- Construction Estimating Review – Provide review of construction estimates by others from preliminary design drawings. Three (3) estimates reviews total will be provided at Schematic Design, Design Development, and a budget check at Construction Documents.

- ~~Community Engagement – planning and attendance of public meetings, assistance with third-party public relations consultants, and cohesive messaging. Consultant with work closely with the city and its partners in the development of this plan.~~

- ~~General project management – monthly reports, other project meetings, general project communication, items not specifically identified above but relevant to project description.~~

- Management of FF&E identification through the Interior Design Team, FF&E budget management, assist the City with FF&E procurement and logistical planning. Provide logistics coordination, and oversight of FF&E installation by others. No AV/IT or low voltage systems are included.

NOT TO EXCEED CONTRACT VALUE: $150,000

Payments will be billed in monthly installments plus approved reimbursable expenses.

HOURLY RATES: (through December 2024)

Radd Way	Principal	$245/hr
Jennifer Gerlach/Rob Putthoff	Partner Advocate	$220/hr
Support Staff		$185/hr

PROJECT ADVOCATES
Your Project. Our Passion.

City of Prairie Village - PA Services
Services & Fee Analysis
2/26/2024

PRAIRIE VILLAGE
THE STAR OF KANSAS

New City Hall and PD Renovation **Prairie Village, KS**

Schedule:	Start	Complete	Months	Weeks
FF&E Procure	4/1/2024	2/28/2025	11	48
Bud/Sched/Logis	4/1/2024	2/28/2025	11	48
Construction				0
Activation	2/1/2026	3/31/2026	2	9

Activity	Duration		Manhours			Total	$ Rate/hr	$245	$220	$185	Total	$/Mnhr
	Wks	Mos	Principal	Proj. Adv.	Support	Hours	Reimbursables	Principal	Proj. Adv.	Support	$'s	
FF&E Procurement & Management	48	11.0	48	238	0	286	included	$11,677	$52,429	$0	$64,107	$224
		April '24 -Feb '25										
Budget, Schedule, Logistics at	48	11.0	48	95	95	238	included	$11,677	$20,972	$17,635	$50,284	$211
SD, DD, CD ck		April '24 - Nov '24										
Construction	0	0.0	0	0	0	0		$0	$0	$0	$0	
FF&E Installation	9	2.0	0	156	0	156	included	$0	$35,608	$0	$35,608	
		Feb '26 - March '26										
TOTAL	**95**	**22.0**	**95**	**490**	**95**	**680**	**included**	**$23,355**	**$109,009**	**$17,635**	**$150,000**	**$220**
							Project Budget	$30,000,000		% Project Budget	0.5%	
		Hours	95	490	95	680						
		FTE's	0.02	0.09	0.02	0.12						

ADMINISTRATION

Council Meeting Date: March 4, 2024

COMMITTEE OF THE WHOLE AGENDA – 2025 Budget Goals and Objectives

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Attached please find a draft of the proposed 2025 Budget Goals and Objectives.

The budget goals and objectives were developed under the framework of the Council's organizational priorities:

- Quality of Life
- Superior Services
- Community Safety
- Be mindful of tax burden
- Invest in Public Realm
- Environmental Sustainability

Each year the Council reaffirms its Goals and Objectives specific to that upcoming budget year. The draft 2025 document carries forward the adopted 2024 budget goals and objectives for Council to provide input and direction for any desired changes.

Staff will present an overview of the budget process and the City's updated mill levy information along with this agenda item.

Staff is seeking Council's direction on whether to amend the proposed 2025 Budget Goals and Objectives before approving the document.

SUGGESTED MOTION

Recommend the City Council approve the 2025 Goals and Objectives.

ATTACHMENTS:

- 2025 Goals and Objectives
- 2025 Goals and Objectives and Mill Levy Presentation

Prepared by: Jason Hannaman, Finance Director
Date: February 28, 2024

City of Prairie Village
2025 DRAFT Budget Goals and Objectives

2025 GOALS	OBJECTIVES
Maintain high quality services and programs	• Manage and plan to meet demand for City services • Promote sustainable growth and development • Understand the scope of available options (solutions within the City's sphere of influence or control) • Maintain employee stability through the City's comprehensive pay and benefits plan
Maintain quality streets, parks and infrastructure	• Maintain a comprehensive plan for both near-term and long-term capital needs, including City facilities • Plan and construct capital projects
Continue strong financial condition	• Maintain AAA bond rating • Budget for General Fund ending fund balance to be a minimum of 25% of revenues (excluding transfers) • Continue emphasis on Equipment Reserve Fund and other funding sources for non-routine equipment purchases • Prepare and adopt a fiscally prudent 2025 City Budget
Maintain financial transparency and citizen participation in budget issues	• Communicate with Citizens and key local partners • Continue to utilize "PV Checkbook" • Continue to publicize budget-related meetings and invite public participation in the budget process • Continue to utilize social media and the Village Voice to communicate key financial issues



City of Prairie Village 2025 Budget Goals & Objectives and Mill Levy Information

- March 4, 2024

Proposed 2025 Budget Goals

- Maintain high quality services and programs
- Maintain quality streets, parks and infrastructure
- Continue strong financial condition
- Maintain financial transparency and citizen participation in budget issues

Proposed 2025 Objectives

- Maintain high quality services and programs
  - Manage and plan to meet demand for City services
  - Promote sustainable growth and development
  - Understand the scope of available options
  - Maintain employee stability through the City's comprehensive pay and benefits plan

Proposed 2025 Objectives

- Maintain quality streets, parks and infrastructure
  - Maintain a comprehensive plan for both near-term and long-term capital needs, including City facilities
    - As a reminder, the 2024 budget has built in $1.15M of debt service payments for the City Hall project. The remaining estimated $530k will be built into the 2025 budget.
  - Plan and construct capital projects

Proposed 2025 Objectives

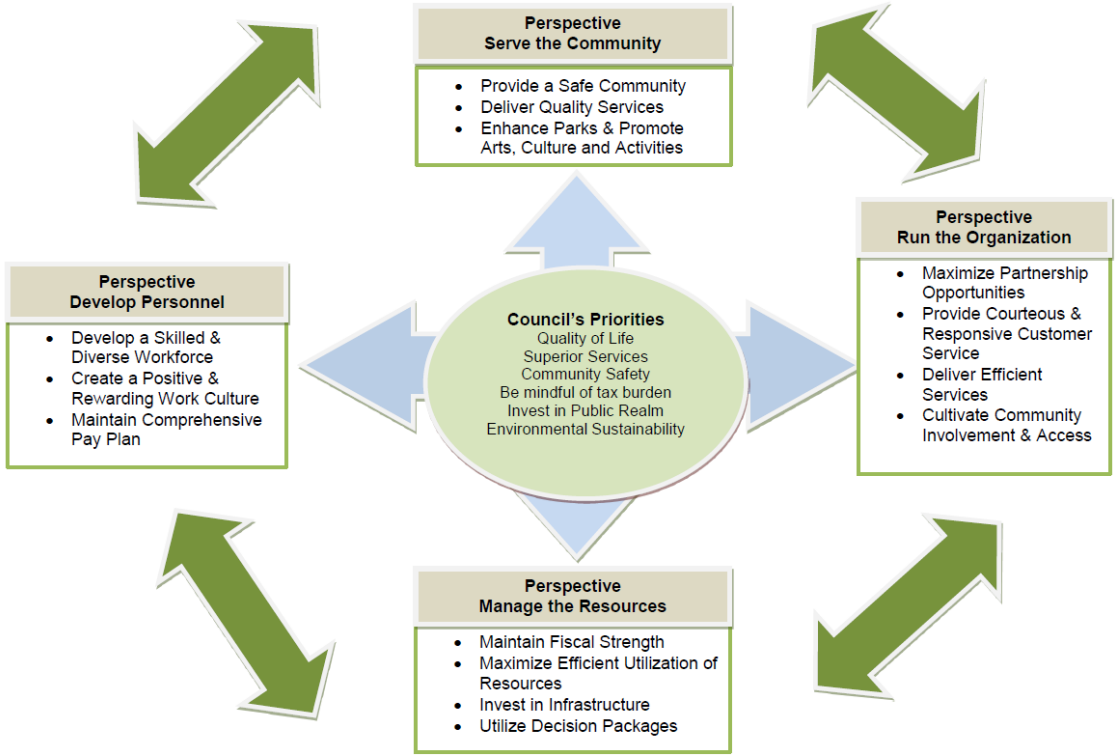
- Continue strong financial condition
  - Maintain AAA bond rating
  - Budget for General Fund ending fund balance to be a minimum of 25% of revenues
  - Continue emphasis on Equipment Reserve Fund and other funding sources for non-routine equipment purchases
  - Prepare and adopt a fiscally prudent 2025 City Budget

Proposed 2025 Objectives

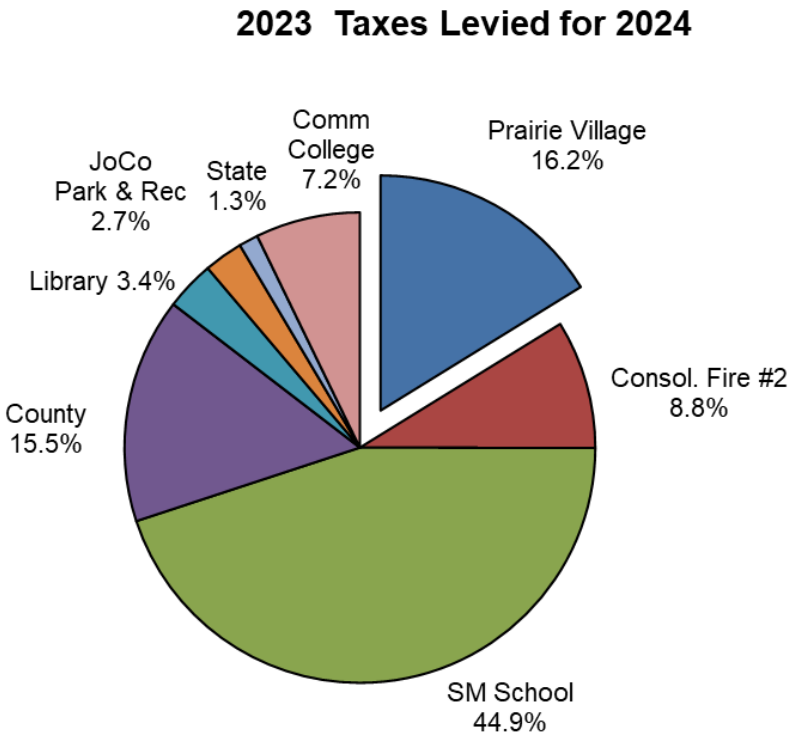
- Maintain financial transparency and citizen participation in budget issues
  - Communicate with citizens and key local partners
  - Continue to utilize “PV Checkbook”
  - Continue to publicize budget-related meetings and invite public participation in the budget process
  - Continue to utilize social media and the Village Voice to communicate key financial issues

Budget Process

Goals and Objectives - Budget Process



Mill Levy: 2023 Taxes Levied for 2024



Mill Levy: Average Prairie Village Home

2023 Taxes Levied for 2024 - Average Prairie Village House

Average Home Appraised Value: $ 496,424

Assessed Value (11.5%): $ 57,089

Mill Levies

	2023/2024
Prairie Village	18.325
Consol. Fire #2	10.007
SM School	50.822
County	17.526
Library	3.812
JoCo Park & Rec	3.022
State	1.500
Comm College	8.131
	113.145

	Annual	Monthly
Prairie Village	$ 1,046	$ 87
Consol. Fire #2	571	48
SM School	2,901	242
County	1,001	83
Library	218	18
JoCo Park & Rec	173	14
State	86	7
Comm College	464	39
	$ 6,460	$ 538

1 mill for the City = $639,791 (2023 Annual Abstract of Taxes)

1 mill for the average house = $57.08 (annual)

Mill Levy: Median Prairie Village Home

2023 Taxes Levied for 2024 - Median Prairie Village House

Median Home Appraised Value: $ 387,050

Assessed Value (11.5%): $ 44,511

Mill Levies

	2023/2024
Prairie Village	18.325
Consol. Fire #2	10.007
SM School	50.822
County	17.526
Library	3.812
JoCo Park & Rec	3.022
State	1.500
Comm College	8.131
	113.145

	Annual	Monthly
Prairie Village	$ 816	$ 68
Consol. Fire #2	445	37
SM School	2,262	189
County	780	65
Library	170	14
JoCo Park & Rec	135	11
State	67	6
Comm College	362	30
	$ 5,037	$ 420

1 mill for the City = $639,791 (2023 Annual Abstract of Taxes)

1 mill for the median house = $44.53 (annual)

Mill Levy Comparisons

Johnson County Cities 2023 Mill Levies
On each $1,000 Tangible Assessed Valuation

	Mill Levy					
City	**City**	**Fire**	**Bond & Interest**	**Stormwater**	**Other**	**Total**
Edgerton	29.753	16.282				46.035
Bonner Springs	29.658		6.685		3.527	39.870
Spring Hill C/F	21.458	13.238	1.322		0.224	36.242
Roeland Park	25.120	10.007	0.880			36.007
Westwood Hills	23.153	10.007				33.160
Gardner	12.678	14.637	5.758			33.073
Mission Hills	21.960	10.007	0.806			32.773
Westwood	20.702	10.007	0.497			31.206
Fairway	19.105	10.007	0.867			29.979
Mission	18.497	10.007				28.504
Prairie Village	**18.325**	10.007	**-**			**28.332**
Lenexa	22.419		5.051			27.470
Leawood	19.205		4.301			23.506
Olathe C/F	8.750	1.746	9.792		3.068	23.356
Shawnee	17.504	1.286	4.258			23.048
Merriam	22.267		0.662			22.929
De Soto	12.245	5.276	2.190			19.711
Overland Park	13.565			0.960		14.525

S: 2023 Mill Levy Report for All Taxing Units - Johnson County, Kansas worksheet found on the Johnson County Dept of Records & Tax Administration website.

Mill Levy Comparisons (*continued*)

Johnson County Cities 2023 Mill Levies (Without External Fire District)
On each $1,000 Tangible Assessed Valuation

	Mill Levy					
City	**City**	**Fire**	**Bond & Interest**	**Stormwater**	**Other**	**Total**
Bonner Springs	29.658	-	6.685	-	3.527	39.870
Spring Hill C/F	21.458	13.238	1.322	-	0.224	36.242
Edgerton	29.753	-	-	-	-	29.753
Lenexa	22.419	-	5.051	-	-	27.470
Roeland Park	25.120	-	0.880	-	-	26.000
Leawood	19.205	-	4.301	-	-	23.506
Olathe C/F	8.750	1.746	9.792	-	3.068	23.356
Westwood Hills	23.153	-	-	-	-	23.153
Shawnee	17.504	1.286	4.258	-	-	23.048
Merriam	22.267	-	0.662	-	-	22.929
Mission Hills	21.960	-	0.806	-	-	22.766
Westwood	20.702	-	0.497	-	-	21.199
Fairway	19.105	-	0.867	-	-	19.972
De Soto	12.245	5.276	2.190	-	-	19.711
Mission	18.497	-	-	-	-	18.497
Gardner	12.678	-	5.758	-	-	18.436
Prairie Village	**18.325**	**-**	**-**	**-**	**-**	**18.325**
Overland Park	13.565	-	-	0.960	-	14.525

S: 2023 Mill Levy Report for All Taxing Units - Johnson County, Kansas worksheet found on the Johnson County Dept of Records & Tax Administration website.

Mill Levy: Estimated Value of One Mill

Estimated Value Of One Mill For 2024 (Mill Rate = 18.325) - NO TIF		
		AVG PV Home
The estimated value of one mill would be:	**$639,791**	
1/10 mill	$63,979	$5.71
2/10 mill	$127,958	$11.42
3/10 mill	$191,937	$17.12
4/10 mill	$255,916	$22.83
5/10 mill	$319,896	$28.54
6/10 mill	$383,875	$34.25
7/10 mill	$447,854	$39.96
8/10 mill	$511,833	$45.66
9/10 mill	$575,812	$51.37
1 mill	$639,791	$57.08
1.1 mill	$703,770	$62.79
1.2 mill	$767,749	$68.50
1.3 mill	$831,729	$74.20
1.4 mill	$895,708	$79.91
1.5 mill	$959,687	$85.62
1.6 mill	$1,023,666	$91.33
1.7 mill	$1,087,645	$97.04
1.8 mill	$1,151,624	$102.74
1.9 mill	$1,215,603	$108.45
2 mill	$1,279,582	$114.16

Mill Levy: Estimated Value of One Mill

Estimated Value Of One Mill For 2024 (Mill Rate = 18.325) - NO TIF		
		Median PV Home
The estimated value of one mill would be:	**$639,791**	
1/10 mill	$63,979	$4.45
2/10 mill	$127,958	$8.91
3/10 mill	$191,937	$13.36
4/10 mill	$255,916	$17.81
5/10 mill	$319,896	$22.27
6/10 mill	$383,875	$26.72
7/10 mill	$447,854	$31.17
8/10 mill	$511,833	$35.62
9/10 mill	$575,812	$40.08
1 mill	$639,791	$44.53
1.1 mill	$703,770	$48.98
1.2 mill	$767,749	$53.44
1.3 mill	$831,729	$57.89
1.4 mill	$895,708	$62.34
1.5 mill	$959,687	$66.80
1.6 mill	$1,023,666	$71.25
1.7 mill	$1,087,645	$75.70
1.8 mill	$1,151,624	$80.15
1.9 mill	$1,215,603	$84.61
2 mill	$1,279,582	$89.06

Decision Packages – Past Examples

- Decision Packages – Past Examples
  - Mill levy reduction
  - Funding second mental health co-responder (shared w/ Mission Hills & Leawood)
  - Exterior/Sustainability Grant program
  - Increasing funding for street maintenance in the Capital Improvement Plan
- Identify estimated amount and recommended funding source
- Submit to Finance by April 4, 2024 to be discussed by the Council and Finance Committee

A "decision package" has traditionally been an item which is above and beyond the existing or core services of the City.

Next Steps

- April 1: Worker's Compensation and Insurance Cost Assumptions
- April 15: Decision Package Discussion (Send to Jason by April 4th)
- April 15: Preliminary Revenue Estimate
- April 15: Committee 2025 Budgets and Outside Funding Requests
- May 6: CIP and Annual Road Condition Discussion

MAYOR'S ANNOUNCEMENTS
Monday, March 4, 2024

Board of Zoning Appeals	03/05/2024	6:30 p.m.
Planning Commission	03/05/2024	7:00 p.m.
Parks and Recreation Committee	03/06/2024	4:00 p.m.
Arts Council	03/06/2024	5:30 p.m.
Tree Board	03/06/2024	6:00 p.m.
Arts Council reception	03/06/2024	7:00 p.m.
Diversity Committee	03/12/2024	4:00 p.m.
City Council	03/18/2024	6:00 p.m.

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INFORMATIONAL ITEMS
March 4, 2024

1. Environmental Committee meeting minutes – January 24, 2024
2. VillageFest meeting minutes – February 22, 2024
3. JazzFest meeting minutes – February 27, 2024
4. March plan of action

The Prairie Village Environmental Committee met at 5:30 p.m. Wednesday January 24, 2024, in the Prairie Village City Hall Multipurpose Room. Recording Secretary was Johanna Comes.

The meeting was called to order at 5:30 p.m.

Members in Attendance: Greg Shelton (co-chair), Terrence Gallagher (co-chair), Ashley Freburg (staff liaison), Warren Smith, Rich Dalton, Penny Mahon, Nathan Kovac, Magda Born, Johanna Comes, Travis Carson, Dave Huyett, Stephanie Alger.

Approval of the Agenda: Stephanie moved to approve the agenda and Rich seconded the motion. All in favor.

Approval of the December 15, 2023, Meeting Minutes: Nathan moved to approve the minutes and Magda seconded the motion. All in favor.

Presentation:
Johnson County Parks and Recreation board member Heather Rubesch discussed the master plan for the planting of native plants at Meadowbrook Park. Meadowbrook Park is within the city of Prairie Village, but it is managed by Johnson County Parks and Recreation. Native grasses are the primary native plants to be planted at Meadowbrook Park, not native flowers or shrubs. Heather outlined several reasons why the planting of native flowers and shrubs is not a realistic option for Meadowbrook Park:

1) Meadowbrook Park is the second most visited park in Johnson County. Because of the high foot traffic there is a risk of plantings being trampled and disturbed.

2) The chemicals used on the former golf course make the park soil less-than-ideal for native plants, other than grasses.

3) Management of large-scale native plantings involves prescribed vegetation burns, which may not be an acceptable management strategy in Prairie Village.

4) The limited number of native seeds available for use by Johnson County Parks and Recreation would be better used in other county park projects where the success of native plant growth is more likely.

Due to these concerns, Meadowbrook Park is not considered an ideal location for the planting of native plants and shrubs. However, Matt Garret, the full-time naturalist with Johnson County Parks and Representatives would be willing to consult with the Prairie Village if the city is interested in native plants and shrubs in their other city parks.

Old Business:
2024 Budget Review. Greg reviewed that Evergy now offers a Smart Thermostat Incentive program, so there is no need for the City of Prairie Village to offer incentivized smart thermostats to residents. Nathan made a motion to remove the smart thermostat program from the Environmental Committee budget. Rich seconded the motion. All in favor.

New Business:
1) 2024 Northeast Johnson County Fall Recycling Event will be held from 9 a.m. to noon, September 28, 2024, at the Nations Holding parking lot. Greg discussed that the financial commitment to the event would be the same as last year, not to exceed $1,000. The commitment includes providing volunteers for the event, promotion and a cost-sharing budget. Promotion for the event would be through the Prairie Village Voice and the City of Prairie Village social media account. Magda made a motion to approve the budget for the Northeast Johnson County Fall Recycling Event. Nathan seconded the motion. All in favor.

2) 2025 Environmental Committee Budget. Greg discussed that programs already planned for the 2025 budget include: the Northeast Johnson County Fall Recycling Event, marketing budget, Go Green Event, Jazz Fest, and the Mayors Monarch Pledge budget. Greg asked the committee to consider other programs to allocate funds for the year 2025. Penny suggested allocating funds to a potential city composting program. Johanna suggested allocating funds to native planting in parks. Nathan suggested allocating funds to electric vehicle charging stations. Terrence discussed that there are plans for EV charging stations to be placed at Wassmer Park through Plug-in KC.

Terrence discussed that there is a plan by the City of Prairie Village to plant and maintain native plants at Franklin Park and Schliffke Park. There is a staff member in the Public Works department who is knowledgeable and interested in planting native plants in Prairie Village city parks that the budget for the plants and maintenance would be separate from the Environmental Committee budget. Greg asked the committee to bring additional ideas to discuss allocation of funds at the February and March Environmental Committee meetings.

Announcements:
Terrence discussed that Boy Scouts from Prairie Village will be mulching Prairie Village parks this spring.

Ashley announced that the City of Prairie Village is holding an open house as part of a Community Center Campus Study. The open house will be at Meadowbrook Park on January 24, 2024.

New Environmental Committee members will be present at the next Environmental Committee Meeting on February 28, 2024.

The Committee recognized and thanked outgoing members Stephanie Alger and Rich Dalton for their service.

Magda will be the recording secretary for the next committee meeting.

Adjourn: Dave made a motion to adjourn the meeting. Stephanie seconded the motion. All in favor. The meeting adjourned at 6:40 pm.

VillageFest 2024

Meeting Information	
Location	Multipurpose Room - PV City Hall
Date & Time	Thursday February 22, 2024 5:30PM - 6:30PM
Attendees	• Amber Fletcher • JD Kinney • Alaina Wilby • Teresa Leland • Toby Fritz • Lori Sharp

Discussion Notes	
Committee Chair's Report	• Sgt. Josh Puttoff will be our new liaison with PVPD. • Doug Gibson will be our Fire Department contact.
Pancake Breakfast	• We will have 3 credit card terminals this year, this will require an additional table and person to man the terminal. • We will have one more 5 gallon water dispenser with ice and water from Public Works at the pancake breakfast.
Patriotic Program	• Kristy Lambert is confirmed.
Spirit Awards	• Nominations are open.
KS National Guard History Museum	• Captain Anthony Braun will not be able to staff the historical display. The Guard looks forward to returning in 2025.

and Display	
History Display	• Steve Noll has been emailed to see if we can have a similar display like last year.
Vendors and Exhibitors	• Old Mission Lodge will have a tent in exchange for their volunteer service. Their tent must be staffed from 9am-1pm. • Polar Oasis is confirmed. They will be bringing 2 trucks to manage their lines better. One will be in their usual spot and the other by the entrance to the skate park and will use skate park electrical box. • Rex Nolen confirmed for popcorn, cotton candy, and lemonade. • Water One Quench Buggy is confirmed. • David Shepherd will sell hot dogs. He is a friend of Rex Nolen.
Live Entertainment	• Mr. Stinky Feet is confirmed. • Multiphonics is confirmed. • American Waste Systems (Stage) is confirmed. • Amazing Alex Balloon Twisting confirmed • Sterling Silver Sound confirmed. • Sister Act - confirmed and adding an additional face painter to reduce wait times. ○ 2 hair painters, 6 face painters, 1 bubble guy • Slip n Slide TBD • Bike Parade - TBD • Blitz Police Dog Demo - confirmed. Waiting to hear specifics on what time or how many demos they want to do.
Pie Contest	• We want to randomize judge assignments. • Need to order supplies: film for camera, carry-out containers, winners

	ribbons. ● Pie Plate finished and picked up.
Activities	● Fun Services contract signed. Rides to include: Trackless Train, Quad Jump, Fiberglass Slide, Climbing Wall, Tri-Jump, and Tornado. Labor and ride costs have gone up. ● Petting Zoo and Pony Rides: waiting for price quote. ● Military Vehicles: Huey helicopter confirmed, looking to add more jeeps. ● Children's Craft Area: Will see if the PV Environmental Committee is interested again. ● The Little Village: Second junior bounce house purchased. ● Yard Games - TBD ● Bounce Houses- confirmed
Giveaways	● We have some bags left over from last year, will inventory and then purchase more based on need.
Infrastructure	● TBD
Info Tent/Lost & Found/First Aid	● Lori Sharp our new City Council Liaison will be at the info tent.
Marketing	● Sign Gypsies will put up a yard sign on the hill (near the info booth) that says "Happy 4th of July - VillageFest 2024." ● Mission Road Banners - Light pole banners go up after Junteenth. ● Park Vinyls to be installed after Junteenth. ● 75th Street banner should be good for many years without revision.
Next Meeting	● April 25, 2024 at 5:30pm (Note we are skipping March due to conflicts on that date for several committee members.)

Prairie Village Jazz Fest 2024
Committee Meeting
Tuesday February 27, 2024, 5:30 p.m.
Multipurpose Room

Attendees

Dave Robinson	City Council Liaison
J.D. Kinney	Special Events Coordinator, Committee Chair
Kyle Vanlanduyt	Master of Ceremonies
John Wilinski	Artist Relations and Backstage Chair
Mary Ann Watkins	Community Member

Committee Chair's Report

Travis Gray will be our PV Police liaison, replacing Luke Roth, who retired.
The Jazz Fest 2025 budget request is due soon. JD will be working on it.
Mary Ann Watkins asked what could be done to prevent firearms being brought into Jazz Fest. JD to consult with PV administration and the PD regarding PV statutes and Kansas law regarding this question.

Talent

SME Blue Knights and Back Alley Brass band are confirmed for 2024

F&B

The Ice Hut, our ice vendor for 2023, has been confirmed for 2024.

VIP Area

No report

Infrastructure

SECT has submitted their contract for 2024 for the stage, lighting and sound. Deposit pending
Aching Backline has committed verbally for Jazz Fest 2024. Jones Piano has not yet confirmed.

Marketing

Advertising package with Johnson County Post is confirmed

City Committees/Exhibitor Tents

A request was made for a tent for Monkey Brain Arts, an organization serving veterans through art instruction.

The next JazzFest Committee meeting will be held Tuesday, March 26, 2024, in the Multipurpose Room at PV City Hall at 5:30 pm

The meeting concluded at 6:05 p.m.
Respectfully submitted: JD Kinney

THE CITY OF PRAIRIE VILLAGE
STAR OF KANSAS

DATE: February 24, 2024

TO: Mayor Mikkelson
City Council

FROM: Wes Jordan

SUBJECT: MARCH PLAN OF ACTION

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

- Large Item Pickup Coordination/Promotion - Adam/Ashley (03/24)
  - Sleepyhead Mattress Recycling
- New Committee Member Orientation - Staff/Committee Chairs (03/24)
  - Waiver Form
  - Code of Conduct
  - Video of CP-001
  - Video of KORA Requirements
  - Website Update
- 2023 Financial Audit
- Severe Weather Preparedness Week - Tim / Ashley (03/24)
- Pool Open Planning and Preparation - Meghan (03/24)
- Insurance Renewal Reports - Staff (03/24)
- Non-selected Committee Applications to Council - Adam (03/24)
- Spring Foundation Board Meeting/annual charitable giving - Meghan (03/24)
- 2025 Budget Process - Staff (03/24)
  - Council Goals & Objectives
  - Committee Funding Requests
  - Decision Packages
  - Insurance Cost Assumptions
  - Personnel Assumptions
  - Reappraisal Projections
  - Use of TGT Funds
  - Preliminary Revenue Estimates Report
  - Meeting w/Appraiser
- City Hall Construction Public Meeting - Melissa / Tim (03/24)
- Community Input Session #2/Community Center - Staff (03/24)
- Update City Employees Code of Ethics - Cindy/Tim (03/24)
- Biometric Screenings for Staff - Cindy (3/24)
- Employee Code of Ethics Update - Tim/Cindy (03/24)

In Progress

- Annual Committee Member Training - Adam/Meghan (02/24)
- 2023 Audit Preparation - Jason (02/24)
- Teen Council Presentations - Staff (02/24)
- Preparing Annual Police Pension Statements - Cindy (02/24)
- NLC Conference Planning - Meghan (01/24)
- Annual Health Risk Assessments - Cindy (01/24)
- Lifeguard and Pool Operational Staff Hiring - Meghan (01/24)
- Carbon Reduction/EV Charging Station - Wassmer Park - Keith (01/24)
- Safe Streets for All Grant/Citywide Traffic Study - Keith (01/24)
- 4th Quarter Financial Report - Jason (01/24)
- 2023 Annual Report - Ashley (11/23)
- Annual Community Garden applications/renewals - Ashley (11/23)
- Project Updates and Cleanup to Website - Staff (08/23)
- Housing Forum follow Up discussion in R-2/R-3/R-4/Commercial - Nickie/Chris (08/23)
- Update Design Guidelines in R1-B - Nickie/Chris (05/23)
- Short Term Rental Update - Nickie/Chris (05/23)
- Research Federal Infrastructure/Job Act Grants - Jason/Nickie/Keith (12/22)
- Park Sign Replacement and Branding Process - Melissa (09/22)
- Recycle Right Initiative - Ashley/Adam (07/22)
- Subdivision Regulations Amendments/Easement Vacation - Nickie/Chris (04/22)
- Agenda Management Software Evaluation - Adam/Ashley (12/21)
- Phone System Replacement - IS (11/21)
- American Rescue Plan Act Fund Uses & Expiration - Staff (04/21)
- Research Viability of Interior Rental Inspections - Nickie (06/19)

Completed

- 4th Quarter Crime Stats - Chief (02/24)
- Volunteer Committee Appointments - Staff (02/24)
- 2025 Budget Calendar Review and Presentation - Jason/Nickie/Wes (02/24)
    - Budget Presentation Notification to Committees
- Village Voice Articles/Publication - Ashley (02/24)
- Mayor's Prayer Breakfast - Ashley (02/24)
- 2024 Exterior and Sustainability Grant Applications Kick Off - Nickie (02/24)
- Black History Month Proclamation - Adam/Tim (02/24)
- Council Service Longevity - Adam (01/24)
- Forfeiture Trust Fund Report/Presentation - Chief (01/24)
- City Attorney Appointment Process - Wes (01/24)
- 2023 Non-Health Insurance Midyear Evaluation - Jason/Nickie (12/23)
- Council Work Session - Meghan (12/23)
- Update Code of Ethics Ordinance & Enforcement - David/Alex/Wes (11/23)

- Annual Volunteer Applications for Committees - Staff (11/23)
- Opioid Settlement Annual Report - Jason (02/24)

Ongoing

- KERMIDA Sustainability Program Implementation - Meghan/Ashley (03/23)
- City Hall/PD Project - Melissa/Staff (04/3/22)
- Disaster Recovery Plan - Dan/Tim (03/22)
- Community Center Project - Staff

Tabled initiatives

- Pool Mural Project - Meghan (04/21) [placed on hold unity the Community Center is decided upon]
- Review & Update the City Code/Ordinances
- Review & update City Policies
- Single Use Plastic Bag Discussion - Staff (02/20) [pending Council direction]