

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, August 4, 2025
6:00 PM**

- I. CALL TO ORDER**
- II. ROLL CALL**
- III. PLEDGE OF ALLEGIANCE**
- IV. APPROVAL OF THE AGENDA**
- V. INTRODUCTION OF STUDENTS AND SCOUTS**
- VI. PRESENTATIONS**
- VII. EXECUTIVE SESSION**
- VIII. 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 August 4. Comments will be shared with Councilmembers prior to the meeting.

IX. 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 – July 21, 2025
- 2. Consider approval of expenditure ordinance #3052
- 3. Consider approval of 2026 Mission Hills contract and 2026 Mission Hills budget
- 4. Authorize the police department to purchase equipment from Paladin for a Drone as First Responder Program
- 5. Consider approval of contract with McAnany Construction for UBAS improvements on 75th Street from State Line to Mission Road (2025 CARS – 75ST0002)

X. COMMITTEE REPORTS

XI. MAYOR'S REPORT

XII. STAFF REPORTS

XIII. OLD BUSINESS

XIV. NEW BUSINESS

COU2025-34 Consider Resolution 2025-07 directing the Johnson County
Election Office to facilitate a ballot question for the November 4,
2025 election
Alex Aggen/Wes Jordan

XV. COUNCIL COMMITTEE OF THE WHOLE (Council President presiding)

Noise ordinance discussion
Nickie Lee/Chief McCullough

XVI. ANNOUNCEMENTS

XVII. 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 COUNCIL
CITY OF PRAIRIE VILLAGE
JULY 21, 2025**

The City Council of Prairie Village, Kansas, met in regular session on Monday, July 21, at 6:00 p.m. Mayor Mikkelson presided.

ROLL CALL

Roll was called by the deputy city clerk with the following councilmembers in attendance: Cole Robinson, Terry O'Toole, Inga Selders, Ron Nelson, Dave Robinson, Tyler Agniel, Nick Reddell, Ian Graves and Terrence Gallagher. Staff present: Eric McCullough, 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; Meghan Buom, Assistant City Administrator; Tim Schwartzkopf, Assistant City Administrator; Jason Hannaman, Finance Director; Ashley Freburg, Deputy City Clerk.

PLEDGE OF ALLEGIANCE

APPROVAL OF AGENDA

Mr. Gallagher made a motion to approve the agenda as presented. The motion was seconded by Mr. Reddell and passed 9-0.

INTRODUCTION OF STUDENTS AND SCOUTS

There were no students or scouts present at the meeting.

PRESENTATIONS

Fire Chief Steve Chick presented the second quarter report from CFD2.

PUBLIC PARTICIPATION

- Pam Justus, Ward 6, spoke in opposition to the financing of municipal complex improvements.
- Mike Thompson, Ward 1, and Susan Welsh, Ward 4, spoke about safety concerns regarding scooters and e-bikes.
- Anna Gepson, Ward 2, spoke about residential construction concerns.



CONSENT AGENDA

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

1. Consider approval of regular City Council meeting minutes - July 7, 2025
2. Consider an ordinance approving the Prairie Village Jazz Festival as a special event and authorizing the sale, consumption and possession of alcoholic liquor and cereal malt beverages within the boundaries of a barricaded public area of the event
3. Consider request for alcoholic beverage waiver for Harmon Park for the Prairie Village Jazz Festival
4. Consider school crossing guard contract renewal with All City Management Services, Inc. (ACMS)
5. Purchase request of police vehicle

Mr. Nelson made a motion to approve the consent agenda as presented. A roll call vote was taken with the following votes cast: “aye”: C. Robinson, O’Toole, Selders, Nelson, D. Robinson, Agniel, Reddell, Graves, Gallagher. The motion passed 9-0.

COMMITTEE REPORTS

- Mr. Reddell reported the Ward 5 meeting held on July 14 was well attended.
- Mr. Graves noted the Arts Council’s artists’ reception for Don James and Butch Murphy was a success. He also stated the State of the Arts reception will be September 17.

MAYOR’S REPORT

- Mayor Mikkelson stated that the annual JazzFest event would be held on September 6 in Harmon Park.
- The Mayor read a viral post about taxes, inflation, and the price of government from Brooks Williams, City Manager in Ferris, Texas.

STAFF REPORTS

- Chief McCullough announced the promotion of Sgt. Josh Putthoff to Captain of staff services, effective July 21, 2025.
- Chief McCullough stated that the Axon software purchased by the department was starting to roll out, including a program called “My90” which requests feedback via text message survey sent to those who have had an encounter with the police.
- Mr. Jordan spoke about Evergy’s responsiveness despite their large service territory. He noted a quick response time to calls and emails from City staff, and he noted additional Evergy staff have helped communicate with residents who frequently experience outages.



OLD BUSINESS

There was no old business to come before the council.

NEW BUSINESS

COU2025-32

**Consider staff recommended changes to ordinances regarding the operation of e-bikes and e-scooters within the City
Chief McCullough**

Chief McCullough stated the Police Department has continued to receive safety concerns regarding e-bike and e-scooter use from residents, department members, and the City Council. The department has implemented a multi-faceted approach of education, public messaging, and enforcement in response.

Efforts include safety presentations incorporated into the D.A.R.E. program. Public messaging has utilized City, Police Department, and Shawnee Mission School District social media channels, as well as articles in the Village Voice. Existing traffic and city ordinances are enforced as needed. While there have been a few crashes in the city, thankfully, none have resulted in serious injuries.

Chief McCullough noted that during the July 7 meeting, the council unanimously agreed with the recommendations to implement the following changes to further promote safe e-bike and e-scooter practices, particularly among young riders:

- Keep the existing helmet requirement for juveniles
- Reiterate that Class 3 e-bikes are only for use by those 16 years old or older and are only allowed on the roadway.
- Adding provisions prohibiting reckless or careless operation, and riders must ride with due regard for the safety of others.
- Language that allows the devices to be used only by the number of riders for which the device is made.

The Department recommended adoption of an ordinance that takes into consideration the recommendations approved by the Council Committee of the Whole July 7 and is similar to those in neighboring communities.

Mr. Dave Robinson asked the Police Department to consider offering courses on e-bike and scooter safety.

Mr. Dave Robinson made a motion to approve Ordinance 2507 regarding traffic laws for electric-assisted bicycles and scooters, adding new sections to the code of the City of Prairie Village. Mr. Reddell seconded the motion.



Mr. Reddell noted that as the liaison for the school district, he has reached out to the superintendent and the school board to set up a meeting about this topic.

Mr. Gallagher expressed interest in a system of identification where bikes and scooters are registered with the police department. Chief McCullough noted the current systems in place at the Police Department can help track interactions, but he noted a registration system would be burdensome on staff time and resources. Mr. Aggen noted that Kansas Statue 8-1592b states that licensing/registration cannot be required for an e-bike.

Mr. Gallagher asked how these rules will apply to private properties including the shopping centers. Chief McCullough noted that while the laws are not applicable on private property, property owners can choose to implement their own rules that mirror the ordinance.

Ms. Selders stated she believes there is not a place for e-bikes on the sidewalk but that kids under the age of 14 should not be riding in the streets.

Mr. Cole Robinson asked about an anticipated increase in call volume related to scooters and e-bikes. Chief McCullough said calls are already up 170%.

Ms. Selders made a motion to amend to add a requirement that e-bikes are only allowed in the street, and riders must be 14 years old or older. The motion failed for a lack of a second.

A roll call vote was taken on the original motion with the following votes cast: “aye”: C. Robinson, O’Toole, Selders, Nelson, D. Robinson, Agniel, Reddell, Graves, Gallagher. The motion passed 9-0.

Mr. Dave Robinson 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. Agniel and passed 9-0.

COUNCIL COMMITTEE OF THE WHOLE 1:13:41

**COU2025-33 Discuss proposed purchase of Drone as First Responder (DFR) equipment and program
Chief McCullough**

Chief McCullough stated the Police Department would like to implement a Drone as First Responder (DFR) program to enhance public safety and operational efficiency. This technology provides critical situational awareness for police and fire personnel, improves response times, and enhances officer safety.

The total first-year cost for hardware, software, and training is \$54,000. The City of Mission Hills has formally agreed to fund 50% of this cost, contributing \$27,000. The Police



Department recommends funding the remaining \$27,000 from its existing equipment reserve budget. The department is also pursuing additional regional partnerships to share the costs in subsequent years.

Mr. Gallagher noted that ariel assistance has greatly helped the Kansas City, Missouri Police Department and stated the program is an opportunity to protect staff and serves as an excellent extension of our manpower. He noted the timeliness of the purchase ahead of the 2026 World Cup and the Prairie Village 75th anniversary events that would take place next year.

Mr. Graves asked about security and existing controls on data collection and data access. Chief McCullough stated this program would fall under the same controls and data collection protocols that are already in place.

Mr. Cole Robinson made a motion to move discussion of the purchase of the drone as a first responder equipment and program to the August 4 council meeting. Mr. Nelson seconded the motion.

After further discussion, the motion passed 9-0.

Mr. Reddell moved that the city council end the council committee of the whole portion of the meeting. The motion was seconded by Mr. Dave Robinson and passed 9-0.

ANNOUNCEMENTS

Announcements were included in the council meeting packet.

ADJOURNMENT

Mayor Mikkelsen declared the meeting adjourned at 7:41 p.m.

Adam Geffert
City Clerk

CITY TREASURER'S WARRANT REGISTER

DATE WARRANTS ISSUED:

Warrant Register Page No. 1

August 4, 2025

Copy of Ordinance
3052

Ordinance Page No. ____

An Ordinance Making Appropriate for the Payment of Certain Claims.

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

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

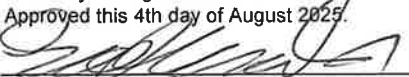
NAME	DATE	AMOUNT	TOTAL
EXPENDITURES:			
Accounts Payable			
33089-33167	6/6/2025	1,052,202.39	
33168-33182	6/13/2025	98,092.32	
33183-33260	6/20/2025	608,983.65	
33261-33276	6/27/2025	177,990.96	
Payroll Expenditures			
6/13/2025		543,398.13	
6/27/2025		573,666.39	
Electronic Payments			
Electronic Pmnts	6/1/2025	753.89	
	6/5/2025	12,362.43	
	6/10/2025	2,819.92	
	6/13/2025	7,796.29	
	6/17/2025	4,358.03	
	6/18/2025	21.00	
	6/26/2025	22,900.00	
	6/27/2025	33,993.40	
TOTAL EXPENDITURES:			3,139,338.80
Voided Checks	Check #	(Amount)	
Disko Promotions Inc	33171	(227.84)	
TOTAL VOIDED CHECKS:			(227.84)
GRAND TOTAL CLAIMS ORDINANCE			3,139,110.96

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

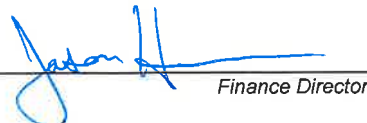
Passed this 4th day of August 2025.

Signed or Approved this 4th day of August 2025.

ATTEST:


City Treasurer

ATTEST:


Finance Director

Payroll Date:	6/13/2025
Total Amount ADP Debited From PV Accounts	\$ 452,454.68
M,N-(K) KPERS Employer	\$ 24,318.85
(K) KPERS Employee	\$ 13,624.05
(G) KPERS Employee Buy Back	
(34) KPERSL Employee Life Insurance	\$ 210.36
M,N-(L) 457ER Employer	\$ 22,589.18
(L) DC457 Employee Contribution	\$ 14,641.14
(LI) CITYPD Employer Contribution	\$ 1,444.94
(457) Roth Employee Contribution	\$ 8,361.73
(P) POLPEN Police Pension Employee	\$ 5,753.20
	<u>\$ 543,398.13</u>

Payroll Date:	6/27/2025
Total Amount ADP Debited From PV Accounts	\$ 481,575.11
M,N-(K) KPERS Employer	\$ 24,618.90
(K) KPERS Employee	\$ 13,792.14
(G) KPERS Employee Buy Back	
(34) KPERSL Employee Life Insurance	\$ 210.36
M,N-(L) 457ER Employer	\$ 22,545.30
(L) DC457 Employee Contribution	\$ 14,792.96
(LI) CITYPD Employer Contribution	\$ 1,444.94
(457) Roth Employee Contribution	\$ 8,571.40
(P) POLPEN Police Pension Employee	\$ 6,115.28
	<u>\$ 573,666.39</u>

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	
	<u>\$ -</u>

Accounts Payable

Checks by Date - Summary by Check Date



PRAIRIE VILLAGE
THE STAR OF KANSAS

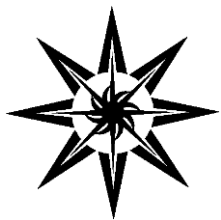
Check No	Vendor No	Vendor Name	Check Date	Void Checks	Check Amount
ACH	945	UMB Bank ACH	06/01/2025	0.00	683.44
ACH	841	Elavon	06/01/2025	0.00	70.45
Total for 6/1/2025:				0.00	753.89
ACH	9	Evergy - KCPL - ACH	06/05/2025	0.00	12,362.43
Total for 6/5/2025:				0.00	12,362.43
33089	2468	911 Custom LLC	06/06/2025	0.00	4,775.00
33090	78	Affinis Corp	06/06/2025	0.00	38,835.56
33091	2265	All City Management Services Inc	06/06/2025	0.00	4,975.42
33092	2392	Allegiant Networks LLC	06/06/2025	0.00	2,104.31
33093	3824	Isabelle Anderson	06/06/2025	0.00	107.13
33094	534	Arbor Masters Tree & Landscape	06/06/2025	0.00	7,665.00
33095	2351	Armstrong Cartridge Inc	06/06/2025	0.00	734.00
33096	3984	Amy Barnes	06/06/2025	0.00	300.00
33097	2390	BBN Architects Inc	06/06/2025	0.00	1,147.50
33098	242	Bledsoe's Rental Inc	06/06/2025	0.00	361.60
33099	156	Blue Cross Blue Shield of Kansas City	06/06/2025	0.00	144,995.81
33100	3089	Bob Allen Ford Inc	06/06/2025	0.00	284.44
33101	101	C&R Johnson County Key Service	06/06/2025	0.00	362.52
33102	431	CAS Commercial Aquatic Services Inc	06/06/2025	0.00	2,696.82
33103	3759	Charter Communications Holdings, LLC	06/06/2025	0.00	275.55
33104	3110	City Wide Maintenance Company Inc	06/06/2025	0.00	11,629.10
33105	3568	Consolidated Fire District 2	06/06/2025	0.00	3,195.00
33106	2747	ConvergeOne Inc	06/06/2025	0.00	7,909.74
33107	3719	CuraLinc LLC	06/06/2025	0.00	3,860.00
33108	2007	Michelle DeCicco	06/06/2025	0.00	1,102.00
33109	2603	Mark T Duffy	06/06/2025	0.00	1,379.50
33110	245	Easy Ice LLC	06/06/2025	0.00	320.46
33111	1572	EE Reimbursement	06/06/2025	0.00	110.00
33112	2976	EE Reimbursement	06/06/2025	0.00	220.00
33113	3863	EE Reimbursement	06/06/2025	0.00	220.00
33114	256	Electronic Technology Inc	06/06/2025	0.00	43.17
33115	2898	Evergy - KCPL	06/06/2025	0.00	516.27
33116	2666	Fiber Platform LLC	06/06/2025	0.00	700.00
33117	3922	Fidelity Security life Insurance Company	06/06/2025	0.00	906.35
33118	88	First Call	06/06/2025	0.00	825.93
33119	3696	Fisher, Patterson, Sayler, & Smith, L.L.P.	06/06/2025	0.00	5,535.00
33120	3995	Brandon Glass	06/06/2025	0.00	200.00
33121	86	Goodyear Auto Service Center	06/06/2025	0.00	1,508.96
33122	3999	Grapevine Designs LLC	06/06/2025	0.00	6,950.24
33123	1381	Great Plains Soc Prevention of Cruelty Ani	06/06/2025	0.00	981.00
33124	3677	Greater Kansas City Community Foundatio	06/06/2025	0.00	200.00
33125	384	GT Distributors	06/06/2025	0.00	201.20
33126	673	Heritage Tractor Inc	06/06/2025	0.00	153.78

Check No	Vendor No	Vendor Name	Check Date	Void Checks	Check Amount
33127	342	Holliday Sand & Gravel	06/06/2025	0.00	84.00
33128	3449	HUB International Great Plains	06/06/2025	0.00	26,825.00
33129	2316	Integrity Locating Services LLC	06/06/2025	0.00	5,846.75
33130	3472	J Webb Inc	06/06/2025	0.00	47.50
33131	1230	J&J Printing Inc	06/06/2025	0.00	583.25
33132	3996	Emily Janssen	06/06/2025	0.00	660.00
33133	562	John A Marshall Co	06/06/2025	0.00	850.15
33134	262	Johnson County Government	06/06/2025	0.00	54,456.85
33135	3732	K&M Office Products Inc	06/06/2025	0.00	873.20
33136	489	Kansas City Junior tennis League	06/06/2025	0.00	300.00
33137	1168	Kaw Valley Engineering Inc	06/06/2025	0.00	9,829.50
33138	213	Legal Record	06/06/2025	0.00	43.10
33139	92	Lexington Plumbing and Heating Company	06/06/2025	0.00	18,403.00
33140	3729	LexisNexis Risk Data Management LLC	06/06/2025	0.00	2,502.90
33141	3993	Tim McFadden	06/06/2025	0.00	2,500.00
33142	2958	Midwest Shredding Service LLC	06/06/2025	0.00	175.00
33143	340	Mill Creek Rifle Club Inc	06/06/2025	0.00	200.00
33144	275	Missouri Door Co. Inc.	06/06/2025	0.00	332.35
33145	896	Moss Printing	06/06/2025	0.00	284.19
33146	3998	Next Generation Recreation LLC	06/06/2025	0.00	184.14
33147	100	O'Dell Service Company Inc	06/06/2025	0.00	1,809.09
33148	2072	Olsson Associates	06/06/2025	0.00	15,976.15
33149	27	Overland Park City Of Attn: Finance	06/06/2025	0.00	7,937.79
33150	369	Overland Park Garden Center Inc	06/06/2025	0.00	2,054.90
33151	3657	Project Advocates LLC	06/06/2025	0.00	5,587.11
33152	1574	Roberts Chevrolet Buick	06/06/2025	0.00	54,442.28
33153	3500	Shawnee Mission School District #512	06/06/2025	0.00	1,021.50
33154	374	Suburban Lawn & Garden Inc	06/06/2025	0.00	437.81
33155	172	Sumner One	06/06/2025	0.00	1,524.42
33156	279	Sunflower Equipment LLC	06/06/2025	0.00	173.52
33157	2246	Superior Bowen Asphalt Company LLC	06/06/2025	0.00	416,659.18
33158	3997	Andrew Stephen Talge	06/06/2025	0.00	551.00
33159	4000	Hadley Thibault	06/06/2025	0.00	535.51
33160	2240	Karen L Torline	06/06/2025	0.00	1,575.00
33161	2568	TREKK Design Group LLC	06/06/2025	0.00	34,227.11
33162	2047	United Rentals (North America) Inc	06/06/2025	0.00	412.00
33163	2820	V F Anderson Builders LLC	06/06/2025	0.00	4,050.00
33164	1042	Verizon Wireless	06/06/2025	0.00	3,259.95
33165	20	Tara Wakefield	06/06/2025	0.00	540.00
33166	2243	WCI Inc	06/06/2025	0.00	114,181.83
33167	368	WEI H2O Kansas LLC	06/06/2025	0.00	1,977.00
Total for 6/6/2025:				0.00	1,052,202.39
ACH	1153	Merchant Services/Elavon/ETS Corp-Court	06/10/2025	0.00	2,160.99
ACH	841	Elavon	06/10/2025	0.00	658.93
Total for 6/10/2025:				0.00	2,819.92
ACH	311	ADP Electronic Debit	06/13/2025	0.00	7,796.29
33168	2330	Allied Services LLC	06/13/2025	0.00	38,464.92
33169	3923	Bukeka B. Blakemore	06/13/2025	0.00	650.00
33170	158	Delta Dental of Kansas	06/13/2025	0.00	6,465.97
33171	1131	Disko Promotions Inc	06/13/2025	VOID	227.84 0.00
33172	2980	Enterprise FM Trust	06/13/2025	0.00	17,883.66
33173	2028	Environmental Systems Research Institute I	06/13/2025	0.00	1,750.00
33174	41	Kansas Gas Service	06/13/2025	0.00	41.58

Check No	Vendor No	Vendor Name	Check Date	Void Checks	Check Amount
33175	4002	Maura Lee Sakach	06/13/2025	0.00	763.49
33176	3404	Sleepyhead Beds	06/13/2025	0.00	2,120.00
33177	3591	Sherri Solis	06/13/2025	0.00	87.03
33178	3435	Spencer Fane LLP	06/13/2025	0.00	1,354.00
33179	72	Staples Business Advantage	06/13/2025	0.00	251.36
33180	439	Sysco of Kansas City	06/13/2025	0.00	2,986.22
33181	111	WaterOne	06/13/2025	0.00	24,998.28
33182	3378	Trudy Williams	06/13/2025	0.00	47.97
Total for 6/13/2025:				227.84	105,660.77
ACH	9	Evergy - KCPL - ACH	06/17/2025	0.00	4,358.03
Total for 6/17/2025:				0.00	4,358.03
ACH	310	Kansas Department of Revenue - "online p	06/18/2025	0.00	21.00
Total for 6/18/2025:				0.00	21.00
33183	3893	222394536 Delaware LLC	06/20/2025	0.00	330.00
33184	2265	All City Management Services Inc	06/20/2025	0.00	2,267.28
33185	2330	Allied Services LLC	06/20/2025	0.00	174,337.92
33186	534	Arbor Masters Tree & Landscape	06/20/2025	0.00	5,862.50
33187	1618	Arrowhead Scientific Inc	06/20/2025	0.00	407.64
33188	2834	Bledsoe's Equipment Inc	06/20/2025	0.00	206.10
33189	101	C&R Johnson County Key Service	06/20/2025	0.00	16.95
33190	2512	Clark Enersen Partners Inc	06/20/2025	0.00	256,125.00
33191	794	Clinical Associates PA	06/20/2025	0.00	550.00
33192	3370	Combes Construction LLC	06/20/2025	0.00	31,860.64
33193	3511	Nora Cooper	06/20/2025	0.00	2,646.00
33194	3766	Whitney Coulas	06/20/2025	0.00	2,500.00
33195	3636	Crane Sales and Service	06/20/2025	0.00	1,703.82
33196	2024	Custom Lighting Services LLC	06/20/2025	0.00	7,062.00
33197	1380	Daystar Corp	06/20/2025	0.00	140.00
33198	158	Delta Dental of Kansas	06/20/2025	0.00	6,770.40
33199	2457	EE Reimbursement	06/20/2025	0.00	44.00
33200	2460	EE Reimbursement	06/20/2025	0.00	57.00
33201	2462	EE Reimbursement	06/20/2025	0.00	66.00
33202	3311	EE Reimbursement	06/20/2025	0.00	237.00
33203	3864	EE Reimbursement	06/20/2025	0.00	19.00
33204	88	First Call	06/20/2025	0.00	570.81
33205	388	Fun Services of Kansas City	06/20/2025	0.00	7,425.00
33206	960	Geiger Ready Mix	06/20/2025	0.00	257.50
33207	3781	Frank P. Gilman, PA	06/20/2025	0.00	1,434.00
33208	86	Goodyear Auto Service Center	06/20/2025	0.00	760.00
33209	1381	Great Plains Soc Prevention of Cruelty Ani	06/20/2025	0.00	900.00
33210	384	GT Distributors	06/20/2025	0.00	3,818.53
33211	4003	Robert Guy	06/20/2025	0.00	5,000.00
33212	2422	Mark Hamblin	06/20/2025	0.00	3,389.00
33213	3569	Heartland Traffic Services Inc	06/20/2025	0.00	13,735.50
33214	673	Heritage Tractor Inc	06/20/2025	0.00	199.24
33215	2	Hiccup Productions, Inc.	06/20/2025	0.00	1,600.00
33216	3763	Hunter Law Group, P.A.	06/20/2025	0.00	7,472.50
33217	150	Hy-Vee	06/20/2025	0.00	28.55
33218	1230	J&J Printing Inc	06/20/2025	0.00	144.75
33219	1986	JM Fahey Construction Co	06/20/2025	0.00	11,861.10

Check No	Vendor No	Vendor Name	Check Date	Void Checks	Check Amount
33220	506	Johnson County Department of Corrections	06/20/2025	0.00	70.00
33221	84	Johnson County Wastewater	06/20/2025	0.00	63.36
33222	3732	K&M Office Products Inc	06/20/2025	0.00	2,051.05
33223	66	KA-Comm Inc	06/20/2025	0.00	6,945.80
33224	41	Kansas Gas Service	06/20/2025	0.00	628.99
33225	147	Kansas State Treasurer	06/20/2025	0.00	4,143.52
33226	258	Key Equipment & Supply Co	06/20/2025	0.00	11,049.16
33227	1805	JD Kinney	06/20/2025	0.00	450.00
33228	3600	Paige Kovarik	06/20/2025	0.00	114.00
33229	395	Lamcraft	06/20/2025	0.00	180.95
33230	97	Lawrence Pest Control Company Inc	06/20/2025	0.00	625.00
33231	92	Lexington Plumbing and Heating Company	06/20/2025	0.00	4,006.00
33232	1608	Lightning Grand Services Inc	06/20/2025	0.00	341.50
33233	3302	Linde Gas & Equipment inc	06/20/2025	0.00	94.63
33234	1605	Daniel R Mapes	06/20/2025	0.00	412.50
33235	2039	MJV-A LLC	06/20/2025	0.00	27.00
33236	3402	Moffpro Inc	06/20/2025	0.00	221.20
33237	369	Overland Park Garden Center Inc	06/20/2025	0.00	2,465.73
33238	4001	Police2Peace Corp.	06/20/2025	0.00	1,500.00
33239	2141	Pre-Paid Legal Services Inc	06/20/2025	0.00	606.10
33240	2744	Pro Circuit Inc	06/20/2025	0.00	727.06
33241	207	Purchase Power	06/20/2025	0.00	108.11
33242	804	Qualification Targets Inc	06/20/2025	0.00	446.11
33243	3982	Rush Truck Centers of Kansas, Inc.	06/20/2025	0.00	115.60
33244	73	SBCO	06/20/2025	0.00	249.00
33245	2003	Timothy H Seeber	06/20/2025	0.00	900.00
33246	3416	Inga Selders	06/20/2025	0.00	166.03
33247	3647	Brad Silance	06/20/2025	0.00	2,500.00
33248	2667	SiteOne Landscape Supply Holding LLC	06/20/2025	0.00	1,058.68
33249	4008	Eric M Smith	06/20/2025	0.00	5,170.00
33250	3254	Staples Inc	06/20/2025	0.00	145.99
33251	374	Suburban Lawn & Garden Inc	06/20/2025	0.00	2,246.01
33252	439	Sysco of Kansas City	06/20/2025	0.00	599.05
33253	438	Thomas M Finholm Jr	06/20/2025	0.00	564.00
33254	2568	TREKK Design Group LLC	06/20/2025	0.00	1,547.05
33255	3103	TWAS Topco LP	06/20/2025	0.00	576.00
33256	1042	Verizon Wireless	06/20/2025	0.00	1,000.33
33257	3625	Vietnam Veterans of America Chapter 243	06/20/2025	0.00	500.00
33258	737	West Publishing Corp	06/20/2025	0.00	762.41
33259	2418	Sterling B Williams III	06/20/2025	0.00	900.00
33260	99	Work Zone Inc	06/20/2025	0.00	900.00
Total for 6/20/2025:				0.00	608,983.65
ACH	4015	Dolyna, Ukraine (Sister-City)	06/26/2025	0.00	22,900.00
Total for 6/26/2025:				0.00	22,900.00
ACH	945	UMB Bank ACH	06/27/2025	0.00	33,643.74
ACH	945	UMB Bank ACH	06/27/2025	0.00	349.66
33261	2392	Allegiant Networks LLC	06/27/2025	0.00	2,897.32
33262	156	Blue Cross Blue Shield of Kansas City	06/27/2025	0.00	150,272.71
33263	2311	Boelte-Hall LLC	06/27/2025	0.00	5,425.01
33264	4011	Catamount Promotional Products	06/27/2025	0.00	623.00
33265	790	Cellco Partnership	06/27/2025	0.00	247.61
33266	874	Tracy Barrett Cooper	06/27/2025	0.00	1,820.00
33267	256	Electronic Technology Inc	06/27/2025	0.00	900.15

Check No	Vendor No	Vendor Name	Check Date	Void Checks	Check Amount
33268	3806	Sean Gordon	06/27/2025	0.00	2,500.00
33269	84	Johnson County Wastewater	06/27/2025	0.00	2,189.62
33270	3570	Kansas CareNow Urgent care	06/27/2025	0.00	555.00
33271	3401	Suzanne McCullough	06/27/2025	0.00	40.00
33272	3947	Renaissance Life and Health Insurance Co	06/27/2025	0.00	7,010.36
33273	3994	Gage Sherron	06/27/2025	0.00	650.00
33274	439	Sysco of Kansas City	06/27/2025	0.00	2,272.20
33275	438	Thomas M Finholm Jr	06/27/2025	0.00	564.00
33276	3378	Trudy Williams	06/27/2025	0.00	23.98
Total for 6/27/2025:				0.00	211,984.36
Report Total (199 checks):				227.84	2,022,046.44



CONSENT AGENDA

Council Meeting Date: August 4th, 2025

Consider Approval of the 2026 Mission Hills Contract and the 2026 Mission Hills Budget

RECOMMENDATION

The Prairie Village Police Department recommends that the City Council formalize its law enforcement relationship with the City of Mission Hills for the 2026 calendar year by approving the attached 2026 Mission Hills Contract and the 2026 Mission Hills Budget.

COUNCIL ACTION REQUESTED ON: August 4th, 2025

BACKGROUND

Each year, the Cities of Prairie Village and Mission Hills formalize their law enforcement relationship with an agreement between the municipalities. The budgetary costs for each law enforcement program are derived from formulas based on percentages of the Prairie Village Budget for services that include manpower allocation, calls for service, reported crimes, and vehicular accidents.

The 2026 Mission Hills Budget is calculated to be \$2,121,416.12, which is a 5.07 percent increase (\$102,276.12) compared to 2025. A breakdown of program costs is specified in the attached 2026 Mission Hills Budget.

The Mission Hills Contract does reflect a 4 percent increase, from \$53.84 to \$55.99 per hour, in Animal Control Services to account for merit and benefit costs.

The Mission Hills City Administrator has agreed with the contents of the attached 2026 Mission Hills Contract, as well as the 2026 Mission Hills Budget.

ATTACHMENTS: 2026 Mission Hills Contract
 2026 Mission Hills Budget

Prepared By:

Eric McCullough
Chief of Police

Date: July 29th, 2026

MISSION HILLS AGREEMENT – 2026

THIS AGREEMENT, made this ____ day of _____, 2025, between the City of Prairie Village, Kansas, a municipal corporation, hereinafter referred to as “Prairie Village,” and the City of Mission Hills, Kansas, a municipal corporation, hereinafter referred to as “Mission Hills.”

WHEREAS, Prairie Village and Mission Hills are adjoining cities and share many of the same problems and concerns for police protection; and

WHEREAS, in the opinion of the governing bodies of Prairie Village and Mission Hills, the consolidated operation of law enforcement and policing of the two cities will be to the mutual benefit and the general welfare of the persons and properties of both municipalities; and

WHEREAS, K.S.A. 12-2908, and amendments thereto, authorize the parties hereto to enter into a contract with respect to performance of government services; and

WHEREAS, the governing bodies of said cities have determined to enter into an agreement as authorized and provided by K.S.A. 12-2908 and amendments thereto,

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein made and contained, it is mutually agreed as follows:

A. Services Provided. Prairie Village shall furnish to Mission Hills during the term of this agreement, the following items:

1. Police Vehicles. It is agreed and understood that Mission Hills has previously paid for four police vehicles that are currently being used primarily in the City of Mission Hills and said vehicles are identified as:

353	2023	Chevy	Tahoe
451	2023	Chevy	Tahoe
350	2023	Chevy	Tahoe
352	2023	Chevy	Tahoe

Each of these vehicles is registered to the City of Prairie Village.

During the terms of this agreement, Mission Hills shall be responsible for the replacement costs of any new vehicles needed. The Chief of Police shall notify the Mission Hills City Administrator when fleet bids are being offered. Replacement vehicles for Mission Hills will be offered as part of the fleet purchase, above the costs of this contract, if desired and approved by Mission Hills. New vehicles will be titled to the City of Prairie Village. Collision and liability insurance on the vehicles purchased by Mission Hills shall be maintained and paid for by Prairie Village.

Mission Hills shall pay all expenses relating to the maintenance of said vehicles, including, but not limited to, gasoline, oil, lubrication, tires, repairs and equipment changeover. Maintenance of said vehicles shall be under the direction and supervision of the Chief of Police. Routine maintenance will be provided by a vendor agreed upon by the Mission Hills City Administrator and the Chief of Police. Gasoline shall be provided through the Prairie Village gasoline pump. A monthly itemized bill shall be prepared and forwarded to Mission Hills for payment, which shall be above the costs of the contract agreement listed in Paragraph B. Major repair items such as engine or transmission overhaul shall be approved by the Mission Hills City Administrator prior to work being performed and will be billed directly to Mission Hills. If a Mission Hills police unit is inoperable for a period of time - as determined by a Police Department Shift Supervisor or Command Staff member, due to the vehicle being unable to be operated safely, or where further use may cause damage to the vehicle - Prairie Village shall provide a replacement vehicle and may bill Mission Hills at the rate equal to the 2026 IRS standard mileage rate per mile for a car used for business purposes for its use, above the costs of this contract.

It is agreed and understood that if both parties agree to terminate the conditions of this contract, those vehicles purchased by the City of Mission Hills, but titled to the City of Prairie Village, shall be transferred back to the ownership of Mission Hills for the sum of **\$1.00**.

2. Police Personnel. Prairie Village shall provide to Mission Hills the services of police officers, detectives, and other personnel as adopted by budget formulas to provide efficient and effective law enforcement services. The Chief of Police will approve staffing/scheduling in consultation with the Mission Hills City Administrator. With respect to the additional officers, Prairie Village shall not be required to provide a replacement officer or effect

a reduction in the amount due Prairie Village by Mission Hills under this Agreement when such an officer is unavailable due to an excused absence. An "excused absence" is an absence provided for under Prairie Village's personnel policies and for which the officer receives monetary compensation or compensatory time directly from Prairie Village for the absence, but does not include any such absence for which the officer is receiving monetary compensation for the absence from Workers' Compensation or other insurance. If any additional officer is unavailable for any reason other than an excused absence, Prairie Village shall either assign a replacement officer for the position or effect an appropriate reduction in the amount due Prairie Village by Mission Hills under this Agreement. Prairie Village shall use its best efforts to ensure that excused absences of police officers assigned to Mission Hills shall not be disproportionately higher than excused absences of police officers assigned to Prairie Village.

Prairie Village shall provide the services of such supervisory and support personnel as shall be necessary for the operation of said police cars and to provide normal police services.

Prairie Village shall pay the salaries, payroll taxes, Workers' Compensation and related benefits and shall bear all expenses and liabilities with respect to said police personnel, which may accrue from or be attributable to the employer-employee relationship.

All Prairie Village Police officers, and all cars used by such police officers, including the vehicles designated as the Mission Hills police vehicles, shall be subject to the jurisdiction of the Prairie Village Chief of Police, whether operating in Mission Hills or Prairie Village. The Prairie Village Chief of Police shall have exclusive supervision of the operation of the police vehicles designated as the Mission Hills cars and the personnel operating same, and shall handle all complaints or calls for services through the Police Department's offices at 7710 Mission Road, Prairie Village, Kansas. The Chief of Police will consult and cooperate with Mission Hills in scheduling and supervising the operation of Mission Hills' vehicles and personnel operating same.

Mission Hills will designate an individual who shall serve as its representative to consult with the Chief of Police. All Prairie Village Police officers shall be deputized to act as police officers in Mission Hills and all Prairie Village personnel, in carrying

out the police functions for Mission Hills as contemplated by this Agreement, shall be deemed to be acting for, and as the police arm of, Mission Hills.

It is further mutually agreed by the governing bodies of the respective cities hereto that each will respectively do all acts necessary and proper as provided in K.S.A. 19-2645 and K.S.A. 19-2646, and acts amendatory and supplemental thereto, for carrying out the applicable provisions of this Agreement.

3. Court Personnel. Prairie Village shall also provide a Clerk of the Court for the Mission Hills Municipal Court for two court sessions per month. Said Clerk shall be assigned by the Court Administrator of the Prairie Village Municipal Court. Said Clerk of the Court shall perform all duties as required by law and shall be deemed to be acting for and on behalf of the City of Mission Hills while performing said duties. Prairie Village shall not be liable in any manner for the actions of said clerk of the Court in the performance or nonperformance of said duties. Prairie Village shall be reimbursed for the costs of providing said Court personnel, which amount is included in the total contract amount as provided in Paragraph B of this Agreement.

4. Humane Officer. For purposes of animal control, Prairie Village shall provide to Mission Hills the services of a humane officer, when such services are needed. Said humane officer shall be under the supervision of the Chief of Police. It is agreed that when on duty, the humane officer shall respond to calls for service within Mission Hills that are the normal function of this service. In addition, the Mayor or City Administrator of Mission Hills can request scheduled hours in Mission Hills on a regular basis, which shall be provided if personnel are available. The cost of this service is not included in the contract amount as provided in Paragraph B, and shall be documented and billed at the rate of **\$55.99** per hour.

It is further agreed that Prairie Village has entered into a contract agreement with Great Plains SPCA for the professional care, impounding and boarding of animals taken into custody by the Police Department. This service is not included in the contract amount as provided in Paragraph B, and shall be billed to Mission Hills by Prairie Village as required by the service provided by AMC.

5. General Law Enforcement Services. Prairie Village shall provide to Mission Hills law enforcement services necessary to efficiently maintain public safety in the City

of Mission Hills. These services include, but are not limited to, administration of the Police Department; 9-1-1 and non-emergency PSAP for communications to the Police Department and police vehicles; Records for maintaining law enforcement files; Crime Prevention Program for education to reduce community vulnerability to crime and establish "community-oriented policing;" Investigations function that provides for the investigation of Part I and Part II crimes perpetrated by adults and youths; D.A.R.E. to provide a prevention aspect to adolescent drug use; the Property Room and evidence system, and the Department's comprehensive training.

B. Reimbursement Costs. Mission Hills shall reimburse Prairie Village for the cost of services and equipment provided to the City of Mission Hills as heretofore provided, the total amount of *two million, one hundred and twenty one thousand, four hundred and sixteen dollars and twelve cents (\$2,121,416.12)*, said amount to be paid by Mission Hills at the rate of *one hundred seventy six thousand, seven hundred and eighty four dollars and sixty eight cents (\$176,784.68)*, per month during the term of this Agreement, said payment to be made not later than the 15th day of each month.

Said amount is based on the standard employee work schedule of the City of Prairie Village and includes the cost of supervision and insurance, radio dispatching, officer supplies, uniform replacement, salary of personnel, overhead and other costs which will be incurred by Prairie Village in fulfilling the obligations of this Agreement. The estimated costs of services and equipment to be provided under this Agreement have been compiled in a proposed budget for the year 2026, previously furnished to Mission Hills by Prairie Village. This budget was used in determining the costs to be reimbursed by Mission Hills; however, the parties recognize that the actual costs for the items furnished may differ from those estimated.

In the event of a difference which results from a change in the wage structure of Prairie Village personnel from that contemplated in the proposed budget, or pursuant to Paragraph A-2, any additional officer is unavailable for any reason other than an excused absence and Prairie Village elects not to assign a replacement officer, an appropriate increase or decrease will be made in the amount due Prairie Village by Mission Hills hereunder. However, the parties agree that no other difference, if any, in the actual costs of the services and

equipment provided from that contemplated in the proposed budget will be cause for increasing or decreasing the amount due Prairie Village from Mission Hills hereunder.

C. Reports. The Chief of Police of Prairie Village shall at least once a month submit to Mission Hills a complete written report of the police activity and protection provided within said city.

D. Liability Insurance and Uninsured Claims. The parties recognize that actions (or omissions) in connection with services to be provided by Prairie Village under this Agreement may result in, or give rise to, claims against Mission Hills or Prairie Village, or both, for alleged damages or injuries. For the purpose of limiting financial exposure with respect to such claims, Prairie Village has obtained liability insurance relating to the operation of the Police Department and relating to the operation of vehicles used in providing the services contemplated by this Agreement. Part of the cost of these policies is allocated to Mission Hills and included in the total contract amount as provided in Paragraph B of this Agreement. Mission Hills shall at all times be named as an insured party on both such insurance policies.

In addition, both Prairie Village and Mission Hills carry general liability insurance and both parties agree that they will use their best efforts to cause the insurance companies providing such insurance coverage to waive any subrogation rights, which such companies may have against Prairie Village or Mission Hills, as the case may be, with respect to expenses incurred and amounts paid under such policies on behalf of the party carrying such insurance.

The parties also recognize that claims may be made against Mission Hills or Prairie Village or both for alleged injuries or damages which are not covered by any of such insurance policies. With respect to such uninsured claims: The parties agree that Mission Hills should bear all or most of the costs related to such claims (including defense costs and payments for settlement or judgment) in those situations in which the action or omission which gives rise to the claim relates primarily to a risk that would not have been incurred by Prairie Village, if Prairie Village were not providing services to Mission Hills under this Agreement; and Prairie Village should bear all or most of the costs related to such claims (including defense costs and payments for settlement or judgment) in those situations in which the action or omission which gives rise

to the claim relates primarily to the operation or policies of the Prairie Village Police Department and services provided to Mission Hills under this Agreement are only incidental to the situation.

Accordingly, the parties agree that the circumstances surrounding any claim, which is not covered by insurance and which relates to or arises from actions (or omissions) in connection with services provided or to be provided by Prairie Village under this Agreement, will be examined at the time such claim is made for the purpose of determining the appropriate percentage of the costs related to such claim, which are to be paid by Mission Hills and the appropriate percentage of such costs, which are to be paid by Prairie Village.

E. Effective Date. This Agreement shall be in effect from January 1, 2026, through December 31, 2026, and shall not be assigned. It is agreed that during the term of this Agreement neither party may terminate or modify the Agreement without the consent of the other, except as otherwise provided by this Agreement.

IN WITNESS WHEREOF, the Mayor of Prairie Village, Kansas, has signed this Agreement on behalf of the City of Prairie Village, as such mayor, and the City of Prairie Village has caused these presents to be attested by its Clerk and the seal of said city to be hereto attached; and the Mayor of Mission Hills, Kansas, has signed this Agreement on behalf of the City of Mission Hills, as such mayor, and the City of Mission Hills has caused these presents to be attested by its Clerk, and the seal of said City to be hereto attached, the day and year first above written.

THE CITY OF PRAIRIE VILLAGE, KANSAS

By: _____
Eric Mikkelson – Mayor

ATTEST:

Adam Geffert – City Clerk

APPROVED AS TO FORM:

Alex Aggen – City Attorney

THE CITY OF MISSION HILLS, KANSAS

By: _____
David W. Dickey – Mayor

ATTEST:

Jason Nickles - City Clerk

APPROVED AS TO FORM:

Anna M. Krstulic – City Attorney

MISSION HILLS, KANSAS

2026

PUBLIC SAFETY BUDGET

MISSION HILLS BUDGET COMPARISON FOR 2026

PROGRAM	2022	2023	2024	2025	2026	2025-2026 COMPARISON	% INCREASE
Administration	\$89,470.00	\$96,301.00	\$102,950.00	\$110,799.00	\$112,047.42	\$1,248.42	1.13%
Staff Services	\$171,915.00	\$185,938.00	\$211,287.00	\$235,059.00	\$248,045.33	\$12,986.33	5.52%
Community Services	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	0.00%
Crime Prevention	\$12,118.00	\$13,835.00	\$17,353.00	\$24,657.00	\$19,893.93	(\$4,763.07)	-19.32%
Patrol	\$1,039,061.00	\$1,184,741.00	\$1,268,761.00	\$1,321,397.00	\$1,420,243.43	\$98,846.43	7.48%
Investigations	\$104,429.00	\$121,475.00	\$137,474.00	\$164,998.00	\$155,065.89	(\$9,932.11)	-6.02%
Special Investigations	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	0.00%
D.A.R.E.	\$12,286.00	\$13,176.00	\$14,736.00	\$17,054.00	\$14,915.22	(\$2,138.78)	-12.54%
Professional Standards	\$33,179.00	\$36,370.00	\$42,067.00	\$45,082.00	\$50,379.68	\$5,297.68	11.75%
Traffic	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	0.00%
Court	\$76,853.00	\$78,746.00	\$95,659.00	\$100,094.00	\$100,825.22	\$731.22	0.73%
School Crossing Guards	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	0.00%
TOTAL	\$1,539,311.00	\$1,730,582.00	\$1,890,287.00	\$2,019,140.00	\$2,121,416.12	\$102,276.12	5.07%

PERCENTAGE OF INCREASE	5.07%
------------------------	-------

SHARED COSTS vs. MISSION HILLS COSTS

Program	2026 Shared Costs	Mission Hills Cost
Administration	\$819,659.27	\$112,047.42
Staff Services	\$1,473,847.21	\$248,045.33
Community Services	\$0.00	\$0.00
Crime Prevention	\$129,546.84	\$19,893.93
Patrol	\$4,704,319.95	\$1,420,243.43
Investigations	\$1,009,543.59	\$155,065.89
Special Investigations	\$0.00	\$0.00
D.A.R.E.	\$149,152.22	\$14,915.22
Professional Standards	\$368,541.90	\$50,379.68
Traffic	\$0.00	\$0.00
Court	\$566,856.00	\$100,825.22
School Crossing Guards	\$0.00	\$0.00
Accounting	\$0.00	\$0.00
TOTAL	\$9,221,466.99	\$2,121,416.12

10-YEAR CRIME SUMMARY

YEAR	PRAIRIE	MISSION HILLS	PERCENTAGE
2015	529	102	16.16%
2016	516	88	14.57%
2017	437	74	14.48%
2018	489	76	13.45%
2019	439	54	10.95%
2020	415	61	12.82%
2021	564	112	16.57%
2022	620	152	19.69%
2023	569	103	15.33%
2024	526	104	16.51%

TOTAL	5,104	926	15.36%
--------------	--------------	------------	---------------

PERSONNEL ALLOCATIONS - MISSION HILLS FORMULA

COST CENTER / PROGRAM	DEPARTMENT EMPLOYEES	DIVISION PERCENTAGE	DEPARTMENT PERCENTAGE
Police Administration	2		3.33%
Staff Services	10		16.67%
Command/Supervision		1 10.00%	
Communications		6 60.00%	
Supervisor, Records & Property Clerk		3 30.00%	
Community Services (Animal Control)	2		3.33%
Crime Prevention	1		1.67%
Patrol	31		51.67%
Command/Supervision	9	29.03%	
Prairie Village	13.8	44.52%	
Mission Hills	8.2	26.45%	
8.2 Mission Hills officers ÷ 60 total authorized staff =		13.67%	
Investigations & School Resource Officers	6		10.00%
Special Investigations	2		3.33%
D.A.R.E.	1		1.67%
Professional Standards	1		1.67%
Traffic Unit	4		6.67%

TOTAL

60

100.00%

Includes Patrol Division Commander, Patrol Operations Sergeant, three Patrol sergeants, three Patrol corporals, and Traffic Sergeant

These personnel allocation percentages will appear again on the Staff Services page

These personnel allocation percentages will appear again on the Patrol page

This number includes one IT position (IT Specialist)

This personnel allocation percentage will appear again on the Administration page

ADMINISTRATION**Program Budget****\$831,099.27**

Removal of Unshared Costs:

Civil Defense-utilities (KCPL)	21-6000-000	\$2,300.00
TIPS Hotline	21-6009-028	\$4,000.00
Civil Defense-maintenance	21-6029-000	\$4,170.00
Holiday Cards	21-7014-050	\$400.00
VillageFest	21-7014-000	\$70.00
Artwork & repair	21-7014-049	\$500.00

Total Unshared Costs

\$11,440.00**Total Shared Cost****\$819,659.27**

Personnel Allocation - Mission Hills officers

13.67%**MISSION HILLS COST****\$112,047.42****2025 Budget - Unshared Costs = Total Shared Cost****8.2 Mission Hills Officers ÷ 60 Total Staff = 13.67%****Total Shared Cost x Mission Hills Allocation = Mission Hills Cost**

STAFF SERVICES

Program Budget	\$1,477,347.21
Removal of:	
Notify JoCo - Prairie Village	01-03-22-6001-060
	\$3,500.00

TOTAL SHARED COST **\$1,473,847.21**

Addition of:	
IT Specialist	\$127,138.54
Mission Hills Total Calls for Service, Major Crimes & Accidents	15.00%

IT SPECIALIST COST **IT Specialist salary x Mission Hills crimes & accidents percentage = \$19,064.54**

COMMUNICATIONS - Personnel Allocation												60.00%
Calls for Service	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	TOTAL	%
Prairie Village	7,197	7,014	6,746	8,135	7,839	8,577	8,048	8,777	9,530	9,307	81,170	83.20%
Mission Hills	1,738	1,573	1,416	1,719	1,379	1,636	1,494	1,759	1,829	1,844	16,387	16.80%
COMMUNICATIONS COST												total shared cost x personnel allocation x Mission Hills calls for service = \$148,540.45

RECORDS - Personnel Allocation												30.00%
Major Crimes	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	TOTAL	%
Prairie Village	529	516	437	489	439	415	564	620	569	526	5,104	84.64%
Mission Hills	102	88	74	76	54	61	112	152	103	104	926	15.36%
Accidents	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	TOTAL	%
Prairie Village	446	487	457	428	389	218	249	241	304	244	3,463	90.21%
Mission Hills	43	62	41	39	41	28	29	29	31	33	376	9.79%
PV TOTAL	975	1,003	894	917	828	633	813	861	873	770	8,567	86.81%
MH TOTAL	145	150	115	115	95	89	141	181	134	137	1,302	13.19%
RECORDS COST												total shared cost x Records personnel allocation x Mission Hills crimes & accidents percentage = \$58,332.63

COMMAND - Personnel Allocation												10.00%
Mission Hills Total Calls for Service, Crimes & Accidents												15.00%
COMMAND COST												total shared cost x Command personnel allocation x Mission Hills Calls, Crimes & Accidents = \$22,107.71

MISSION HILLS COST **\$248,045.33**

2025 BUDGET - UNSHARED COSTS = TOTAL SHARED COST

PERSONNEL ALLOCATION PERCENTAGES FROM THE MISSION HILLS FORMULA PAGE

MISSION HILLS CALLS FOR SERVICE = MISSION HILLS CRIMES & ACCIDENTS ÷ 2 = OVERALL PERCENTAGE

IT SPECIALIST + COMMUNICATIONS COST + RECORDS COST + COMMAND COST = MISSION HILLS COST

CRIME PREVENTION

PROGRAM BUDGET											\$ 129,546.84
Removal of:											
No Items											\$ -
Total Shared Cost:											\$ 129,546.84

Major Crimes	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	TOTAL	%
Prairie Village	529	516	437	489	439	415	564	620	569	526	5104	84.64%
Mission Hills	102	88	74	76	54	61	112	152	103	104	926	15.36%

MISSION HILLS COST **\$19,893.93**

2026 Budget - Unshared Costs = Total Shared Cost

Total Shared Cost x Mission Hills Major Crimes Percentage = Mission Hills Cost

PATROL

Program Budget				\$ 5,278,519.95
Removal of Unshared Costs:				
Vehicle Maintenance/Assembly/Graphics	25-6025	\$	53,000.00	
Axon	25-8001-000	\$	334,000.00	
Vehicle Ops/Air Cards (no car washes/registrations)	25-7009	\$	35,100.00	
Fuel	25-7008-000	\$	60,000.00	
No Parking Signs	25-7010-083	\$	100.00	
Vehicle Acquisitions	25-8006-000	\$	52,000.00	
Equipment Acquisitions	25-8003	\$	40,000.00	
Total Unshared Costs:		\$	574,200.00	

TOTAL SHARED COST		\$ 4,704,319.95
--------------------------	--	------------------------

Patrol Personnel Allocation				
Mission Hills	8.2		26.45%	\$ 1,244,292.63
Patrol Command/Supervision	9		13.67%	\$ 170,094.80

BUDGET SUBTOTAL	Mission Hills Personnel Allocation + Patrol Command/Supervision	\$ 1,414,387.43
------------------------	--	------------------------

Direct Costs			
K-9 Unit -- 13.67% of \$5,000 = Mission Hills Cost	\$	684.00	
Vehicle Insurance	\$	5,172.00	
Total Direct Costs:	\$	5,856.00	

MISSION HILLS COST	Budget Subtotal + Direct Costs =	\$ 1,420,243.43
---------------------------	----------------------------------	------------------------

2026 Budget - Unshared Costs = Total Shared Cost
Overall Ratio of Mission Hills Officers to Patrol Staff
Total Shared Cost x Mission Hills Personnel Allocation
Mission Hills Patrol Costs x Patrol Command/Supervision Allocation of Personnel
Mission Hills Patrol Costs x Patrol Command/Supervision Allocation of Personnel = Budget Subtotal
Budget Subtotal + Direct Cost = Mission Hills Cost

INVESTIGATIONS

PROGRAM BUDGET	\$1,009,543.59
-----------------------	-----------------------

Removal of Unshared Costs:
NO ITEMS

Total Unshared Costs	\$0.00
----------------------	---------------

TOTAL SHARED COST	\$1,009,543.59
--------------------------	-----------------------

10-Year Crime Summary Percentage (from	15.36%
--	---------------

MISSION HILLS COST	\$155,065.89
---------------------------	---------------------

**2025 BUDGET - UNSHARED COSTS = TOTAL SHARED COST
PERCENTAGE BASED ON THE 10-YEAR CRIME SUMMARY**

TOTAL SHARED COST x CRIME SUMMARY PERCENTAGE = MISSION HILLS COST

D.A.R.E.

Program Budget	\$	149,152.22
Removal of Unshared Costs:		
No Items		
Total Unshared Costs:	\$ -	

Total Shared Cost	\$	149,152.22
Estimated Percentage of Mission Hills Students		10%

Mission Hills Cost	\$	14,915.22
---------------------------	-----------	------------------

2025 Budget - Unshared Costs = Total Shared Cost

Total Shared Cost x Percentage of Mission Hills Students =
Mission Hills Cost

PROFESSIONAL STANDARDS

Program Budget	\$ 368,541.90
-----------------------	----------------------

Removal of Unshared Costs:

NO ITEMS

Total Unshared Costs:	\$	-
------------------------------	-----------	----------

Total Shared Cost	\$ 368,541.90
--------------------------	----------------------

Total Staff: 60

Mission Hills Officers: 8.2

Personnel Allocation - Mission Hills Officers ÷ Total Staff =	13.67%
---	---------------

MISSION HILLS COST	\$ 50,379.68
---------------------------	---------------------

2026 Budget - Unshared Costs = Total Shared Cost

8.2 Mission Hills Officers ÷ 60 Total Staff = 13.67% Personnel Allocation

Total Shared Cost x Mission Hills Allocation = Mission Hills Cost

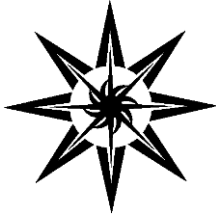
COURT

Program Budget				\$725,622.00
Removal of:				
	Prairie Village Jail Costs	01-04-48-6019-000	\$26,000.00	
	Prairie Village Judges/Prosecutor/Public Defender	01-04-47-6009-000	\$103,666.00	
	Prairie Village Credit Card Fees for Online Payments	01-04-48-6009-000	\$24,000.00	
	Prairie Village Interpreters	01-04-48-6009-000	\$2,300.00	
	Prairie Village STO / UPOC	01-04-48-6024-000	\$100.00	
	Mission Hills Credit Card Fees/Bonds	01-04-48-6009-000	\$2,700.00	
	Total Unshared Costs:		\$158,766.00	
TOTAL SHARED COST				\$566,856.00

Cases Filed	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	TOTAL	%
Prairie Village	8,889	8,056	8,455	8,947	8,016	6,131	6,792	4,169	5,692	4,627	69,774	83.02%
Mission Hills	2,125	1,291	1,892	1,754	1,719	987	1,260	948	1,294	996	14,266	16.98%

Direct Costs				
	Mission Hills Credit Card Fees/Bonds		\$2,700.00	
	Mission Hills Bank Fees (<i>based on prior year</i>)		\$1,900.00	
	Credit Card Fees for Online Payments		<i>As incurred</i>	
	Court Appointed Attorneys		<i>As incurred</i>	
	Interpreters		<i>As incurred</i>	
TOTAL DIRECT COSTS				\$4,600.00

MISSION HILLS COST	Total Shared Cost x Mission Hills Percentage of Cases Filed + Direct Costs	\$100,825.22
---------------------------	---	---------------------



POLICE DEPARTMENT

Council Meeting Date: August 4th, 2025

CONSENT AGENDA: Authorize the Police Department to purchase equipment from Paladin for a Drone as First Responder Program

RECOMMENDATION

Staff recommends that the Council authorize the purchase of equipment from Paladin Inc. to implement a Drone as First Responder Program (DFR) at the Police Department.

COUNCIL ACTION REQUESTED ON August 4th, 2025.

BACKGROUND

At the July 21st council committee of the whole meeting, the Police Department presented a request to implement a Drone as First Responder program (DFR) and provide funding for the project. A DFR program enhances the Police Department's existing drone capabilities by allowing for the rapid dispatch of a drone to a call for service, often arriving before personnel. This provides responding officers with real-time intelligence, which is crucial for de-escalation and safety. An officer is not required to operate the drone at the scene, freeing them up for other critical tasks.

Key benefits of the DFR program include:

- **Improved Officer Safety:** Allows officers to assess a situation remotely before arriving.
- **Enhanced Situational Awareness:** Provides an aerial perspective for both police and fire operations.
- **Improved Response Times:** Drones can often arrive on-scene faster than ground units.
- **Increased Efficiency:** Can help clear certain calls for service where a physical officer may not be needed.

The council committee of the whole unanimously approved moving the program forward for approval by the City Council. During the discussion on July 21st questions regarding aspects of the contract were raised. Those questions were addressed by Paladin in an appendix to the contract. Those questions included:

- **Concerns about Data Privacy:** This has been addressed by the existing Department Policy and Procedure as well as an addition to the contract requiring Paladin to receive permission from the Police Department to access any data.
- **Termination of Contract Rights:** Paladin agreed to amend the contract to allow the City to terminate with 30 days' notice.

- **Choice of Law and Venue:** The contract was amended to change all references to the State of Delaware in the contract to the State of Kansas.
- **Indemnification for Paladin:** The contract was amended to include language that indemnifies the City for intentional acts, omissions, or negligence committed by Paladin or its employees.

The total cost of the program in the first year is \$54,000. This includes the purchase of equipment, software, and training. The City of Mission Hills has approved an expenditure to fund 50% of the first year. The cost to the City of Prairie Village will be \$27,000. Ongoing costs for software and support are \$37,000 per year. The share of future costs will be worked into the Prairie Village and Mission Hills budget. Discussions have also been held with Consolidated Fire District #2 (CFD 2) and other Northeast police agencies about utilizing the DFR as a regional asset. Should these agencies join the program after implementation, the city's future costs will be further reduced.

FUNDING SOURCE

Equipment Reserve Fund - \$27,000

PREPARED BY

Eric McCullough

Chief of Police

Date: July 30, 2025

ATTACHMENTS

Paladin Contract

DFR Presentation

PALADIN ORDER FORM

1. **Parties:** This Agreement (“**Agreement**”) is entered into on **06/30/2025** (“**Effective Date**”), by and between Paladin Drones, Inc., a Delaware corporation having its principal place of business at **11241 Richmond Ave, Ste E102, Houston, TX 77082** (hereinafter, “**Paladin**”) and **City of Prairie Village, KS**, with an address of **7710 Mission Rd, Prairie Village, KS 66208** (hereinafter, “**Customer**”); and collectively the “**Parties**.”
2. **Consideration.** WHEREAS Customer agrees to pay the amount listed under Exhibit A of this Order Form; AND WHEREAS, Paladin agrees to provide drone services and equipment; THEREFORE, for good and valuable consideration, the sufficiency of which are hereby acknowledged, Customer and Paladin agree as follows:
3. **Definitions.** All definitions under this contract are subject to the definitions listed under the attached Terms and Conditions (hereinafter, “**Exhibit B**”).
4. **Incorporation of Exhibit.** This Agreement includes Paladin Quote (i.e., Exhibit A), Paladin Terms & Conditions (i.e., Exhibit B), and Additional Terms and Conditions (i.e., Exhibit C).
5. **Superseding Clause of Exhibits.** Paladin Terms and Conditions (i.e., Exhibit B), is superseded by Additional Terms and Conditions (i.e., Exhibit C).

Initial Effective Date: 06/30/2025 Final Term End Date: 06/30/2026 Pricing Package: Base-DFR Package		Billing Frequency: Annually Payment Terms: Net 30 days Price: See Exhibit A	
---	--	---	--

6. **Services.** As part of the Onboarding Services, Paladin will provide Implementation Services. Subject to the terms described infra, Paladin will grant Customer access to the Watchtower software, and provide Support Services during an Active Term. The same will be offered with each Renewal Term.
7. **Fees.** Paladin will charge Customer a recurring Annual Subscription Fee in accordance with this Agreement. Paladin’s offered Price (see Exhibit A) is only available for sixty (60) from the date of the offer. The Subscription Fee has a minimum term of one (1) year from the date set forth in Exhibit B. Renewal Terms will begin on the date of the Renewal Agreement. Customer understands that additional drones can only be added at the beginning of a Term. Upon full payment of any Term, Customer will own the Drone free and clear of any lien or interest by Paladin.
8. **Implementation Services.** During any Active Term, Customer is granted Implementation Services at any time during an Active Term, which include but are not limited to customized Customer support, training, and Onboarding Services (*see Exhibit B Sec. 1 for details*).

- 9. Billing.** Unless otherwise provided in Exhibit C, all Fees will be due and payable in advance on the terms indicated herein, and each invoice will be emailed to the Customer's billing contact indicated below. Customer accepts an emailed invoice as an actual invoice and will not require a written invoice as a condition for payment.
- 10. Renewal Term.** The Agreement is subject to renewal on the terms set forth in Exhibit B. The Pricing Package applicable for each Renewal Term will be determined based on the aggregate amount of Customer Selected Applications at the time of renewal. Exhibit A's pricing offer is only available for sixty (60) days from the date of the offer. *See* specific pricing in Exhibit A. The Customer understands that they may add additional Drone(s) throughout any term and that **Adding a Drone will dissolve the remainder of the Active Term and start a Renewal Term from the date of the renewal Agreement's respective Exhibit B.**
- 11. Termination.** The Agreement is subject to early termination on the terms set forth in Exhibit B.
- 12. Time of the Essence.** Time is of the essence in the performance of Parties' obligations herein.
- 13. Entire Agreement.** By executing this Agreement, each party agrees to be bound by its terms, and the Incorporated Documents, collectively the "Agreement." This Agreement contains the entire agreement among the Parties, and no oral statements or prior written matters not specifically incorporated herein shall be of any force and effect. No variation, modification or changes hereof shall be binding on either party hereto, unless set forth in a document executed by the Parties contemporaneously with this Agreement. If there is a conflict between this Agreement and any terms contained in any proposal, invoice or other agreement between Paladin and Customer, the terms of this Agreement shall control, but shall be superseded only by terms in Exhibit C, which shall be Customer's additional terms.
- 14. Intellectual Property.** Except for the limited rights and licenses expressly granted to Customer under the Agreement, nothing in the Agreement grants to Customer or any third party any intellectual property rights or other right, title, or interest in or to the Paladin IP.
- 15. Important Disclaimers & Limitations.** EXCEPT FOR THE WARRANTIES SET FORTH IN THE TERMS & CONDITIONS, PALADIN IP IS PROVIDED "AS IS," AND PALADIN DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE, OR TRADE PRACTICE. IN ADDITION, TO THE EXTENT PERMITTED BY APPLICABLE LAW, THE PARTIES' LIABILITIES UNDER THE AGREEMENT ARE LIMITED AS SET

FORTH IN THE TERMS & CONDITIONS.

16. Notices. Any Notice delivered under the Agreement will be delivered to the address below each party's signature below.

17. Authority to Execute Agreement. Each of the undersigned represents that they are authorized to (1) execute and deliver this Order Form on behalf of their respective party and (2) bind their respective party to the terms of the Agreement. This Paladin Order Form and any other documents executed and delivered in connection with the Agreement may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same Agreement. To the extent permitted by applicable law, electronic signatures may be used for the purpose of executing the Order Form by email or other electronic means. Any document delivered electronically and accepted is deemed to be "in writing" to the same extent and with the same effect as if the document had been signed manually.

(Signature page follows)

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the Effective Date by their duly authorized representatives.

PALADIN DRONES INC.

By:

Name: Divy Shrivastava

Title: CEO

CITY OF PRAIRIE VILLAGE, KS

By:

Name:

Title:

The terms and conditions of this Agreement govern all transactions contemplated by this Agreement, including all orders by Customer. Any proposed purchase order and/or other document submitted by Customer is null and void.

Exhibit A
PALADIN QUOTE

[See attached.]

Prairie Vlg Police Dept, KS

Prairie Vlg Police Dept, KS

7710 Mission Rd
Prairie Village, KS 66208
US

Eric McCullough

emccullough@pvkansas.com
+19133854608

Reference: 20250529-145238725

Quote created: May 29, 2025

Quote expires: August 27, 2025

Quote created by: Ian Baques

Account Executive

ian.baques@paladindrone.io

+13175175719

Comments from Ian Baques

The referenced Quote provides an all-inclusive pricing package with an annual subscription fee for a one (1) year term with the option to renew for two (2) additional twelve (12) month terms.

Products & Services

Item & Description	Quantity	Unit Price	Total
Base DFR Package The Base DFR Package is an all-inclusive base annual sub- scription fee which includes: • One (1) EXT Module, connectivity for one (1) drone (sold separately) to Watchtower Software • One (1) Dock Integration, connectivity for one (1) dock- ing station to Watchtower Software at any time (OPTIONAL) • One (1) ADS-B Receiver system • FAA and BVLOS (ADS-B Waiver) Compliance review, set- up, and renewal • Delivery, implementation, training, customer support • Unlimited users and data storage • Annual battery replacements This Package also provides access to Paladin's dealer dis- counted One-Time Purchases on equipment. This system is compatible with the Paladin Drop Mechanism with select drones.	1	\$37,000.00 / year	\$37,000.00 / year for 1 year
DJI Dock 3 Set (+M4TD) DJI Dock 3 Set which includes: • DJI M4TD (x1) • DJI Dock 3 (x1) • Matrice 4 Batteries (x4) • RC Plus Controller (x1) • 240 Watt Charging Hub (x1) • Drone Carrying Case (x1) • Replacement Propellers (x4)	1	\$24,000.00	\$17,000.00 after \$7,000.00 discount
Annual subtotal			\$37,000.00
One-time subtotal			\$17,000.00 after \$7,000.00 discount
Total			\$54,000.00

Purchase terms

Questions? Contact me



Ian Baques

Account Executive

ian.baques@paladindrone.io

+13175175719

Paladin Drones, Inc.

10200 Richmond Ave

STE 272

Houston, Texas 77042

United States

Exhibit B
PALADIN Terms and Conditions

[See attached.]

EXHIBIT B
Paladin Terms and Conditions

PALADIN'S GENERAL TERMS & CONDITIONS

Please carefully read these General Terms and Conditions (hereinafter, "**Terms & Conditions**").

By executing the Order Form, the Customer agrees to be bound by these Terms.

1. Definitions and Provisions

Capitalized terms used in the "Agreement" have the meanings set forth in this section.

"Active Term" means a term for which Customer has a current subscription for service from Paladin. Active Terms become "Inactive Terms" upon the completion of their specified period and may be partitioned by several Implementation Periods which are limited by the Term End Date (e.g., If the contract is for three years, the active term shall be the three years, and each year shall be an Implementation Period).

"Add-Ons" means the addition of one or more Drone (e.g., M30, M30T, M350, etc.) and/or Drone with a Docking Station under the Advanced Package.

"Advanced Package" means one of three Package types that includes a Paladin issued M30T Drone, or similar, fitted with an EXT Module and Docking Station. This package does not require Client to provide its own Drone. This is the top package and includes (1) Set-Up of FAA and BVLOS Compliance Documents; (2) In-Person Delivery, Implementation, and Onboarding; (3) Unlimited Training & Customer Support; and (4) Unlimited Users & online cloud storage. Upon payment of the initial Implementation Period Client will own the provided Drone, and EXT module, and Docking Station. At Client's option, it may renew its term and add Add-ons. The Watchtower software will serve the hardware.

"Aggregated Statistics" means data and information related to Customer's use of the Services that are used by Paladin in an aggregate and anonymized manner, including statistical and performance information related to the Services to improve its products and services.

"Agreement" means, collectively and to the extent applicable the Paladin Order Form, these Terms & Conditions (i.e., Exhibit B), Exhibit A, and Exhibit C, and any other Incorporated Documents.

"Application Obligations" means, collectively, Customer's debt, and other financial obligations relevant to the Application Services.

"Application Services" means management and compliance software-as-a-service application. Generally, this refers to but is not limited to the Watchtower software. These services are included during an Active Term.

"Appropriate Security Measures" means, collectively, commercially reasonable technical and physical controls and safeguards intended to protect Customer Data against destruction, loss, unauthorized disclosure, or unauthorized access by employees or contractors employed by Paladin.

"Authorized User" means any of Customer's employees, consultants, contractors, or agents who are authorized by Customer to access and use any of the Services. Additionally, any user of the provided Software, and/or Equipment with the explicit, implicit, or tacit authorization of Customer.

"Confidential Information" means any information in any form related to the Agreement, disclosed by a party (the **"Discloser"**), or disclosed on behalf of such party by its affiliates or representatives, to another (the **"Recipient"**), including without limitation any trade secrets, technology, technical data, source code, object code, software, inventions, know-how, information that Discloser considers and treats as confidential, or that a reasonable person would believe is confidential based on the nature of the information. Confidential Information does not include information that (i) at the time of disclosure, is available to the general public, (ii) becomes available to the general public through no fault of Recipient, (iii) is received by Recipient at any time from a third party without breach of a non-disclosure or confidentiality obligation to Discloser, (iv) is known to Recipient at the time of disclosure, as demonstrated by documentary evidence, (v) is developed independently by Recipient without access to any of Discloser's Confidential Information, or (vi) is approved for disclosure by prior written permission of Discloser or a corporate officer, including without limitation pursuant to the terms of this Agreement.

"Customer" means the person or entity purchasing the Services as identified in the Order Form.

"Customer Data" means, other than Aggregated Statistics, information, data, and other content, in any form or medium, that is transmitted by or on behalf of Customer or an Authorized User through the Services.

"Customer Terms" means any terms or agreements provided by Customer and applicable to the Services but only to the extent such terms or agreements are expressly referenced and incorporated into the Order Form, and/or as contained in Exhibit C. For the avoidance of doubt, "Customer Terms" does not include any purchase order or similar document generated by Customer unless such document is expressly referenced and incorporated into the Order Form.

"Delivery Date" means the first day of delivery of the included equipment.

"Delivery Point" means the location agreed by Parties to be where Customer shall receive their Equipment. If no designation is made then the default delivery point shall be the address listed on the Paladin Purchase Order for Customer.

"Documentation" means any documents, FAA certification and the documents and processes required for the acquisition of such, training materials, information, directions, explanations, or material, concerning the Equipment and/or the Watchtower Products, whether produced by or for Paladin, for the use of the Equipment and/or Watchtower

Software, in whatever form, and including without limitation the Specifications. Including, Paladin's end user documentation and content, regardless of media, relating to the Services made available from time to time on Paladin's website at paladindrone.io.

"Drone" means an unmanned aerial vehicle (UAVs), and refers to Select Drone(s) by Customer.

"Drone as a Service Fees" has the meaning set forth in Section 6 (Prices and Fees) of this Agreement.

"Effective Date" means the date that the Agreement designates in its Terms as "Effective Date". Refer to Exhibit A and C. If no Effective Date is designated by the Parties, then the default Effective Date is the date Client signed the Agreement (i.e., Paladin Purchase Order Form and Exhibit B).

"Equipment" means (1) EXT Module; (2) Select Drone; and/or (3) Docking Station.

"Fee" means an amount owed for services pursuant to the Agreement.

"Feedback" means any comments, questions, suggestions, or similar feedback transmitted in any manner to Paladin, including suggestions relating to features, functionality, or changes to the Paladin IP.

"Governing State" means the State of Delaware.

"Government Entity" means any unit of state or local government, including states, counties, cities, towns, villages, school districts, special purpose districts, and any other political or governmental subdivisions and municipal corporations, and any agency, authority, board, or instrumentality of any of the foregoing.

"Implementation Period" for a twelve (12) month period, with each such period beginning, if applicable, on the Effective Date and on each anniversary of the Effective Date thereafter.

"Implementation Services" means the services provided to Customer during an Implementation Period (i.e., on an annual basis as limited by the Term End Date), including tailored Customer support, instructions, review of Application Obligations, and entry of relevant Customer Data.

"Inactive Term" means any period that is not an Active Term and usually follows the end of a subscription period when no renewal for service is made prior to the end of that Active Term.

"Incorporated Documents" means, collectively, Exhibit A, Exhibit B, Exhibit C.

"Initial Term" means the term of the services beginning on the Effective Date and

ending on the term End Date, as established in the Paladin Order Form (see pg. 1, section 5).

"Intellectual Property Rights" means all intellectual property and proprietary rights anywhere in the world under the laws of any state, country, territory, and/or other jurisdiction, as may now exist or hereafter come into existence, whether statutory, common law, or otherwise, including without limitation any and all patent rights (including patent applications and disclosures), copyright rights, trade secret rights, moral rights, know-how, database rights, mask work rights, rights of publicity, Marks (whether registered or unregistered), and all goodwill relating to the foregoing and any and all applications therefore and registrations, renewals, and extensions thereof. "Mark" means any trademark, trade name, trade dress, service mark, corporate name, design, logo, device, domain name, and/or other indicator of the source or origin of any product or service.

"Launch Package" means one of three Package types that includes a Paladin issued M30 Drone fitted with its EXT Module. This package does not require Client to provide its own Drone. This is the middle package and includes (1) Set-Up of FAA and BVLOS Compliance Documents; (2) In-Person Delivery, Implementation, and Onboarding; (3) Unlimited Training & Customer Support; and (4) Unlimited Users & online cloud storage. At the end of the Agreement Term Client will own the provided Drone and EXT module and may at Client's option renew its term and Add-Ons. The Watchtower software will serve the hardware.

"Legal title" means unconditional ownership of a tangible asset.

"Offer" means a conditional proposal made by a Party, which becomes legally binding if accepted by the offeree.

"Onboarding Services" means onboarding services, support, and training as required to make the Application Services available to the Customer during the service Term.

"Order Form" means (1) the order document executed and delivered by Paladin and Customer for the Initial Term or (2) to the extent applicable, any subsequent Order Form document executed and delivered by Paladin and Customer for any Renewal Term.

"Package Type" means the selected package by Customer to facilitate its Drones. Customer may select from the following packages: Turn-Key, Launch, or Advanced.

"Paladin" means Paladin Drones Inc., d/b/a Paladin, a Delaware corporation, and its permitted successor and assigns.

"Paladin IP" means (1) the Services, Documentation, and Feedback, including all ideas, concepts, discoveries, strategies, analyses, research, developments, improvements, data, materials, products, documents, works of authorship, processes, procedures, designs, techniques, inventions, and other intellectual property, whether or not patentable or copyrightable, and all embodiments and derivative works of each of the foregoing in any form and media, that are developed, generated or produced by Paladin arising from or related to the Services, Documentation, or Feedback; and (2) any

intellectual property provided to Customer or any Authorized User in connection with the foregoing other than Customer Data.

"Paladin Order Form" means the document named Paladin Order Form, and incorporated into these terms herein by reference, and which when executed by both parties hereto, shall form a part of Party's Agreement and Parties agree to be subject to its terms.

"Privacy Policy" means, collectively, Paladin's privacy policy and any similar data policies generally applicable to all users of the Application Services, in each case as posted to Paladin's website, in general, and as updated from time to time in accordance with their terms found at <https://paladindrone.io/privacy-policy/>.

"Provided Software" means any software which Paladin has made available by any means to Customer. Generally this refers to but is not limited to the Watchtower software.

"Regular Use" means in accordance with the terms of this Agreement, autonomous flight and manual control of the drone through Paladin's Watchtower Software

"Renewal Agreement" means an Agreement that follows or extends a former Agreement for the purpose of extending or maintaining a service with Paladin.

"Renewal Term" means any Active Term that is renewed subject to the terms of an Agreement, or Renewal Agreement but prior to becoming an Inactive Term.

"Section number (#)" means any section within this document that is referenced to with its section number and/or subsection (e.g., where a section refers to section 3, then this means that the terms in section 3 are to be read to have been replicated in that referencing section).

"Services" means, collectively, the Application Services, the Onboarding Services, the Implementation Services, and the Support Services.

"Select Drones" means Drones that are offered based on the selected Package Type. Not all Drones are available for each package.

"Specifications" means those standards by which the Equipment and Watchtower Products must be operated, as set forth in Schedule C attached hereto and incorporated herein by reference.

"Support Services" means the general maintenance services and technical support provided in connection with the Application.

"Term" means, collectively, the Initial Term and, if applicable, each successive Renewal Term.

"Final Term End Date" means, the date no Renewal Term or Implementation Period shall proceed the last Active Term and the Services will terminate.

"Turn-Key Package" means one of three Package types that allows Customer to

bring their own Drone that is compatible with Paladin's EXT Module. This package is serviced by Paladin's Watchtower Software. This is the basic package and includes (1) Set-Up of FAA and BVLOS Compliance Documents; (2) In-Person Delivery, Implementation, and Onboarding; (3) Unlimited Training & Customer Support; and (4) Unlimited Users & online cloud storage.

"Unlimited Warranty" means during the life of the contract Paladin will repair, or replace, any provided equipment that is acquired under either the Launch Package and Advanced Package. These warranties are applicable only when Customer has used products in accordance with the terms of this agreement.

"User-error" means, while any Select Drone is being operated by a Pilot in Command (PIC) the Drone sustains damage as a result of the PIC's direct control.

"Usage Policy" means, collectively, Paladin's acceptable usage policy, any end user licensing agreement, or any similar policy generally applicable to all end users accessing the Application Services, in each case as posted to Paladin's website and as updated from time to time in accordance with its terms.

"Watchtower Products" means the Watchtower Software.

"Watchtower Software" means the primary software licensed to allow users to interface with Select Drone(s), commission flight, develop, retain, and store data and reports for Parties analysis, view the live stream, and send commands to the drone during active situations.

"Website" means the websites of Paladin Drones, Inc., the primary web page URL of which is <https://paladindrone.io/>.

2. Access and Use.

a. Provision of Access. Subject to the terms and conditions of the Agreement, Paladin grants Customer and Customer's Authorized Users a non-exclusive, non-transferable (except as permitted by this Agreement) right to access and use the Application Services during the Term, solely for Customer's internal use and for the Authorized Users' use in accordance with the Agreement. Paladin will provide to Customer the necessary passwords and network links or connections to allow Customer to access the Application Services. Paladin agrees to provide instructions to the Customer, employees, agents, and related entities bound under the Agreement, to maintain the airworthiness of its drone(s) so that it is in a condition that is ready for service. Paladin will instruct Customer how to maintain all proper licensing and registration for itself and the drones so that they can legally be used for Customer's purposes when called upon.

b. Documentation License. Subject to the terms and conditions of the Agreement, Paladin grants to Customer and Customer's Authorized Users a non-exclusive, non-sublicensable, non-transferable (except as permitted by these Terms) license to use the Documentation during the Term solely for Customer's and its Authorized User's internal business purposes. Paladin does not exercise any control over the Drone or equipment

when it is in flight and Customer while using any features in the Documentation is the sole operator controlling the Drone, and or equipment.

c. Customer Responsibilities. Customer is responsible and solely liable for its Authorized Users' access and use of the Services and Documentation, regardless of whether such use is permitted by the Agreement. Customer must use reasonable efforts to make all Authorized Users aware of the provisions applicable to their use of the Services, including the Incorporated Documents.

d. Use Restrictions. Customer may not at any time, directly or indirectly through any Authorized User, access or use the Services in violation of the Usage Policies, including any attempt to (1) copy, modify, or create derivative works of the Services or Documentation, in whole or in part; (2) sell, license, or otherwise transfer or make available the Services or Documentation except as expressly permitted by the Agreement; or (3) reverse engineer, disassemble, decompile, decode, or otherwise attempt to derive or gain access to any software component of the Services, in whole or in part. During the Term hereof, Customer shall not use the Equipment, Watchtower Products, and/or Documentation for any purposes except as set forth in this Agreement. Without limiting the foregoing and except as otherwise expressly set forth in this Agreement, Customer shall not at any time, directly or indirectly: (i) copy, modify, or create derivative works of the Watchtower Products and/or Documentation, in whole or in part; (ii) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer, or otherwise make available the Watchtower Products and/or Documentation; (iii) reverse engineer, disassemble, decompile, decode, adapt, or otherwise attempt to derive or gain access to the source code of the Watchtower Products and/or Documentation, in whole or in part; (iv) reverse engineer, disassemble, or gain access to the interior components of the Watchtower Products and/or Documentation; (v) remove any proprietary notices from the Watchtower Products and/or Documentation; or (vi) use the Watchtower Products and/or Documentation in any manner or for any purpose that infringes, misappropriates, or otherwise violates any Intellectual Property Right or other right of any person, or entity, or that violates any applicable law. The Customer is responsible and liable for all uses of the Watchtower Products and/or Documentation resulting from access provided by Customer, directly or indirectly, whether such access or use is permitted by or in violation of this Agreement. Without limiting the generality of the foregoing, Customer is responsible for all acts and omissions of Authorized Users, and any act or omission by an Authorized User that would constitute a breach of this Agreement if taken by Customer will be deemed a breach of this Agreement by Customer.

e. Protection of Equipment Trade Secrets. Customer acknowledges and agrees that the design, construction, and internal components, and other elements, of the Equipment provided under this Agreement are Confidential Information (and may include valuable trade secrets) and, as such, is protected under the terms of this Agreement. Customer agrees that any Disclosure of such would cause Paladin irreparable injury and damage without a need to prove the same. To ensure the protection of such information, Customer acknowledges its duty to implement reasonable precautions not to— open or disassemble the Equipment, nor any piece or component thereof, nor to otherwise investigate the internal components and operations of any of the Equipment. Customer agrees to use reasonable precautions to protect the Equipment from theft, inspection, investigation, discovery of the Equipment's components, design, construction, and/or other

elements, and any unauthorized use.

f. Suspension. Notwithstanding anything to the contrary in the Agreement, Paladin may temporarily suspend Customer's and any Authorized User's access to any or all the Services if:

(1) Customer is more than 45 days late in satisfying: All Application Obligations; Fees then due, or in accordance with, the terms of the Agreement.

(2) Paladin reasonably determines that:

(A) there is a threat or attack on any of the Paladin IP;

(B) Customer's or any Authorized User's use of the Paladin IP disrupts or poses a security risk to the Paladin IP or to any other customer or vendor of Paladin;

(C) Customer, or any Authorized User, is using the Paladin IP for fraudulent or illegal activities; or

(D) Paladin's provision of the Services to Customer or any Authorized User is prohibited by applicable law.

(3) Any vendor of Paladin has suspended or terminated Paladin's access to or use of any third-party services or products required to enable Customer to access the Services (i.e., "**Service Suspension**"). Paladin will use commercially reasonable efforts to—

(i) provide written notice of any Service Suspension to Customer,

(ii) provide updates regarding resumption of access to the Services, and

(iii) resume providing access to the Services as soon as reasonably possible after the event giving rise to the Service Suspension is cured. Paladin is not liable for any damage, losses, or any other consequences that Customer or any Authorized User may incur because of a Service Suspension.

g. Aggregated Statistics. Notwithstanding anything to the contrary in the Agreement, Paladin may monitor Customer's use of the Services and collect and compile Aggregated Statistics. As between Paladin and Customer, all right, title, and interest in Aggregated Statistics, and all intellectual property rights therein, belong to and are retained solely by Paladin. Paladin may compile Aggregated Statistics based on Customer Data input into the Services. Paladin may (1) make Aggregated Statistics publicly available in compliance with applicable law, and (2) use Aggregated Statistics as permitted under applicable law so long as, in each case, Paladin's use of any Aggregated Statistics does not identify the Customer or disclose Customer's Confidential Information.

3. Service Levels and Support. Subject to the terms and conditions of the Agreement, Paladin will use commercially reasonable efforts to make the Application Services and Support Services available. Paladin will assist Customer in applying for FAA BVLOS waivers and instruct Customer to operate equipment in a legal manner. Paladin will start with one deployment location at a time and continue progressively until the agreed upon number of deployment locations for all UAS. In an effort to aid in Paladin's BVLOS process,

Paladin will provide training materials to the Customer which may enable it to self certify employees as Visual Observers (VOs). Paladin will provide training to officers on how to access and utilize the Paladin Watchtower in a “train the trainer” model.

Paladin will teach Customer how to dispatch the Hardware using the Software to emergency calls. Customer warrants that only personnel authorized by Customer may have access to the Live Stream from the drone. Customer will be taught on how to use Paladin’s software to view and stream on any compatible internet-connected device. Paladin will apply for Certificates of Authorization (i.e., “COA”) from the FAA on behalf of Customer and provide related training. Customer understands that Paladin will not provide FAA, Part 107, training. Customer agrees that only Authorized personnel who have undertaken training from Paladin may have access to the Paladin Watchtower software, which can convey the status of the drone, and how to tell the drone to conduct additional maneuvers if needed. All operations will be conducted by a Pilot in Command (PIC), who may be an FAA-certified pilot, and have manual override control of the drone to prevent malfunctions. Customer will provide the PICs needed to sustain this program.

Paladin’s training shall consist of: :

1. Showing how to access Watchtower on their respective internet devices.
2. Showing how to view a live stream through the application.
3. Showing how to control the drone using the application.
4. Showing how to report problems if they come across them on the application.
5. After the initial training, and upon the written request of the Customer, Paladin will schedule a training course for new hires and to aid in maintaining Customer’s FAA compliance.

a. Paladin will provide training for the Customer to use the Equipment. This training will consist of:

1. Going over the maintenance list for the drone, and how to maintain airworthiness.
2. Teaching how to fly the drone autonomously using Watchtower.
3. Teaching how to fly the drone manually using the remote control.
4. Teaching how to fly the drone via LTE.
5. Teaching how to attach, detach, activate, deactivate, the LTE module that attaches to the drone and gives it LTE capabilities.

4. Fees and Payment.

a. Fees. Customer will pay Paladin the fees (“Fees”) set forth in the Order Form. Paladin will invoice Customer for all Fees in accordance with the invoicing schedule and requirements set forth in the Agreement (e.g., Exhibit A). Customer must pay all Fees in US dollars, and all Fees are fully earned once paid. To the extent permitted by applicable law, if Customer fails to make any payment when due, Paladin may, without limiting any of its other rights, after a five (5) day grace period, charge interest on the past due amount at the lowest of (1) the rate of 5% per month, (2) the rate established in Exhibit C, or (3) the maximum rate permitted under applicable law. Customer agrees to reimburse Paladin for all costs incurred in collecting any late payments, including, without limitation, reasonable attorneys’ fees.

b. **NET 30: PAYMENT IS DUE WITHIN 30 DAYS OF THE PALADIN ORDER FORM'S EFFECTIVE DATE.** The set-up process for all services and software begins upon receipt of the (1) signed Agreement (e.g., Paladin Purchase Order) and (2) the receipt of payment. If applicable, payment must include any Add-On(s) (i.e., physical equipment) purchased by Customer. Refunds are strictly waived by Client and agree that all sales are final. Client has the option to upgrade a Package Type at the end of any 12 month term, during an Active Term. If an upgrade is requested Parties must resign a new Agreement (i.e., Paladin Order Form). Payment is due according to the terms of the Agreement every 12 months from the Effective Date.

c. **Taxes.** All Fees and other amounts payable by Customer under the Agreement are exclusive of taxes and similar assessments. Unless Customer is exempt from making any such payment under applicable law or regulation, Customer is responsible for all applicable sales, use, and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any federal, state, or local governmental or regulatory authority on any amounts payable by Customer under the Agreement, other than any taxes imposed on Paladin's income. If Customer is a non-government entity, the Agreement Price (e.g., Exhibit A and C) will designate the total tax owed. Client agrees to be solely responsible for any tax obligations relating to its purchase, and if any errors are discovered or later calculated, Client agrees to cure any tax obligations as soon as practicable.

5. **Equipment Provided to Customer**

a. **Conditional Ownership.** Paladin offers to sell to Customer a service Package Type. Based on the selection made by Customer, Paladin shall grant an (1) EXT Module; (2) Select unmanned Drone; and/or (3) Docking Station. In the event Customer selects Add-Ons, they will be granted by Paladin and Legal Title shall pass to the Customer upon full payment of the Initial Term.

b. **Pricing:** Paladin's Order Form shall designate the offered price for services described in its Exhibit A (i.e., part of its Incorporated Documents).

c. **Batteries:** Each year, as specified in the Paladin Order Form, Customer shall be entitled to a designated number of batteries compatible with their Drone. These batteries are included at no additional charge; however, customer shall have the option to purchase extra batteries.

d. **Repairs:** Paladin warrants the repairs of Equipment it provides to the Customer, so long as the Equipment's use was in accordance with this Agreement, and in the event of Equipment damage, such damage is not caused by a 3rd party regardless of if the act was intentional or accidental, or Client's user-error and/or negligence. Autonomous flight in accordance with the proper use of the Watchtower software even if resulting in Equipment damage will be replaced at no cost to Client.

e. **Delivery.** Paladin shall make the Equipment available to Customer at Customer's address set forth in the Paladin Order Form. Transportation and use of the Equipment after delivery at the Delivery Point, shall be entirely at Customer's own risk and expense. If Customer disassembles the Equipment to facilitate transportation, Paladin shall bear no responsibility for reassembly of the Equipment or any related defects. If for any reason Customer fails to accept delivery of the Equipment by the date fixed in the

Agreement or pursuant to Paladin's notice that the Equipment is available at the Delivery Point, or if Paladin is unable to make the Equipment available at the Delivery Point within a reasonable time after the Delivery Date owing to any act or omission of Customer or its representatives, including without limitation the failure to provide appropriate access to Delivery point, facilitation to access Delivery point, instructions, documents, licenses, access, clearance and/or authorizations: (i) Customer shall bear the risk of loss to the Equipment; (ii) the Equipment shall be deemed to have been delivered; and (iii) Paladin, at its option, may store the Equipment until collected by Customer, whereupon Customer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).

6. Loss And Damage Of Equipment

- a. Customer assumes and shall bear the entire risk of loss, damage to, theft or destruction of equipment, from any cause. LOSS OR DAMAGE TO THE EQUIPMENT, OR ANY PART OF IT, SHALL NOT RELIEVE CUSTOMER OF ANY OBLIGATION UNDER THIS AGREEMENT. The customer's obligations with respect to the aforementioned shall commence upon delivery of the equipment.
- b. Customer agrees to immediately notify Paladin of any accident or event of loss or damage involving the Equipment. The notification shall include any information as may be pertinent to Paladin's investigation of such accident, loss, or damage, or which Customer may reasonably require.
- c. Subject to Section 2 supra and in accordance with the terms in Section 9, infra, Paladin offers repairs and replacements to Customer's equipment that was purchased from Paladin and at the time of equipment failure had an Active Term under the Launch package or Advanced package.

7. Confidential Information

a. During any Active Term, either party (the "**Disclosing Party**") may disclose or make available to the other party (the "**Receiving Party**") information about the Disclosing Party's business affairs, products, confidential intellectual property, trade secrets, third-party confidential information, and other sensitive or proprietary information, whether in written, electronic, or other form or media, that is marked, designated, or otherwise identified as "confidential", or which a reasonable person would understand to be confidential or proprietary under the circumstances (collectively, "**Confidential Information**"). Paladin's Confidential information includes the Paladin IP and the Application Services source code and specifications. As used in the Agreement, "Confidential Information" expressly excludes any information that, at the time of disclosure is (1) in the public domain; (2) known to the receiving party at the time of disclosure; (3) rightfully obtained by the Receiving Party on a non-confidential basis from a third party; or (4) independently developed by the Receiving Party.

b. To the extent permitted by applicable law, the Receiving Party will hold the Disclosing Party's Confidential Information in strict confidence and may not disclose the Disclosing Party's Confidential Information to any person or entity, except to the Receiving Party's employees, officers, directors, agents, subcontractors, financial advisors, and

attorneys who have a need to know the Confidential Information for the Receiving Party to exercise its rights or perform its obligations under the Agreement or otherwise in connection with the Paladin's Services and internal operations. Notwithstanding the foregoing, each party may disclose Confidential Information to the limited extent required (1) in order to comply with the order of a court or other governmental body, or as otherwise necessary to comply with applicable law, provided that the party making the disclosure pursuant to the order must first give written notice to the other party; or (2) to establish a party's rights under the Agreement, including to make required court filings.

c. On the expiration or termination of the Agreement, the Receiving Party must promptly return to the Disclosing Party all copies of the Disclosing Party's Confidential Information, or destroy all such copies and, on the Disclosing Party's request, certify in writing to the Disclosing Party that such Confidential Information has been destroyed. Notwithstanding anything to the contrary in section seven (7), Paladin may store, collect, analyze, and make unrestricted use of any data on its platform for the improvement of its services, customer support, and in accordance with meeting its obligations under this Agreement and under section eight (8)(b).

d. Each party's obligations under this Section are effective as of the Effective Date and will expire three years from the Effective date of the Agreement; provided, however, with respect to any Confidential Information that constitutes a trade secret (as determined under applicable law), such obligations of non-disclosure will survive the termination or expiration of the Agreement indefinitely.

e. Notwithstanding anything in Section seven (7) to the contrary, if Customer is a Government Entity, then Paladin expressly agrees and understands that Customer's obligations under this Section are subject in all respects to, and only enforceable to the extent permitted by, the public records laws, policies, and regulations of the Governing State.

f. **Mutual Restrictions.** Recipient shall use Discloser's Confidential Information only for the purposes of this Agreement (the "**Purpose**"). Except as permitted in this Agreement, Recipient shall not disclose to any third party any of Discloser's Confidential Information that is obtained directly or indirectly from Discloser or its affiliates or representatives. Recipient may only disclose the Confidential Information of Discloser to its representatives who are required to have it to further the Parties' purpose and/or obligations herein. Recipient must inform any such representative of the confidential nature of the information and cause the representative to comply with the terms of this Agreement as if it were the Recipient, and Recipient will be liable for any breach of this Agreement by any such representative, agent, or delegatee. Recipient will exercise the highest degree of care toward the Confidential Information. Recipient agrees to take all reasonable steps to protect the secrecy of, and avoid disclosure or use of, the Discloser's Confidential Information in order to prevent it from falling into the public domain or possession of unauthorized persons. Recipient agrees to immediately notify Discloser in writing of any use and/or disclosure in violation of this Agreement. Each party, however, may disclose Confidential Information of the other pursuant to the order or requirement of a court, federal agency, or other governmental body, provided that the disclosing party gives reasonable notice to the other party to contest such order or requirement. Recipient agrees and

acknowledges that any such breach or threatened breach of these terms of confidentiality may cause irreparable injury to Discloser so that, in addition to any other remedies available, Discloser may seek injunctive relief against the threatened or actual breach. Without limiting the generality of the foregoing, Customer shall continue to protect the Confidential Information of Paladin in perpetuity, as it relates to trade secrets contained in the Equipment and/or Watchtower Products.

8. Intellectual Property

a. Paladin IP. As between Customer and Paladin, Paladin owns all Paladin IP: rights, title, and interest.

b. Customer Data. As between Parties, Customer owns all right, title, and interest, including all intellectual property rights, in and to the Customer Data. Customer hereby grants to Paladin a non-exclusive, royalty-free, worldwide license to reproduce, distribute, sublicense, modify, prepare derivative works based on, and otherwise use and display the Customer Data and perform all acts with respect to the Customer Data as may be necessary or appropriate for Paladin to improve its Services and provide the Services to Customer.

c. Customer acknowledges and agrees that Paladin and its licensors and suppliers retain and own all rights, legal title, and interests in and to all Intellectual Property Rights therein of the following: (i) the Paladin Website, Watchtower Products, Watchtower Software, Watchtower Website Portal, Paladin Services, and any and all other services and products related thereto; (ii) the components and any and all other materials, content, data and/or information provided and/or made available by Watchtower in connection with any of the foregoing (but excluding content and/or data provided exclusively by Customer and Equipment purchased by Customer); all know-how and proprietary design and configuration of the Equipment; and (iii) any and all configurations, derivative works, developments, modifications, adaptations, changes, alterations, edits, conversions, improvements and/or the like made to, arising out of, and/or resulting from any of the foregoing. All rights not expressly granted under this Agreement, are reserved to Paladin and its licensors and suppliers, and there are no implied rights. Under no circumstances will anything in this Agreement be construed as granting, by implication, estoppel, or otherwise, a right or license to any party's Intellectual Property Rights or proprietary technology other than in strict accordance with the terms of this Agreement. Customers, its Authorized Users, and all other Users acknowledge and agree that Paladin and its licensors, suppliers, vendors, and/or its third party vendors shall own all right, title, and interest in and to all Intellectual Property Rights in and to any suggestions, enhancement requests, feedback, or recommendations provided by Customers, Authorized Users, and/or all other Users relating to the Watchtower Products, and Paladin Services, without any limitations, restrictions, and/or requirement of compensation, including without limitation all unpatented inventions, patent applications, patents, design rights, copyrights, Marks, know-how, and other trade secret rights, and all other Intellectual Property Rights, derivatives or improvements thereof.

d. Effect of Termination. Without limiting either party's obligations this Agreement, Paladin, at no further charge to Customer, will (1) provide Customer with temporary access to the Application Services for up to 60 days after the termination of the

Agreement to permit Customer to retrieve its Customer Data and (2) use commercially reasonable efforts to assist Customer, at Customer's request, with such retrieval. After such a period, Paladin may destroy any Customer Data in accordance with Paladin's data retention policies.

9. Warranties & Disclaimers.

- a. When Customer is engaging in Regular Use through the Watchtower Software, Paladin shall: (A) provide all three packages (i.e., Turn-key, Launch, and Advanced) unlimited updates and repairs of their EXT Module and Watchtower software during any Active Term; (B) provide unlimited repairs to the M30T drone and provide replacement parts and related instructions for any wear and tear on propellers and batteries; and (C) provide to Customers who selected the Advanced Package unlimited repairs to their Docking station.
- b. Notwithstanding the aforementioned, no maintenance or repairs shall be provided in the event of non-regular use, intentional damage, third-party damage, or when Paladin's insurance provider(s) for any reason declines to cover the claim. However, despite the aforementioned, Paladin will reserve the discretion to make repairs despite noncoverage.
- c. Functionality & Service Levels. During the Term, the Application Services will operate in a manner consistent with general industry standards reasonably applicable to the provision of the Application Services and will conform in all material respects to the Documentation. Paladin does not make any representation, warranty, or guarantee regarding availability of the Application Services.
- d. Paladin warrants upon delivery, that at a minimum, all drones are maintained and operated in material accordance with:
 1. All applicable manuals inclusive but not limited to the manufacturers and operators' maintenance manuals;
 2. Mandatory Advisory Circulars or other Airworthiness Directives issued by the FAA;
 3. The manufacturer's airworthiness limitations;
 4. Manufacturer or FAA mandated inspection schedules, overhaul schedules, and calendar retirement dates; and
 5. Service Bulletins.
- e. Customer Warrants and is solely responsible for ensuring that all crew, including pilot in command, visual observer, sensor or payload operator, or other persons necessary for the safe operation of the flight have the qualifications, experience, licenses, and certificates required by applicable Federal Aviation Administration regulations and that all have the necessary skill required to perform their duties.
- f. IN ORDER TO BE IN COMPLIANCE WITH THIS AGREEMENT'S TERMS OF USE, CUSTOMER MUST:
 - i. PER FAA REGULATIONS, A MINIMUM OF ONE PILOT IS REQUIRED TO OPERATE EACH DRONE.
 - ii. WORK WITH PALADIN TO GET BVLOS WAIVERS FOR THE CUSTOMER TO FULLY USE PALADIN'S PRODUCT AND SERVICES.

- iii. TRAIN CUSTOMER TO BE VO'S SO THAT THE CUSTOMER CAN HAVE FAA-COMPLIANT AND SAFE BVLOS OPERATIONS.
- iv. IF CUSTOMER CONNECTS PALADIN'S SOFTWARE TO THEIR COMPUTER AIDED DISPATCH (CAD) SYSTEM OR THIRD PARTY INTEGRATION SOFTWARE (i.e., NON-PALADIN APPLICATION PROGRAM INTERFACE "API"), PALADIN SHALL NOT BE LIABLE FOR ANY RELATED COSTS AND CUSTOMER WILL PROVIDE ACCESS TO SAID CAD SYSTEM OR API. PALADIN SHALL NOT BE LIABLE FOR ANY RELATED COSTS AND CUSTOMER WILL PROVIDE ACCESS AT NO COST TO PALADIN AND FURTHER GRANTS A LICENSE TO PALADIN TO USE ANY CONNECTED API OR CAD SYSTEM TO RETRIEVE LATITUDE, LONGITUDE, AND OTHER INFORMATION ABOUT 911 CALLS AS THEY ARE PLACED.
- v. PALADIN WILL PROVIDE THEIR WATCHTOWER INTERFACE TO COMMAND THE EQUIPMENT AND ALLOW AUTHORIZED USERS TO ACCESS CONTROLS.

g. Security. Paladin has implemented Appropriate Security Measures and has made commercially reasonable efforts to ensure its licensors and hosting providers, as the case may be, have implemented Appropriate Security Measures intended to protect Customer Data.

h. Paladin IP. EXCEPT FOR THE WARRANTIES SET FORTH IN THIS SECTION, PALADIN IP IS PROVIDED "AS IS," AND PALADIN HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE. PALADIN SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE, OR TRADE PRACTICE. EXCEPT FOR THE LIMITED WARRANTY SET FORTH IN THIS SECTION, PALADIN MAKES NO WARRANTY OF ANY KIND THAT THE PALADIN IP, OR ANY PRODUCTS OR RESULTS OF THE USE THEREOF, WILL MEET CUSTOMER'S OR ANY OTHER PERSON'S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY SOFTWARE, SYSTEM, OR OTHER SERVICES, OR BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE, OR ERROR FREE.

i. EXCEPT AS SET FORTH HEREIN AND TO THE EXTENT NOT PROHIBITED BY LAW, ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, ARE DISCLAIMED, INCLUDING WITHOUT LIMITATION THE WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO ANY SERVICE OFFERED, PROVIDED, OR AVAILABLE. ALL STATEMENTS CONCERNING THE AUTONOMOUS FLIGHT, EQUIPMENT AND PRODUCT COVERED BY THIS WARRANTY, OR STATEMENTS CONTAINED IN ADVERTISING, PAMPHLETS OR OTHER PRINTED MATERIALS DO NOT CONSTITUTE WARRANTIES, AND THE CUSTOMER AND/OR BUYER ACKNOWLEDGE THAT THEY HAVE NO RIGHT TO RELY UPON SAME NOTWITHSTANDING ANY WARRANTY IN THE AGREEMENT AND SECTION 6

SUPRA. PALADIN OR ANY OF ITS SUBSIDIARIES MAKE NO WARRANTY AS TO THE QUALITY OF FLIGHT, DATA COLLECTION, OR ACCESS OF ANY SOFTWARE OR HARDWARE OR OTHER PRODUCTS AND SHALL NOT BE LIABLE FOR ANY LOSSES, SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES, OR FOR ANY LOSS, DAMAGE OR EXPENSE ARISING UNDER OR IN CONNECTION WITH THE SAME. LIABILITY FOR DAMAGES OF ANY KIND SHALL IN NO EVENT EXCEED THE ORIGINAL PURCHASE PRICE OF THE PARTICULAR ORDER. IN PARTICULAR, PALADIN DRONES, INC. OR ANY OF ITS SUBSIDIARIES, AGENTS, OFFICERS, OR CONTRACTORS, OF ANY KIND, SHALL NOT BE LIABLE FOR LOSS OF LIFE, PROPERTY, REVENUES OR PROFITS OR CLAIMS OF ANY THIRD PARTIES.

j. **NO WARRANTY** SHALL APPLY TO (I) DEFECTS, ERRORS, DAMAGES, OR LOSS RESULTING FROM CORRECTIONS, REPAIRS OR SERVICE RELATING TO CUSTOMER'S OR USER'S SYSTEM, COMPUTERS, SERVERS, AND/OR OTHER EQUIPMENT OR CUSTOMER'S USE; (II) ANY ACT OR OMISSION BY ANYONE OTHER THAN CUSTOMER; (III) POWER SHORTAGES, IRREGULARITIES, BUGS, GLITCHES, INACCURACIES, OR FAILURES; (IV) MODIFICATIONS OF THE EQUIPMENT AND WATCHTOWER PRODUCTS BY ANYONE OTHER THAN PALADIN; AND (V) ANY OTHER CAUSE BEYOND PALADIN'S CONTROL NOTWITHSTANDING THE AFOREMENTIONED, IN THE EVENT OF HARDWARE FAILURE OR DESTRUCTION OF THE DRONE, PALADIN WILL PROVIDE REPLACEMENTS SO LONG AS THE TERMS OF AGREEMENT HAVE NOT BEEN BREACHED AND THE FAILURE OR DESTRUCTION WAS NOT THE RESULT OF USER ERROR. PALADIN RESERVES THE RIGHT TO REPLACE EQUIPMENT DAMAGED BY USER ERROR. ANY DAMAGE CAUSED TO EQUIPMENT WHILE USING THE DRONE AS TRAINED BY PALADIN AND WHILE ENGAGING IN AUTOMATED FLIGHT SHALL BE REPAIRED AT NO COST TO CUSTOMER. IN THE EVENT THAT A REPAIR CANNOT BE ACCOMPLISHED THEN PALADIN WILL REPLACE THE DRONE OR EQUIPMENT AT NO COST TO CUSTOMER. CUSTOMER MUST NOTIFY PALADIN OF THE INCIDENT AND CO-OPERATE WITH ANY REASONABLE REQUESTS BY PALADIN TO FACILITATE THE REPAIR OF THE EQUIPMENT PRIOR TO REPLACEMENT.

k. EXCEPT AS MAY BE EXPRESSLY PROVIDED IN SECTION 9 (WARRANTIES) HEREOF, THE EQUIPMENT, WATCHTOWER SOFTWARE, WATCHTOWER PRODUCTS, DOCUMENTATION, SERVICES, AND ALL RELATED PRODUCTS AND SERVICES ARE PROVIDED TO CUSTOMER "AS IS" AND "WITH ALL FAULTS." PALADIN MAKES NO REPRESENTATION OR WARRANTY OR PROMISE WHATSOEVER WITH RESPECT TO, AND HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, STATUTORY (INCLUDING ALL UCC STATUTES), OR OTHERWISE, INCLUDING ANY WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, OR OTHERWISE.

l. EXCEPT AS MAY BE EXPRESSLY PROVIDED IN SECTION 9(e) (PALADIN WARRANTIES) HEREOF, PALADIN DOES NOT WARRANT THAT THE

WATCHTOWER SOFTWARE AND/OR WATCHTOWER PRODUCTS ARE FREE FROM ERROR OR HARMFUL CODE AND/OR WILL RUN PROPERLY ON, AND/OR INTEROPERATE WITH, ALL HARDWARE AND/OR OPERATING SYSTEMS, THAT SUCH WILL MEET THE REQUIREMENTS OF CUSTOMER, OR OPERATE IN THE COMBINATIONS WHICH MAY BE SELECTED FOR USE BY CUSTOMER OR ANY USER OR THAT THE OPERATIONS OF SUCH WILL BE UNINTERRUPTED OR ERROR FREE OR THAT IT IS SECURE FROM HACKING OR OTHER UNAUTHORIZED INTRUSION.

m. CUSTOMER MUST INFORM PALADIN WHEN PROPELLERS AND BATTERIES EXHIBIT SIGNIFICANT WEAR AND TEAR. THE CONDITION PRECEDENT TO SIGNIFICANT WEAR AND TEAR SHALL MEAN THAT THE OPERATION OF THE EQUIPMENT CANNOT OPERATE AT ITS ORIGINAL CAPACITY AND DURATION. UPON RECEIVING NOTICE, PALADIN SHALL PROVIDE PROPELLERS AND BATTERIES AT NO ADDITIONAL COST. CUSTOMER SHALL INSTALL NEW ACCESSORIES IN A TIMELY MANNER. CUSTOMER MUST PROMPTLY REPORT ANY DAMAGE TO EQUIPMENT AND DATE OF INSTALLATION OR UPGRADE.

10. LIMITATION ON LIABILITY

a. IN NO EVENT SHALL PALADIN BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE, OR ENHANCED DAMAGES, LOST PROFITS OR REVENUES OR DIMINUTION IN VALUE, ARISING OUT OF, OR RELATING TO, AND/OR IN CONNECTION WITH ANY BREACH OF THIS AGREEMENT, REGARDLESS OF (A) WHETHER SUCH DAMAGES WERE FORESEEABLE, (B) WHETHER OR NOT PALADIN WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, (C) THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT, OR OTHERWISE) UPON WHICH THE CLAIM IS BASED, AND (D) THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

b. EXCEPT FOR COSTS DIRECTLY INCURRED BY PALADIN TO FULFILL THE EXPRESS WARRANTY PROVIDED IN SECTION 9(e) (PALADIN WARRANTIES) HEREOF, IN NO OTHER INSTANCE SHALL PALADIN'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, EXCEED THE AGGREGATE AMOUNTS PAID TO PALADIN HEREUNDER FOR THE CURRENT ACTIVE TERM (I.E., TWELVE MONTHS) OF PALADIN'S PURCHASE ORDER, OR TO THE MAXIMUM LIMIT OF ITS INSURED, OR \$2,000,000.00, WHICHEVER IS LESS. IN NO EVENT WILL PALADIN BE LIABLE UNDER OR IN CONNECTION WITH THE AGREEMENT UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE, FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED, OR PUNITIVE DAMAGES, REGARDLESS OF WHETHER EITHER PARTY WAS ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE. EXCEPT AS EXPRESSLY OTHERWISE PROVIDED IN THIS AGREEMENT.

c. SUCH LIMITED WARRANTY SET FORTH ABOVE SHALL ONLY APPLY IF CUSTOMER (I) NOTIFIES PALADIN IN WRITING OF THE WARRANTY BREACH BEFORE THE EXPIRATION OF THE WARRANTY PERIOD; (II) HAS PROMPTLY INSTALLED ALL UPDATES, UPGRADES, AND/OR MAINTENANCE RELEASES PREVIOUSLY MADE AVAILABLE BY PALADIN; AND (III) AS OF THE DATE OF

NOTIFICATION, IS IN COMPLIANCE WITH ALL TERMS AND CONDITIONS OF THIS AGREEMENT, INCLUDING THE PAYMENT OF ALL PRICES AND FEES THEN DUE AND OWING. Furthermore, such warranty as set forth above shall not apply to the extent that the alleged breach and/or infringement arises and/or results from: (i) combination, operation, or use of the Equipment and/or Watchtower Products in or with, any technology (including any software, hardware, firmware, system, or network) or service not provided by Paladin or specified for Customer's use in the Documentation, unless otherwise expressly permitted by Paladin in writing; (ii) modification of the Equipment and Watchtower Products other than: (a) by Paladin in connection with this Agreement; or (b) with Paladin's express written authorization and in strict accordance with its written directions and specifications; (c) use of any version of the Equipment and/or Watchtower Products other than the most current version or failure to timely implement any modification, update, and/or replacement of such made available by Paladin; (d) negligence, abuse, misapplication, or misuse of the Equipment and/or Watchtower Products or Documentation; (e) use of the Equipment, Watchtower Products, and/or Documentation by or on behalf of Customer that is outside the purpose, scope, or manner of use authorized by this Agreement or in any manner contrary to the Documentation or Paladin's instructions; (f) events or circumstances outside of Paladin's commercially reasonable control (including any third-party hardware, software, or system bugs, defects, or malfunctions); and/or (iii) Open source components or other third-party materials.

d. Paladin exercises no control over the flow of information to or from the Application Service, Paladin's network, or other portions of the Internet. Such flow depends in large part on the performance of Internet services provided or controlled by third parties. At times, actions or inactions of such third parties can impair or disrupt connections to the Internet. Although Paladin will use commercially reasonable efforts to take actions Paladin deems appropriate to remedy and avoid such events, Paladin cannot guarantee that such events will not occur. ACCORDINGLY, PALADIN DISCLAIMS ANY AND ALL LIABILITY RESULTING FROM OR RELATING TO ALL SUCH EVENTS, AND EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THE AGREEMENT, ANY OTHER ACTIONS OR INACTIONS CAUSED BY OR UNDER THE CONTROL OF A THIRD PARTY.

11. Indemnification.

a. Paladin Indemnification.

i. PALADIN **DOES NOT INDEMNIFY**, DEFEND, OR HOLD HARMLESS CUSTOMER FROM AND AGAINST ANY AND ALL LOSSES, DAMAGES, LIABILITIES, COSTS (INCLUDING REASONABLE ATTORNEYS' FEES) (COLLECTIVELY, "**LOSSES**") INCURRED BY CUSTOMER RESULTING FROM ANY THIRD-PARTY CLAIM, SUIT, ACTION, OR PROCEEDING ("**THIRD-PARTY CLAIM**") THAT THE APPLICATION SERVICES, OR ANY USE OF THE APPLICATION SERVICES IN ACCORDANCE WITH THE AGREEMENT, INFRINGES OR MISAPPROPRIATES SUCH THIRD PARTY'S US PATENTS, COPYRIGHTS, OR TRADE SECRETS.

ii. Customer will notify Paladin promptly, in writing of any Third-Party Claim, and agrees to indemnify Paladin of Third-Party Claim(s). Customer's indemnification obligation under this Section will not apply to the extent that the

alleged infringement arises from Paladin's use of the Application Services with any third party, unless such use is in accordance with this Agreement or intended for the service of Customer. This section will not limit Customer's duty to indemnify Paladin where a claim arises under Paladin's operations as they relate to Section 7, supra.

iii. If such a claim is made as stated above or appears possible, Customer agrees to permit Paladin, at Paladin's sole expense and discretion, to

1. (A) modify or replace the Paladin IP, or component or part of the Paladin IP, to make it non-infringing, or
2. (B) obtain the right for Customer to continue use.
3. (C) If Paladin determines that neither alternative is reasonably available, Paladin may terminate the Agreement in its entirety or with respect to the affected component or part, effective immediately on written notice to Customer, so long as, in each case, Paladin promptly refunds or credits to Customer amounts Customer paid with respect to the Paladin IP that Customer cannot reasonably use as intended under the Agreement.
4. IF LEGALLY PRACTICABLE, ANY REFUND OWED BY PALADIN TO CUSTOMER WILL BE PRORATED, STARTING FROM THE DAY THAT ACTUAL NOTICE IS PROVIDED TO PALADIN IN WRITING OF ANY THEN EXISTING THIRD-PARTY CLAIM.
5. IN THE EVENT THAT PALADIN MUST UNWIND THE AGREEMENT AND REFUND CUSTOMER ALL PAYMENT(S), CUSTOMER MUST RETURN ALL EQUIPMENT PROVIDED IN THE SAME CONDITION IT WAS RECEIVED. IF THE EQUIPMENT IS DAMAGED, THE CUSTOMER AGREES TO ACCEPT THE REFUND OF ALL PAYMENT(S) LESS \$35,000.00 PER DRONE AND DOCKING STATION, OR \$25,000.00 PER DRONE ONLY.

b. Sole Remedy. THE AGREEMENT SETS FORTH CUSTOMER'S SOLE REMEDIES AND PALADIN'S SOLE LIABILITY FOR ANY ACTUAL, THREATENED, OR ALLEGED CLAIMS THAT THE SERVICES INFRINGE, MISAPPROPRIATE, OR OTHERWISE VIOLATE ANY THIRD PARTY'S INTELLECTUAL PROPERTY RIGHTS. IN NO EVENT WILL PALADIN'S AGGREGATE LIABILITY EXCEED \$2,000,000 TO CUSTOMER.

c. Customer Indemnification.

i. TO THE EXTENT PERMITTED BY APPLICABLE LAW, CUSTOMER WILL INDEMNIFY, HOLD HARMLESS, AND, AT PALADIN'S OPTION, DEFEND OR REIMBURSE LEGAL FEES FOR PALADIN FROM AND AGAINST ANY CLAIMS OR LOSSES RESULTING FROM ANY THIRD-PARTY CLAIM. TO THE FULLEST EXTENT PERMITTED BY LAW, CUSTOMER HEREBY RELEASES

AND FURTHER AGREES TO PROTECT, DEFEND, INDEMNIFY AND HOLD PALADIN, ITS RELATED ENTITIES AND AFFILIATES AND THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS (HEREIN COLLECTIVELY REFERRED TO AS THE "INDEMNITEE") FREE AND HARMLESS FROM AND AGAINST ANY AND ALL DAMAGES, LOSSES, PENALTIES, EXPENSES, CLAIMS, DEMANDS, CAUSES OF ACTIONS, SUITS OR OTHER LITIGATION (INCLUDING ALL COSTS THEREOF AND ATTORNEYS' FEES) OF EVERY KIND AND CHARACTER INCLUDING THOSE ASSERTED BY ANY THIRD PARTY, OR CUSTOMER (INCLUDING BUT NOT LIMITED TO, PERSONNEL OF THE CUSTOMER OR ITS ASSIGNEES, LICENSEES, SUBCONTRACTORS AND ALL OTHERS IN PRIVITY WITH CUSTOMER) INCLUDING WITHOUT LIMITATION ANY CLAIMS ON ACCOUNT OF BODILY INJURY, DEATH OR DAMAGE TO OR LOSS OF PROPERTY (HEREIN COLLECTIVELY REFERRED TO AS THE "LOSS") IN ANY WAY OCCURRING, INCIDENT TO, ARISING OUT OF, OR IN CONNECTION WITH (i) A BREACH OF THE WARRANTIES PROVIDED HEREIN BY THE CUSTOMER; (ii) THE OPERATIONS OR SERVICES RENDERED AND/OR PERFORMED OR TO BE PERFORMED BY THE PARTIES IN ACCORDANCE WITH THE AGREEMENT (iii) CUSTOMER'S PERSONNEL, SUBCONTRACTORS, AGENTS, AND LICENSEES; (iv) USER-ERROR; OR (v) ANY NEGLIGENT ACTION, OMISSION, OR BOTH OF THE INDEMNITEE RELATED IN ANY WAY TO THIS AGREEMENT, WHETHER THE INDEMNITEE IS NEGLIGENT IN WHOLE OR IN PART, AND EVEN WHEN THE LOSS IS CAUSED BY THE SOLE FAULT OR NEGLIGENCE (INCLUDING ACTS OR OMISSIONS THAT ARE CHARACTERIZED AS NEGLIGENCE PER SE, NEGLIGENCE PREMISED ON STRICT LIABILITY, OR OTHERWISE) OF THE INDEMNITEE. ANY PAYMENTS BY CUSTOMER UNDER THIS PARAGRAPH ON BEHALF OF THE INDEMNITEE SHALL BE IN ADDITION TO ANY AND ALL OTHER LEGAL REMEDIES AVAILABLE TO THE INDEMNITEE AND SHALL NOT BE CONSIDERED THE INDEMNITEE'S EXCLUSIVE REMEDY.

ii. When Customer Data, or any use of the Customer Data in accordance with the Agreement, infringes or misappropriates ANY such third party's property rights and any Third-Party Claims based on Customer's or any Authorized User's negligence or willful misconduct or use of the Services in a manner not authorized by the Agreement or the State in which the product is used, and/ or Federal Law then Customer agrees to be solely liable and shall hold harmless Paladin. Customer shall indemnify, defend, and hold harmless Paladin and its affiliates, and each of their and their respective officers, directors, employees, agents, subcontractors, permitted successors and permitted assigns from and against any and all expenses, losses, charges, damages, settlements, and/or similar or related costs incurred by Paladin resulting from any claim, allegation, demand, action, process, investigation by a third party. Without limitation to the following, Customer agrees to indemnify Paladin when: (i) Customer fails to comply with the Documentation, Specifications, and/or standards for operating the Watchtower Products and/or Equipment; (ii) any Intellectual Property Rights or other right of any person, or any law, is or will be infringed, misappropriated, or otherwise violated by any: (a) use or combination of the Watchtower Products by or on behalf of Customers or any of its representatives

with any hardware, software, system, network, service, or other matter whatsoever that is neither provided by Paladin nor authorized by Paladin in this Agreement and the Documentation, or otherwise in writing; and (b) information, materials, or technology directly or indirectly provided by Customer or directed by Customer to be installed, combined, integrated, or used with, as part of, or in connection with the Watchtower Products, Equipment, and/or Documentation; (c) relating to all use, negligence, abuse, misapplication, misuse or more culpable act or omission (including recklessness or willful misconduct) by or on behalf of Customers or any of its representatives with respect to the Watchtower Products, Equipment, and/or Documentation or otherwise in connection with this Agreement; or (d) relating to use of the Watchtower Products, Equipment, and/or Documentation by or on behalf of Customer or any of its representatives that is outside the purpose, scope, or manner of use authorized by this Agreement or the Documentation, or in any manner contrary to Paladin's instructions.

12. Term. Except as the parties may otherwise agree in the Order Form, or unless terminated earlier in accordance with the Agreement:

i. The Initial Term of the Agreement will begin on the Effective Date and end on the FinalTerm End Date of the Paladin Order Form;

ii. The Agreement will automatically renew for successive 12-month Renewal Terms unless either party gives the other party written notice of non-renewal at least 30 days before the expiration of the then-current term.

1. After two renewals access to the Watchtower Portal is automatically revoked if not renewed by the End of the third Term.

2. The foregoing notwithstanding, this Agreement will survive for so long as any Paladin Order Form remains in effect. Paladin Order Form shall expire and/or terminate according to the terms set forth infra.

iii. each Renewal Term will be subject to the same terms and conditions established under the Agreement, with any Fees determined in accordance with Paladin's then-current pricing packages published on Paladin's website and generally applicable to all users of the Services, as provided to Customer at least 60 days before the expiration of the then-current term.

13. Termination. In addition to any other express termination right set forth in the Agreement:

i. Paladin may terminate the Agreement immediately if Customer breaches any of its obligations under the Agreement.

ii. Either party may terminate the Agreement, effective on written notice to the other party, if the other party materially breaches the Agreement, and such breach: (A) is incapable of cure; or (B) being capable of cure, remains uncured 30

days, and the process to cure has not been initiated, after the non-breaching party provides the breaching party with written notice of such breach and demand to cure is sent to the address listed on the Paladin Order Form.

iii. IF:

1. Customer is a governmental entity, and
2. Sufficient funds are not appropriated to pay for Paladin's Services, then Customer may terminate the Agreement at any time without penalty following 30 days prior written notice to Paladin.

iv. Additionally, either party may, to the extent permitted by law, terminate the Agreement, effective immediately on written notice to the other party, if either party becomes subject voluntarily or involuntarily to any proceeding under any domestic bankruptcy.

v. If Customer has made its first Term payment for services covering 12-months, then in all cases of termination Customer will retain Legal Title to the hardware it obtained during that first Term. This includes all accessories provided to Client for the operation of the equipment, and all Services will terminate in accordance with this Agreement. If client purchases "Add-ons" at a later term, then Legal Title to the add-ons shall vest with Client upon full payment of the Active Term incorporating the add-ons. Furthermore, in the event a product is replaced by Paladin the replacement shall remain with Customer, and in all cases the Client shall return the original.

vi. Duties upon-termination. Following any termination, expiration, or cancellation of this Agreement or the licenses granted herein: (i) immediately upon receipt of Paladin's instructions, Customer will destroy or send to Paladin (at Customer's expense) all copies of the Watchtower Software and the Documentation; (ii) Customer's rights to continue to use the Watchtower Products and Documentation shall immediately cease; and (iii) all of Paladin's obligations hereunder shall cease (iv) all equipment in violation of subsection b(v) above must be returned to Paladin at the address provided at that time. As needed to accomplish the return and/or destruction of the Watchtower Software, Paladin may, in its sole discretion and at Customer's expense, provide services to assist Customer.

b. Survival. After this Agreement terminates or expires, the terms of this Agreement that expressly or by their nature contemplate performance after this Agreement terminates or expires will survive and continue in full force and effect. The termination of this Agreement for any reason will not release either Party from any obligations incurred prior to termination of this Agreement or that thereafter may accrue in respect of any act or omission prior to such termination in accordance with this Agreement.

14. Independent Contractor. The parties to the Agreement are independent contractors.

This Agreement does not create a joint venture or partnership between the Parties, and neither Party is, by virtue of the Agreement, authorized as an agent, employee, or representative of the other Party.

Customer shall make use of the services provided in accordance with the specifications of each Purchase Order as an independent contractor, having the sole right to control the details of and manner for performance of the use except that the same must be performed in accordance with the training and scope of use defined in the Agreement. The parties to this Agreement recognize that this Agreement does not create any actual or apparent agency, partnership, franchise, or relationship of employer and employee between the parties. The Customer is not authorized to commit Paladin to any agreements, and Paladin is not authorized to commit the Customer to any agreements, and the Customer shall not represent itself as the agent or legal representative of the Paladin. Further, the Customer shall not be entitled to participate in any of the Paladin benefits, including without limitation any health or retirement plans. The Parties shall not be entitled to any remuneration, benefits, or expenses other than as specifically provided for in this Agreement. Paladin shall not be liable for taxes, Worker's Compensation, unemployment insurance, employer's liability, employer's FICA, social security, withholding tax, or other taxes or withholding for or on behalf of the Customer or any other person consulted or employed by the Customer in performing Services under this Agreement. All such costs shall be the Customer's responsibility. Parties acknowledges that this Agreement and all Purchase Orders and any other Agreed Orders are lump sum contracts, and that Customer shall be solely responsible for all required withholdings including but not limited to taxes, social security taxes, and state unemployment taxes including but not limited to for Customer's employees, agents, or subcontractors, as well as all applicable sales taxes or use taxes on labor provided and materials furnished. No Taxes will be collected or paid by Paladin under this Agreement, except as required by law.

Paladin does not provide Workers Compensation Insurance or Workers Compensation benefits for Customer or its employees. If requested, Customer will furnish Paladin with Certificates of Insurance showing Customer to be covered by Workers' Compensation Insurance in such amounts and types of coverage as Paladin may specify. It is Customer's sole responsibility to: (1) Assume all expenses for any job injury or illness occurring to Customer or any of its employees, agents, officers, and others working under its direction; (2) provide safe working procedures for its employees; and when applicable (3) comply with the requirements of the Occupational Safety and Health Act of 1970 (OSHA). CUSTOMER WARRANTS THAT IT IS ADEQUATELY INSURED FOR INJURY TO ITS EMPLOYEES AND OTHERS INCURRING LOSS OR INJURY AS A RESULT OF THE ACTS OF CUSTOMER OR ITS EMPLOYEES OR SUBCONTRACTORS. CUSTOMER SHALL MAINTAIN ALL WORKERS' COMPENSATION AND LIABILITY INSURANCE AT ALL TIMES WHILE MAKING ANY USE OF SERVICES OR EQUIPMENT.

15. Waiver of Jury: ALL PARTIES ACKNOWLEDGE THAT ALL DISPUTES RELATED TO THIS AGREEMENT OR ARISING FROM THIS AGREEMENT OR ANY TRANSACTION CONTEMPLATED BY THIS AGREEMENT MUST BE SUBMITTED TO BINDING ARBITRATION. NOTWITHSTANDING, EACH PARTY HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT TO ANY LITIGATION, DIRECTLY OR INDIRECTLY,

ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY TRANSACTION CONTEMPLATED BY THIS AGREEMENT.

16. Choice of Law and Mandatory Venue. This Agreement shall be construed in accordance with the laws of the state of Delaware. CUSTOMER FURTHER HEREBY ACKNOWLEDGES, CONSENTS, STIPULATES, AND AGREES THAT ANY AND ALL CLAIMS, ACTIONS, PROCEEDINGS OR CAUSES OF ACTIONS RELATING TO THIS AGREEMENT, ANY WORK PERFORMED BY THROUGH OR UNDER CUSTOMER, OR ANY TRANSACTION CONTEMPLATED BY THIS AGREEMENT INCLUDING WITHOUT LIMITATION THE VALIDITY, PERFORMANCE, INTERPRETATION, ENFORCEMENT OR ANY COMBINATION THEREOF, SHALL BE SUBMITTED EXCLUSIVELY TO THE JURISDICTION OF THE STATE OF DELAWARE OR FEDERAL COURT. CUSTOMER IRREVOCABLY WAIVES THAT ANY PROCEEDING BROUGHT IN DELAWARE HAS BEEN BROUGHT IN AN INCONVENIENT OR IMPROPER FORUM.

17. Mediation-Arbitration. Parties agree that all disputes, controversies or claims including any arising out of or relating to Services or Equipment provided by Paladin, its assignees or subcontractors, any warranties (express or implied), any issues or matters arising out of or related to this Agreement, or questions as to its interpretation including any breach thereof (herein referred to collectively as a "Dispute") may be submitted to non-binding mediation. IN THE EVENT THE EITHER PARTY OR BOTH ARE UNWILLING OR UNABLE TO RESOLVE THE DISPUTE BY MEDIATION, THE DISPUTE SHALL BE SUBMITTED TO BINDING ARBITRATION. THE ARBITRATION SHALL BE GOVERNED BY DELAWARE LAW AND THE U.S. ARBITRATION ACT, 9 U.S.C. §§ 1-16, TO THE EXCLUSION OF ANY PROVISIONS OF STATE LAW THAT ARE INCONSISTENT WITH APPLICATION OF THE FEDERAL ACT. THE SUBMISSION TO MEDIATION OR ARBITRATION OF ANY DISPUTE ARISING DURING AN ACTIVE TERM SHALL NOT DELAY OR OTHERWISE AFFECT THE CONTINUING PERFORMANCE OF SERVICES OR ACCESS TO THE WATCHTOWER SOFTWARE. ARBITRATION SHALL BE FILED, INITIATED, OR BOTH IN DELAWARE, AND ALL ARBITRATION HEARINGS SHALL BE HELD IN DELAWARE. PARTIES AGREE TO INCLUDE THE REQUIREMENT OF THIS PROVISION IN ALL FUTURE CONTRACTS, and SUB-CONTRACTS IT MAY ENTER INTO FOR ANY PORTION OF THE TERMS OF THIS AGREEMENT. ANY AND ALL DECISIONS AS TO THE ENFORCEABILITY OF THIS ARBITRATION PROVISION SHALL BE DETERMINED BY ARBITRATION AND ANY COURT PRESENTED WITH THE ARBITRABILITY OF A CLAIM SHALL IMMEDIATELY ABATE THE CASE AND ORDER THAT THE DECISION AS TO ARBITRABILITY BE MADE IN ARBITRATION.

18. Entire Agreement: Order of Precedence. The Paladin Order Form, and the Incorporated Documents constitute the complete Agreement between the parties and supersede any prior discussion or representations relating to or regarding the Customer's purchase and use of the Services and equipment. To the extent any conflict exists between the terms of the Agreement, the documents will govern in the following order or precedence: (1) the Paladin Order Form (2) the Customer Terms (i.e., Exhibit C), (3) the Terms & Conditions herein (i.e., Exhibit B), and (4) Paladin Quote (i.e., Exhibit A). No other purchasing order or similar instrument issued by either party in connection with the Services will have any effect on the Agreement or bind the other party in any way. There are no additional agreements of any kind between the parties with respect to the subject matter

hereof. No waiver, amendment, modification or release of any term or provision of this Agreement shall be deemed to have been given or made unless expressly set forth in a written document signed by each of the parties hereto.

19. **Waiver.** No waiver by any party of any of the provisions of the Agreement will be effective unless explicitly set forth in writing and signed by the party so waiving. Except as otherwise set forth in the Agreement, no failure to exercise, delay in exercising, or any partial exercise of any rights, remedy, power, or privilege arising from the Agreement will in any way waive or otherwise limit the future exercise of any right, remedy, power, or privilege available under the Agreement. The failure by either party to enforce any provision of this Agreement will not constitute a waiver of future enforcement of that or any other provision. Except where otherwise specified in writing by the Parties, the rights and remedies granted to a Party under this Agreement are cumulative and in addition to, and not in lieu of, any other rights or remedies which the party may possess at law or in equity.

20. **Amendments And Right to Update:** No amendment to the Paladin Order Form, or the Incorporated Documents will be effective unless it is in writing and signed by an authorized representative of each party. This Agreement may not be supplemented, amended, and/or modified at any time unless the parties hereto execute a written agreement that must— (i) be in a mutually agreed upon written or electronic format, (ii) must be clearly designated as an amendment, addendum, or modification, and (iii) must be signed by an authorized representative of each party. The Parties stipulate and agree that an exchange or series of written or electronic correspondences shall not be deemed to be such a written instrument, for supplemental, amendment or modification purposes. Notwithstanding the aforementioned, Paladin may update the Incorporated Documents from time-to-time following notice to Customer so long as such updates are generally applicable to all users of the Services, however, no unilateral Paladin updates will have any effect to change the existing financial obligations of Customer until the end of an Active Term and following Customer's signed agreement thereto.

21. **Notices.** All notices, requests, consents, claims, demands, and waivers under the Agreement (each, a "**Notice**") must be in writing and addressed to the recipients and addresses set forth for each party on the Order Form. All Notices must be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), or email (with confirmation of transmission by the recipient), or certified or registered mail (in each case, return receipt requested, postage pre-paid). Any notices required or permitted to be given under this Agreement shall be in writing and shall be deemed given if delivered by hand, sent by recognized overnight courier (such as Federal Express), transmitted via facsimile transmission or mailed by certified or registered mail, return receipt requested, in a postage pre-paid envelope. Notices personally delivered or sent by overnight courier shall be deemed given on the date of receipt, notices sent via facsimile transmission shall be deemed given upon transmission and confirmation of receipt and notices sent via certified mail in accordance with the foregoing shall be deemed given when delivered (whether accepted or refused) as established by the U.S. Postal Service return receipt.

22. **Force Majeure.** Except for any obligations to make payments, In no event will either party be liable to the other party, or be deemed to have breached the Agreement, for any

failure or delay in performing its obligations under the Agreement , if and to the extent such failure or delay is caused by any circumstances beyond such party's reasonable control, including acts of God, flood, fire, earthquake, pandemic, epidemic, problems with the Internet, shortages in materials, explosion, war, terrorism, invasion, riot or other civil unrest, strikes, labor stoppages or slowdowns or other industrial disturbances, or passage of law or any action taken by a governmental or public authority, including imposing an embargo.

23. **Severability**. If any provision of the Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability will not affect any other term or provision of the Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

24. **Assignment**. Either party may assign its rights or delegate its obligations, in whole or in part, on 30 days prior written notice to the other party, to an affiliate or an entity that acquires all or substantially all the business or assets of such party, whether by merger, reorganization, acquisition, sale, or otherwise. Except as stated in this paragraph, neither party may assign any of its rights or delegate any of its obligations under the Agreement without the prior written consent of the other party, which consent may not be unreasonably withheld, conditioned, or delayed. The Agreement is binding on and inures to the benefit of the parties and their permitted successors and assigns. Notwithstanding the aforementioned, if Customer's assignment requires additional services beyond that which were negotiated then Customer and its assignee shall be liable for any additional costs incurred by Paladin to provide the Agreed service(s) during an Active Term.

25. **Marketing**. Subject to Section seven (7) supra, neither party may issue press releases related to the Agreement, conversations, or activities, without the other party's prior written consent. However, either party may include the name and logo of the other party in lists of customers or vendors.

26. **State-Specific Certifications & Agreements**. To the extent required under the laws of the Governing State, Paladin hereby certifies and agrees as follows:

- a. Paladin is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in the Agreement by any governmental department or agency of the Governing State where services are sought;
- b. Paladin will not discriminate against any employee or applicant for employment because of race, ethnicity, gender, gender identity, sexual orientation, age, religion, national origin, disability, color, ancestry, citizenship, genetic information, political affiliation or military/veteran status, or any other status protected by federal, state, or local law.
- c. **Execution**. Any document executed and delivered in connection with the Agreement may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement. To the extent permitted by applicable law, electronic signatures may be used for the purpose of executing the Order Form by email or other electronic means. Any document delivered electronically and accepted is

deemed to be "in writing" to the same extent and with the same effect as if the document had been signed manually.

27. **Legal Compliance.** Customers agree to comply with applicable laws with respect to the ownership, possessions, and operation of the Equipment. The parties acknowledge and agree that the legal regulation of unmanned drones is evolving, and the parties shall cooperate to seek to comply with applicable laws. The Watchtower Products, Equipment, and all services provided hereunder are subject to all applicable export control laws and regulations, including without limitation those of the United States government. Customer and Authorized Users agree that not to directly or indirectly export, re-export, divert, release, provide access to, transfer or disclose such, or any derivative thereof, to any prohibited or restricted destination, end-use or end-users or to anyone who requires a United States export license or other license, except in accordance with all relevant export control laws and regulations which may require it to obtain necessary licenses, approvals or permissions from the appropriate US governmental authority and all required foreign authorities prior to undertaking such activities.

28. **Watchtower Software License.**

- a. **Grant of License.** Paladin shall grant a license of the Watchtower Software to the Customer in accordance with the terms and conditions outlined in this Agreement.
- b. **FAA Regulatory Waivers.** Paladin will assist the Customer in acquiring FAA regulatory waivers. Except for transfers by error, the Customer shall hold Legal Title to those documents upon their transfer. Paladin will assist the customer in renewing these waivers during the Active Terms of the agreement. The process used to acquire the waivers is confidential information and cannot be shared with any 3rd party without the express permission of Paladin.

29. **Watchtower Software License.** Conditioned upon compliance with the Use Restrictions in Section 2, and payment of all fees then due, and compliance with all other terms and conditions hereof, Paladin shall grant to Customer, during any Active Term of this Agreement, a limited, non-exclusive, revocable, non-sublicensable, and non-transferable license to use the Watchtower Software.

30. **Insurance.**

- a. Customer warrants that it will maintain insurance coverage in accordance with its use and operations and that in the event that Customer's insurance is not able to cover the full extent of the damages or claim that Paladin's insurance shall be called upon to cover the remaining balance of a claim. Notwithstanding the aforementioned, if the claim is not one in which Paladin's coverage may extend, then Customer shall be solely liable for any such claim or damages.
- b. Customer will maintain coverage with an aggregate limit of not less than \$2,000,000.00, per occurrence; and upon Paladin's request will provide proof.
- c. Paladin shall maintain coverage with an aggregate limit of not less than \$2,000,000.00 per occurrence.
- d. Subject to section "a" supra, Paladin's insurance shall pay damages relating to bodily injury or property damage subject to its insurance policy which Customer may request a copy of at any time.

- e. Customer understands that Paladin's coverage shall not apply to: (1) loss of use of any aircraft, drone, or otherwise, which is for a period of less than forty-eight hours; (2) sums attributable to any period an aircraft is not available for flight operations for reasons other than a grounding, or would not have been available for flight operations if no grounding had occurred; (3) loss of use of any aircraft occurring during the period that Paladin did not use all reasonable means to correct and eliminate the cause of the loss of use; (4) loss of use of any aircraft attributable to a culpable failure by Paladin to perform any obligation with respect to making available or delivering products to the owner or operator of such aircraft; (5) loss of use of any military derivative of a civil aircraft unless the grounding also applies to the civil aircraft; (6) loss of use of any launch vehicle, spacecraft product or missile; (7) loss of use of any aircraft operated by Paladin or in its care, custody or control other than aircraft temporarily in Paladin's care, custody or control for modification, repair or inspection relating to grounding; (8) loss of use of any aircraft owned by or loaned to Paladin. For the purposes of this exclusion, any aircraft as to which Paladin has retained title pursuant to a conditional sales contract, chattel mortgage or similar lien, a lease agreement, a consignment agreement or similar contract of bailment, shall be deemed not to be owned by Paladin; (9) any liquidated or stipulated damages or penalties which Paladin is obligated to pay by reason of any contract or agreement, but this exclusion does not apply to any obligation it would have had in the absence of such contract or agreement.
- f. Customer is aware that the aforementioned instances where coverage shall not apply are not every instance where the coverage does not apply and that it is the responsibility of Customer to familiarize itself with the limitations of Paladin's insurance policy.
- g. Paladin makes no representations to Customer relating to which policy it shall acquire and only requires that the insured obtain a policy that is sufficient to meet the foreseeable liabilities under Customer's intended use and operation of any provided equipment, software, or service.
- h. In accordance with section 30, if Paladin is legally obligated to pay damages because of bodily injury or property damage, Paladin's insurance shall have the right and duty to defend any suit seeking those damages.

31. **Consideration of services.** Paladin agrees to provide the services set forth in the Paladin Order Form, and Incorporated Documents. Customer agrees to make all payments in a timely manner pursuant to Section four (4) supra, and cooperate and abide by the requirements and standards, as set forth in this Agreement.

32. **Data Use.** Paladin retains all rights to any data obtained from the provision of the products and services hereunder, including any copyright subject to the following (a) Paladin will only use personally identifiable data (including precise geolocation data), as defined under applicable law, for its internal analytical purposes (e.g., to improve its services), and (b) Paladin will use photographs or videos for its internal purposes and the improvement of services, such as demonstration or marketing, in each case subject to applicable laws (data described in (a) and (b) referred to as "**Data**"). Paladin grants Customer the right to use Data collected from the Services for its own internal purposes, subject to applicable laws. In addition, and without limiting Paladin's restrictions above,

Paladin agrees that it will not resell any Data to any other person or entity without the prior express written permission of the Customer.

33. **Headings**. The parties agree that the captions, headings, and/or titles used in this Agreement are inserted for convenience only and shall not affect the meaning or interpretation of this Agreement.

34. **No Third-Party Beneficiaries**. This Agreement is intended for the benefit of the parties hereto, and those specifically referenced herein, and their respective successors and permitted assigns, and is not for the benefit of, nor may any provision hereof be enforced by, any other person. The terms and provisions of this Agreement shall not inure to the benefit of any other third person or entity not a signatory to this Agreement.

35. **Joint Participation**. The parties hereto have participated fully in the negotiation and preparation of this Agreement and this Agreement shall not be more strictly construed against either Customer or Paladin.

36. **Counterparts**. This agreement may be executed in one or more counterparts, each counterpart being an original.

37. **Confidentiality**. The information contained in the Agreement is considered confidential by the Parties. Neither Party shall disclose to any other third party the terms and conditions contained in this Agreement, except as required by law, and except disclosure to their respective employees, agents and advisors on an as-needed basis.

38. **Attorney's Fees**. In the case of any breach of this Agreement or other Dispute (as defined herein) the prevailing party shall be entitled to recover its costs of mediation, arbitration, Court, expert witness fees and any necessary and reasonable attorney's fees.

39. **Authority**. Each person executing this Agreement warrants, in his/her individual capacity, that he or she has full legal authority to execute this Agreement for and on behalf of the respective parties and to bind such parties.

Exhibit C
Additional Terms and Conditions

Section 13, Termination

Customer has the right to terminate for cause with thirty (30) days notice and a minimum of 120 days under contract. Paladin will reimburse the Customer for the pro-rated annual amount within Net 30 days.

Section 16, Choice of Law and Mandatory Venue

All references to "State of Delaware" will be changed to "State of Kansas."

Section 32, Data Use

Paladin acknowledges and agrees that Customers controls any grant of data to Paladin. Paladin must request any use of data from the Customer and receive written acceptance from authorized representatives of the Company.

Section 11, **Indemnification**, is amended to add the following language as Subsection (d):

"Notwithstanding anything else contained in any part of this Section 11, Paladin shall indemnify Customer and hold Customer harmless for any intentional acts, omissions, or negligence, including but not limited to gross negligence, by Paladin or its employees, contractors, or agents, which intentional acts, omissions, or negligence directly cause or give rise to any injury or damage to Customer or to a third-party which makes a claim for damages to Customer."

Subsection (ii) of Section 13, **Termination**, is amended and replaced in its entirety as follows:

"After a minimum of one hundred and twenty (120) days after the original Effective Date of this Agreement, Customer has the right to terminate this Agreement, including during any renewal term, with thirty (30) days' written notice to Paladin. Paladin shall then reimburse Customer for any remaining pro-rated annual value, and do so within sixty (60) days of the termination notice."

Section 16, **Choice of Law and Mandatory Venue**, is modified such that any reference therein to the state of Delaware shall be changed to the state of Kansas.

Section 32, **Data Use**, is amended and replaced in its entirety as follows:

"Paladin acknowledges and agrees that Customer is the sole owner of any data, and Customer controls any grant of data to Paladin. Paladin must request any use of data from the Customer and receive written acceptance from duly authorized Customer representatives in order to have any access to data."



PV/MH DFR

PV/MH Drone as First Responder



PUBLIC SAFETY USES

PVPD

- Missing/endangered party searches
- Criminal suspect apprehension
- Deployment of appropriate resources
- Response to in progress crimes
- Traffic incident management
- Review of high traffic crash areas (automated at set time each day to collect data)
- Situational awareness when responding to calls for service
- Reconnaissance on tactical missions
- In progress tactical operations
- Hostage situations
- Documentation of crime scenes
- Documentation of crash scenes
- Pre scouting City events
- Security/Overwatch during City Events
- Large scale public disturbances
- Active shooter situations
- Mass casualty events
 - Scene analysis
 - Communication via loudspeaker
- Mapping of critical infrastructure
- Observation of vehicles that run from Police

Pre-Incident response:

- Monitor road closures and construction projects
- Monitor and document building construction projects (training)
- Pre-fire planning
- Festival site mapping and surveillance

Incident response:

- All fire incident types (structure, trash, grass, car, etc.)
- All highway incidents (location, access, and congestion)
- Automatic fire alarms
- Building collapse (including MVC vs. building)
- Outdoor incidents/rescues (trench, high angle, water, ice, missing persons, park & trail, etc.)
- MVCs
- Hazardous materials release
- Hostile event
- Train derailment

Post Incident response:

- Disaster damage assessment
- Fire watch (send back to scene to examine for hot spots/rekindle)
- Fire investigations
- Post incident analysis



LENEXA PD PILOT PROGRAM



2025-04-11 00:45:54 -0500
AXON FLEET 3 F X685L2DVR

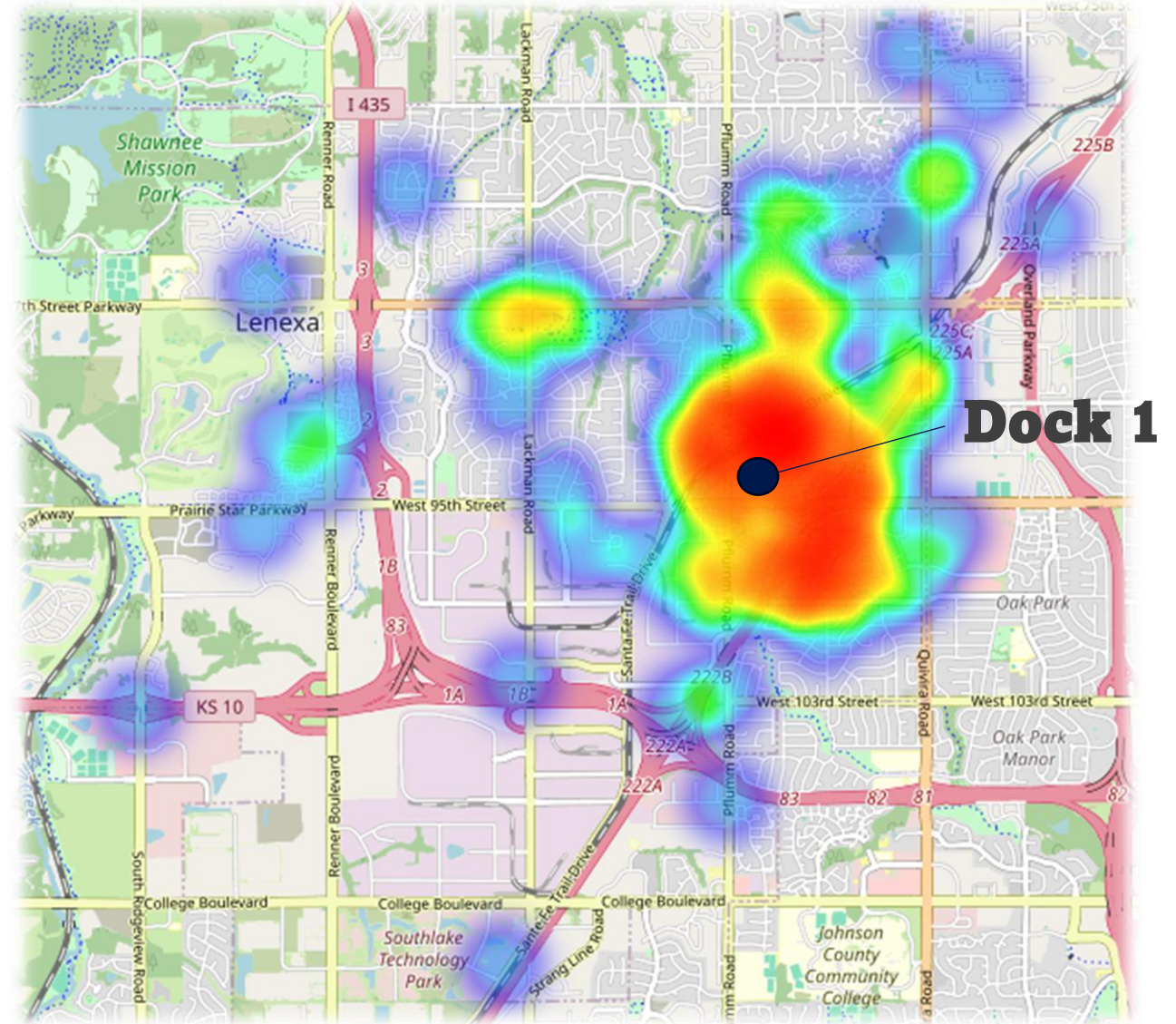


25-12935 PALADIN DFR DEMO

ALL DFR FLIGHTS

MARCH 12 – MAY 6

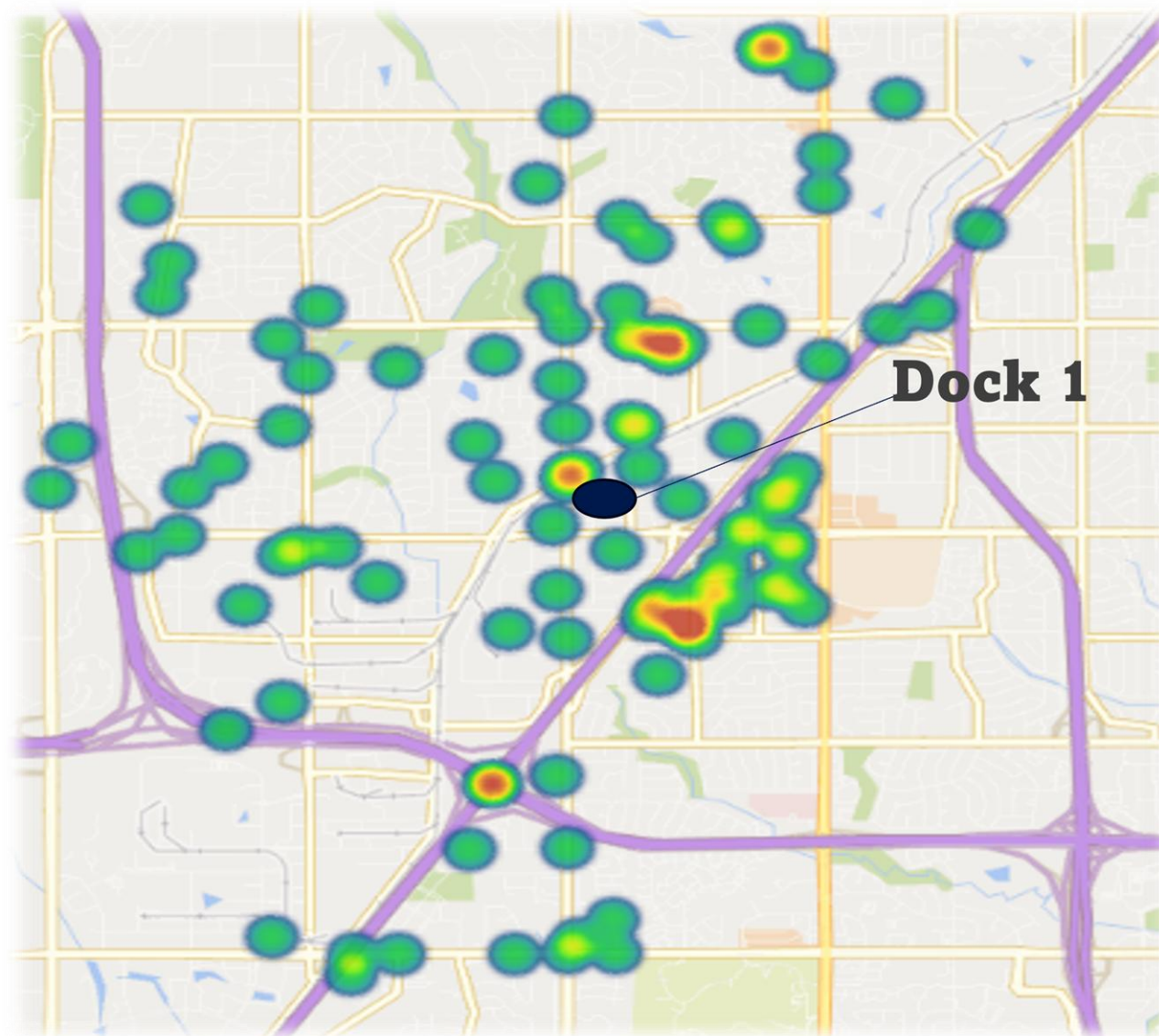
- Flights:
 - 335 Flights
- Flight Hours:
 - 64 Hours
- Total Miles Flown:
 - 794.8 Miles



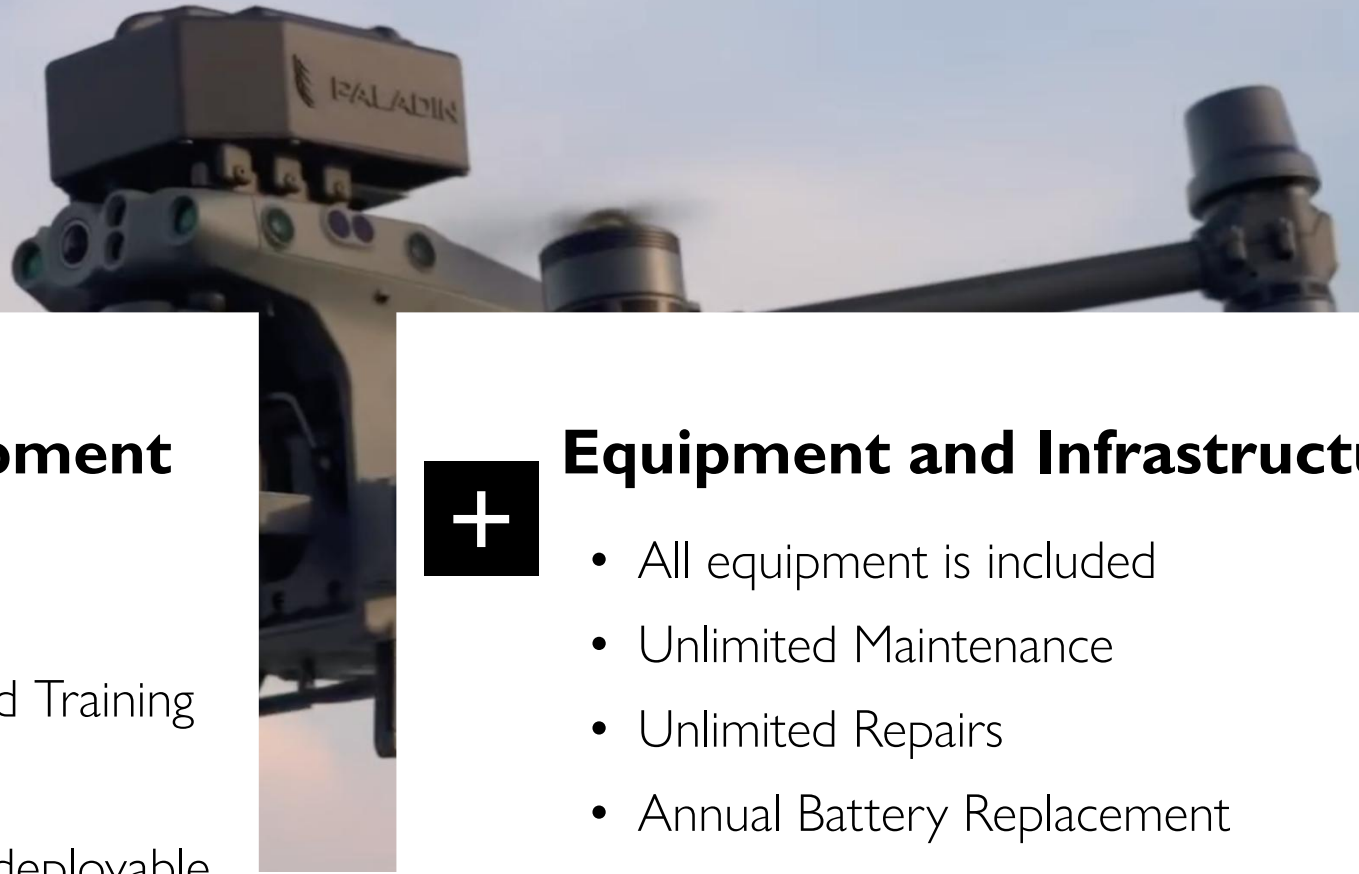
LENEXA CALLS FOR SERVICE – 139 DEPLOYMENTS

MARCH 16 – MAY 2

• Suspicious Activity –	28
• Disturbance –	27
• Welfare Check –	13
• Accident – Unknown –	10
• Alarm –	10
• Fire Call -	8
• Accident – Non-Injury -	7
• Assist Outside Agency -	5
• Juvenile Related -	4
• DUI -	4
• Accident – Injury -	4
• Animal Call -	3
• Medical Call -	3
• Traffic Complaint -	3
• Runaway Juvenile -	2
• Auto Theft -	2
• ELSAG Read -	1
• Hit and Run Crash -	1
• Civil Matter -	1
• 911 Disconnect -	1
• Information Call -	1
• Drug Possession -	1



PV/MH DFR



Software and Development

- FAA and BVLOS Compliance documentation
- Implementation and Unlimited Training
- Unlimited Data Storage
- Livestream Capabilities from deployable drones.
- All Integrations included
 - Axon
 - CAD
 - Drone Sense



Equipment and Infrastructure

- All equipment is included
- Unlimited Maintenance
- Unlimited Repairs
- Annual Battery Replacement
- Guaranteed Sustainability
- 24/7 Service for equipment and Software

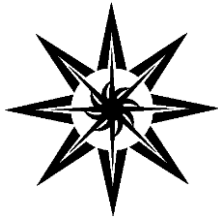
PV/MH DFR COST

- 1 Docking Station and DJI M4TD
 - One time cost \$17,000
- Annual Cost - \$37,000
 - Auto Renewing
- Mission Hills/Prairie Village Split
 - 50/50 - \$27,000 each
 - Future plans to utilize as a NE resource. (Fire, NE PDs)



QUESTIONS?

PV/MH Drone as First Responder



PUBLIC WORKS DEPARTMENT

Council Consent Agenda: August 4, 2025

CONSIDER APPROVAL OF A CONTRACT WITH McANANY CONSTRUCTION FOR UBAS IMPROVEMENTS ON 75TH STREET FROM STATE LINE TO MISSION ROAD (2025 CARS - 75ST0002)

RECOMMENDATION

Move to authorize the Mayor to sign the Construction Contract with McAnany Construction for the 2025 CARS project, 75th Street UBAS from State Line to Mission (Project 75ST0002).

BACKGROUND

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

75th Street from State Line to Mission was milled/overlaid 10 years ago as part of the federally funded project on that corridor. It is best practice to put a surface treatment on a roadway approximately 7-10 years after a mill/overlay. The timeframe is dependent upon the condition of the roadway.

On July 26, 2025, the office of the City Clerk opened bids for the 2025 CARS project. Two bids were received:

McAnany Construction	\$ 455,000.00
Superior Bowen	\$ 474,135.90
Engineer's Estimate	\$ 769,894.60

City staff have reviewed the bids for accuracy and recommends awarding the project to the low and responsible bidder, McAnany Construction.

FUNDING SOURCE

There is funding available in the CIP Project 75ST0002 which includes funding from the Johnson County CARS Program.

ATTACHMENTS

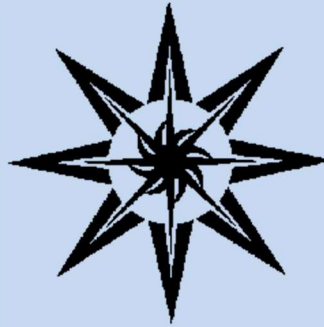
1. Construction Agreement with McAnany Construction.

PREPARED BY

Melissa Prenger, City Engineer

July 30, 2025

CONSTRUCTION AGREEMENT



PV 75ST0002
CARS 320001514

75TH STREET
FROM
STATE LINE TO MISSION

BETWEEN

CITY OF PRAIRIE VILLAGE, KS

AND

McAnany Construction

CONSTRUCTION CONTRACT
FOR
75ST0002 75TH STREET FROM STATE LINE TO MISSION

BETWEEN
THE CITY OF PRAIRIE VILLAGE, KANSAS
AND
McANANY CONSTRUCTION LLC

THIS AGREEMENT, is made and entered into this ____ day of _____, 2025, by and between the City of Prairie Village, Kansas, hereinafter termed the “**City**”, and McANANY CONSTRUCTION LLC, hereinafter termed in this agreement, “**Contractor**”, for the construction and completion of Project 75TH STREET FROM STATE LINE TO MISSION, (the “**Project**”) designated, described and required by the Project Manual and Bid Proposal, to wit:

WITNESSETH:

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

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

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

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

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

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

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

1.1 Following words are given these definitions:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2. ENTIRE AGREEMENT:

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

3. INTENT AND INTERPRETATION

- 3.1 The intent of the Contract is to require complete, correct and timely execution of the Work. Any Work that may be required, including construction, labor, materials, tools, equipment and transportation, implied or inferred by the Contract Documents, or any one or more of them, as necessary to produce the intended result, shall be provided by the Contractor for the Contract Price.
- 3.2 All time limits stated in the Contract Documents are of the essence of the Contract.
- 3.3 The Contract is intended to be an integral whole and shall be interpreted as internally consistent. What is required by any one Contract Document shall be considered as required by the Contract.
- 3.4 The specification herein of any act, failure, refusal, omission, event, occurrence or condition as constituting a material breach of this Contract shall not imply that any other, non-specified

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

the best general practice is to be used. All interpretations of the Project Manual shall be made on the basis above stated.

- 3.14 The conditions set forth herein are general in scope and are intended to contain requirements and conditions generally required in the Work, but may contain conditions or requirements which will not be required in the performance of the Work under contract and which therefore are not applicable thereto. Where any stipulation or requirement set forth herein applies to any such non-existing condition, and is not applicable to the Work under contract, such stipulation or requirement will have no meaning relative to the performance of said Work.
- 3.15 KSA 16-113 requires that non-resident contractors appoint an agent for the service of process in Kansas. The executed appointment must then be filed with the Secretary of State, Topeka, Kansas. Failure to comply with this requirement shall disqualify the Contractor for the awarding of this Contract.

4. CONTRACT COST

The City shall pay the Contractor for the performance of the Work embraced in this Contract, and the Contractor will accept in full compensation therefore the sum (subject to adjustment as provided by the Contract) of FOUR HUNDRED FIFTY FIVE THOUSAND AND 00/100 DOLLARS (\$ 455,000.00) for all Work covered by and included in the Contract; payment thereof to be made in cash or its equivalent and in a manner provided in the Contract Documents.

5. WORK SUPERINTENDENT

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

6. PROJECT MANAGER

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

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

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

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

7. **WORK SCHEDULE:**

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

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

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

8. DELAYS AND EXTENSIONS OF TIME

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

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

9. ADVERSE WEATHER:

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

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

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

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

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

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

10. LIQUIDATED DAMAGES

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

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

11. PAYMENT PROCEDURE

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

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

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

12. COMPLETION AND FINAL PAYMENT

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

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

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

13. CLAIMS BY THE CONTRACTOR

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

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

- 13.5 The City reserves the right to increase or decrease quantities, and alter the details of construction including grade and alignment as the Project Manager may consider necessary or desirable, by approved Change Order. Such modifications shall not invalidate the Contract nor release the surety. Unless such alterations and increases or decreases change the total cost of the Work, based on the originally estimated quantities and the unit prices bid, by more than 25 percent, or change the total cost of any major item, based on the originally estimated quantities and the unit price bid, by more than 25 percent, the Contractor shall perform the work altered, increased or decreased, at a negotiated price or prices. (A major item shall mean any bid item, the total cost of which exceeds 12-1/2 percent of the total Contract Price based on the proposed quantity and the contract unit price).
- 13.6 When the alterations cause an increase or decrease in excess of the 25 percent indicated above, either the Contractor or the Project Manager may request an adjustment of the unit price to be paid for the item or items.
- 13.7 If a mutually agreeable adjustment cannot be obtained, the City reserves the right to terminate the Contract as it applies to the items in question and make such arrangements as may be deemed necessary to complete the Work.
- 13.8 In connection with any claim by the Contractor against the City for compensation in excess of the Contract Price, any liability of the City for the Contractor's costs shall be strictly limited to direct costs incurred by the Contractor and shall not include standby costs, indirect costs or consequential damages of the Contractor. The City shall not be liable to the Contractor for claims of third parties.
- 13.9 If the Contractor is delayed in progressing any task which at the time of the delay is then critical or which during the delay becomes critical, as the sole result of any act or neglect to act by the City or someone acting in the City's behalf, or by changes ordered in the Work, unusual delay in transportation, unusually adverse weather conditions not reasonably anticipated, fire or any causes beyond the Contractor's control including delays resulting from the COVID-19 pandemic or any similar event, then the date for achieving Final Acceptance of the Work shall be extended upon the written notice and claim of the Contractor to the City, for such reasonable time as the City may determine. Any notice and claim for an extension of time by the Contractor shall be made not more than seven calendar days after the occurrence of the event or the first appearance of the condition-giving rise to the claim and shall set forth in detail the Contractor's basis for requiring additional time in which to complete the Work. In the event the delay to the Contractor is a continuing one, only one notice and claim for additional time shall be necessary. If the Contractor fails to make such claim as required in this subparagraph, any claim for an extension of time shall be waived.
- 13.10 The Contractor shall delay or suspend the progress of the work or any part thereof, whenever so required by written order of the City, and for such periods of time as required; provided, that in the event of such delay or delays or of such suspension or suspensions of the progress of the work, or any part thereof, the time for completion of work so suspended or of work so delayed by such suspension or suspensions shall be extended for a period equivalent to the time lost by reason of such suspension or suspensions; but such order of the City or Project Manager shall not otherwise modify or invalidate in any way, any of the provisions of this Contract. In the event that the work shall be stopped by written order of the City, any expense,

which, in the sole opinion and judgment of the City, is caused by the City, shall be paid by the City to the Contractor.

- 13.11 In executing the Contract Documents, the Contractor expressly covenants and agrees that, in undertaking to complete the Work within the time herein fixed, it has taken into consideration and made allowances for all hindrances and delays incident to such work, whether growing out of delays in securing materials or workers, normal weather conditions, the COVID-19 pandemic or any similar event, or otherwise provided, however, such hindrances and delays could be anticipated by Contractor at the time of execution. No charge shall be made by the Contractor for hindrances or delays from any cause during the progress of the work, or any portion thereof, included in this Contract, except as provided herein.
- 13.12 Notwithstanding the foregoing or anything in the Contract to the contrary, Contractor acknowledges and agrees that the work, and the performance thereof, may be subject to current and future governmental orders or directives regarding safety protocols related COVID-19 or similar event, and Contractor agrees that all Work shall be performed in accordance with the same, including but not limited to directives regarding social distancing, hygiene and other efforts to slow the spread of COVID-19 or similar event. Failure of Contractor to comply with such order or directive shall be deemed an event of default under this Contract, and City shall not be responsible for any increase in the Contract Sum or the Contract Time related to City's enforcement of such orders or directives, or Contractor's failure to comply with such orders or directives. If Work on the Critical Path is delayed due to COVID-19 or similar event reasons outside the control of the contractor, an equitable adjustment in the Contract Sum and/or the Contract Time shall be made to the Contract as the City may reasonably decide.
- 13.13 In addition to the Project Manual particular to Mobilization found elsewhere in this document, additional mobilization shall not be compensable for work outside of the designated areas for work deemed essential by the City. A quantity of work equal to as much as 10% of the total Contract may be required to be performed beyond the boundaries of the designated work areas.

14. CHANGES IN THE WORK

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

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

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

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

15. INSURANCE AND BONDS.

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

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

15.3 Minimum Requirements Commercial General Liability Policy Limits -

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

Policy MUST include the following conditions:

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

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

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

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

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

Limits -

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

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

Workers' Compensation:	Statutory
Employer's Liability:	
Bodily Injury by Accident	\$1,000,000 each accident
Bodily Injury by Disease	\$1,000,000 policy limit
Bodily Injury by Disease	\$1,000,000 each employee

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

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

15.8 Subcontractor's Insurance. If a part of the Agreement is to be sublet, the Contractor shall either:

- A. Cover all subcontractor's in its insurance policies, or
- B. Require each subcontractor not so covered to secure insurance which will protect subcontractor against all applicable hazards or risks of loss as and in the minimum amounts designated.

Whichever option is chosen, Contractor shall indemnify and hold harmless the City as to any and all damages, claims or losses, including attorney's fees, arising out of the acts or omissions of its Subcontractors.

15.9 Prior to commencing any work, Contractor shall provide City with certificates evidencing that (1) all Contractor's insurance obligations required by the contract documents are in full force and in effect and will remain in effect until Contractor has completed all of the work and has received final payment from City and (2) no insurance coverage will be canceled, renewal refused, or materially changed unless at least thirty (30) days prior written notice is given to City. Contractor's property insurance shall not lapse or be canceled if City occupies a portion of the work. Contractor shall provide City with the necessary endorsements from the insurance company prior to occupying a portion of the work.

15.10 Waiver of Subrogation. All insurance coverage required herein shall contain a waiver of subrogation in favor of the City. Contractor's insurance policies shall be endorsed to indicate that Contractor's insurance coverage is primary and any other insurance maintained by City is non-contributing as respects the work of Contractor.

15.11 Additional Insurance. Excess Liability coverage or additional insurance covering special hazards may be required on certain projects. Such additional insurance requirements shall be as specified in Special Conditions.

15.12 Bonds and Other Performance Security. Contractor shall provide a Performance Bond, Maintenance Bond and a Statutory Bond in the amount of one hundred percent (100%) of the Contract Price to cover the entire scope of Work and any other specific performance security that may be indicated in this Contract. With each bond there shall be filed with the City one copy of "Power of Attorney" certified to include the date of the bonds.

16. INDEMNITY

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

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

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

17. SUCCESSORS AND ASSIGNS

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

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

18. NON-DISCRIMINATION LAWS

- 18.1 The Contractor agrees that:
- A. The Contractor shall observe the provisions of the Kansas Act Against Discrimination (K.S.A. 44-1001 et seq.) and shall not discriminate against any person in the performance of Work under the present contract because of race, religion, color, sex, disability, national origin, ancestry or age;
 - B. In all solicitations or advertisements for employees, the Contractor shall include the phrase, "equal opportunity employer," or a similar phrase to be approved by the Kansas Human Rights Commission (Commission);
 - C. The Contractor further agrees that it shall abide by the Prairie Village Non Discrimination Code (Section 5-801 et seq) and shall not discriminate against any person in the performance of Work under the present contract because of sexual orientation or gender identity. If the City determines that the Contractor has violated any applicable provision of any local, state or federal law, or has discriminated against any person because of race, religion, color, sex, sexual orientation, gender identity, disability, age, national origin, or ancestry, such violation and/or discrimination shall constitute a breach of contract and the City may cancel, terminate or suspend this agreement in whole or in part. The parties do not intend this provision to subject any party to liability under local, state or federal laws unless it applies.
 - D. If the Contractor fails to comply with the manner in which the Contractor reports to the commission in accordance with the provisions of K.S.A. 44-1031 and amendments thereto, the Contractor shall be deemed to have breached the present contract and it

may be cancelled, terminated or suspended, in whole or in part, by the contracting agency;

- E. If the Contractor is found guilty of a violation of the Kansas Act Against Discrimination under a decision or order of the Commission which has become final, the Contractor shall be deemed to have breached the present contract and it may be cancelled, terminated or suspended, in whole or in part, by the contracting agency; and
 - F. The Contractor shall include the provisions of Subsections A through D in every subcontract or purchase order so that such provisions will be binding upon such Subcontractor or vendor.
 - G. The provisions of this Section shall not apply to a contract entered into by a Contractor: (1) Who employs fewer than four employees during the term of such contract; or (2) Whose contracts with the City cumulatively total \$5,000 or less during the fiscal year of the City.
- 18.2 The Contractor further agrees that it shall abide by the Kansas Age Discrimination In Employment Act (K.S.A. 44-1111 et seq.) and the applicable provision of the Americans With Disabilities Act (42 U.S.C. 12101 et seq.) as well as all other federal, state and local laws.

19. FEDERAL LOBBYING ACTIVITIES

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

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

20. RELATIONS WITH OTHER CONTRACTORS:

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

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

21. RIGHT OF CITY TO TERMINATE

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

22. MISCELLANEOUS:

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

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

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

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

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

CITY OF PRAIRIE VILLAGE

McANANY CONSTRUCTION INC.

By: _____
(signed)

By: _____
(signed)

Eric Mikkelson

(typed name)

Mayor

(typed title)

City of Prairie Village

McANANY CONSTRUCTION INC.
(typed company name)

7700 Mission Road

15320 MIDLAND DRIVE
(typed address)

Prairie Village, Kansas 66208

SHAWNEE, KANSAS 66217
(typed city, state, zip)

913-385-4647 (Public Works)

913-631-5440
(typed telephone number)

(date of execution)

(date of execution)

SEAL

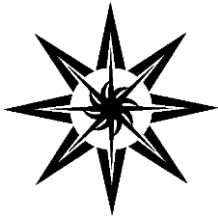
ATTEST:

APPROVED BY:

City Clerk, Adam Geffert

City Attorney, Alex Aggen

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



ADMINISTRATION

Council Meeting Date: August 4, 2025

COU2025-34

Consider Resolution 2025-07 Directing the Johnson County Election Office to Facilitate a Ballot Question for the November 4, 2025 Election

BACKGROUND

The Johnson County Election Office has requested the attached Resolution be approved by the Governing Body of the City in order to facilitate the placement of the November 4, 2025, ballot question - *"Shall the City of Prairie Village, Kansas, abandon the Mayor-Council form of Government"* in accordance with the Kansas Court of Appeals Opinion.

SUGGESTION MOTION

Move to approve the attached Resolution 2025-07 concerning the Ballot Question as outlined.

Attachment(s):

1. Resolution 2025-07
2. Court of Appeals Mandate
3. Court of Appeals Opinion
4. Order Denying Petition for Supreme Court Review

PREPARED BY

Wes Jordan
City Administrator
Date: July 28, 2025

**CITY OF PRAIRIE VILLAGE, KANSAS
RESOLUTION NO. 2025-07**

**A RESOLUTION OF THE CITY OF PRAIRIE VILLAGE, KANSAS, DIRECTING THE
JOHNSON COUNTY ELECTION OFFICE TO SET THE QUESTION OF
ABANDONMENT OF THE FORM OF CITY GOVERNMENT FOR THE NOVEMBER
4, 2025, GENERAL ELECTION.**

WHEREAS, on or about August 1, 2023, a certain petition was filed with the City Clerk purportedly under the authority of K.S.A. 12-184, requesting a public referendum on the question of whether the City of Prairie Village, Kansas, shall abandon the mayor-council form of government (the "Petition"), the terms of which Petition are incorporated herein by this reference; and

WHEREAS, pursuant to K.S.A. 25-3601(a) and K.S.A. 12-184(c), the Johnson County Election Office is the office, agency, or official charged with the responsibility for certifying petitions such as the Petition; and

WHEREAS, on or about August 14, 2023, the Johnson County Election Office certified to the City Clerk that the Petition had the required number of signatures but, notwithstanding the provisions of K.S.A. 25-3601(a) and K.S.A. 12-184(c), advised that "[w]e will need the City's written confirmation of: 1) Whether the petition is valid; 2) if valid and an election is called, the question for the ballot; and 3) the date requested for the election", thus reflecting an incomplete certification; and

WHEREAS, following certain legal proceedings regarding the Petition, on or about September 15, 2023, the Johnson County District Court entered its Amended Memorandum Decision in Case No. 23CV04487, which determined that the Petition was legally sufficient to be placed on the ballot (the "District Court Decision"), which District Court Decision is incorporated herein by this reference; and

WHEREAS, following certain appeal proceedings, on or about March 7, 2025, the Kansas Court of Appeals issued its Memorandum Opinion No. 126,881, affirming the decision of the District Court that the Petition was legally sufficient to be placed on the ballot (the "Court of Appeals Opinion"), which Court of Appeals Opinion is incorporated herein by this reference; and

WHEREAS, on or about June 27, 2025, the Kansas Supreme Court issued its Order denying review of the Court of Appeals Opinion (the "Supreme Court Order"), thereby upholding the decisions of the Court of Appeals, which Supreme Court Order is incorporated herein by this reference; and

WHEREAS, on or about July 11, 2025, the Kansas Court of Appeals issued its Mandate to the District Court (the "Mandate"), which Mandate is incorporated herein by this reference and which Mandate is hereby deemed by the City to have established final certification of the Petition and execution of the judgment of the Kansas Court of Appeals as reflected in the Court of Appeals Opinion; and

WHEREAS, K.S.A. 12-184(b) provides that, as to the Petition, the question of abandonment of the form of city government shall be submitted to the qualified electors of the City at the next city or state general or primary election following by not less than sixty (60) days the certification of the Petition; and

WHEREAS, the next city or state general or primary election following by not less than sixty (60) the date of the Court of Appeals' Mandate is the November 4, 2025, general election; and

WHEREAS, although not required or provided for under Kansas law, the Johnson County Election Office has requested this Resolution from the City in order to facilitate the placement of the

question called for in the Petition on the November 4, 2025, general election ballot, and the City has agreed to provide this Resolution in order to further execute the decision of the Kansas Court of Appeals, as described above; and

WHEREAS, K.S.A. 12-184a(a) states that “[a] city shall continue to operate under its current form of government whether established at an election, or by adoption of a charter ordinance or ordinance until such time that the city’s form of government is changed as provided by law.”

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

Section 1. The City Council hereby finds that the Petition requested a public referendum on the following question (the “Question”):

“Shall the City of Prairie Village, Kansas abandon the mayor-council form of government?”

Section 2. Pursuant to K.S.A. 12-184, the Petition, the District Court Decision, the Court of Appeals Opinion, the Supreme Court Order, and the Mandate, the City Council hereby requests that the Johnson County Election Office place the above-described Question on the City general election ballot and election scheduled for November 4, 2025, in such ballot form and format as may be required under applicable law.

Section 3. The City Council makes no further findings of fact as to the sufficiency of the Petition or the above-described Question, or their compliance with Kansas law, but instead directs the Johnson County Election Office’s attention to the District Court Decision, the Court of Appeals Opinion, the Supreme Court Order, and the Mandate, all of which speak for themselves.

Section 4. The Mayor, City Administrator, City Clerk, and the City Attorney are hereby authorized and directed to take such other actions as may be appropriate, desirable, or necessary to accomplish the purposes of this Resolution.

Section 5. This Resolution shall be in full force and effect from and after its adoption.

ADOPTED by the City Council of the City of Prairie Village, Kansas, this 4th day of August, 2025.

Eric Mikkelsen, Mayor

ATTEST:

Adam Geffert, City Clerk

REVIEWED AND APPROVED AS TO FORM:

Alex Aggen, City Attorney

MANDATE

COURT OF APPEALS,

Appellate Court No. 23-126881-A

ss.

STATE OF KANSAS,

District Court No. 23CV4487

The State of Kansas, to the District Court within and for the County of JOHNSON
in the State of Kansas, Greeting:

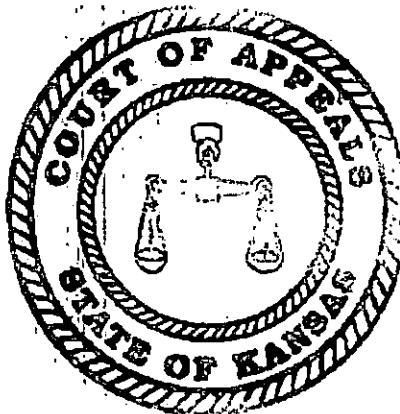
WHEREAS, In a certain civil action lately pending before you, wherein CITY OF PRAIRIE VILLAGE, KANSAS, A MUNICIPAL CORPORATION, appellee/cross-appellant, and, PV UNITED, INC., AND REX SHARP, appellant /cross-appellees, a judgment was rendered by you against the appellant from which judgment appellant prosecuted an appeal in the Court of Appeals within and for the State of Kansas;

AND WHEREAS, on March 7, 2025, on consideration of the appeal, it was ordered and adjudged by the Court of Appeals that the judgment of the district court be affirmed in part and reversed in part.

AND WHEREAS, on June 27, 2025, the Supreme Court denied the petition for review. The judgment of the district court is affirmed in part and reversed in part upon the denial.

An attested true copy of the opinion is attached.

YOU ARE THEREFORE COMMANDED, that without delay you cause execution to be had of the judgment of the Court of Appeals, according to law.



Costs

Paid Fees of Clerk of the Appellate Courts \$ 155.00

Other Costs..... \$

Total \$

WITNESS my hand and the seal of the Court of Appeals affixed
hereto, at my office, in the City of Topeka, on JUL 11 2025

Douglas T. Shima

DOUGLAS T. SHIMA, Clerk of the Appellate Courts

MANDATE RECEIVED BY CLERK
TRIAL JUDGE NOTIFIED

Date: _____

PS

NOT DESIGNATED FOR PUBLICATION

No. 126,881

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

CITY OF PRAIRIE VILLAGE, KANSAS, A MUNICIPAL CORPORATION,
Appellee/Cross-appellant,

v.

PV UNITED, INC., and REX SHARP,
Appellants/Cross-appellees.

MEMORANDUM OPINION

Appeal from Johnson District Court; RHONDA K. MASON, judge. Oral argument held October 16, 2024. Supplemental briefing filed October 25, 2024. Opinion filed March 7, 2025. Affirmed in part and reversed in part.

Rex A. Sharp, of Sharp Law LLP, of Prairie Village, for appellants/cross-appellees.

W. Joseph Hatley, of Spencer Fane LLP, of Kansas City, Missouri, and *David E. Waters*, of the same firm, of Overland Park, for appellee/cross-appellant.

Before ARNOLD-BURGER, C.J., GREEN and HILL, JJ.

ARNOLD-BURGER, C.J.: The ability of Americans to petition their government with grievances is a longstanding and cherished right in a democracy. It even appears in the First Amendment to the United States Constitution. ("Congress shall make no law . . . abridging the . . . right of the people to . . . petition the Government for a redress of grievances.") That right extends from the highest levels of power to the local or city level. In Kansas, like most states, the Legislature has set out various procedures to get those grievances before the electorate, depending on the desired result.

Here, a group of citizens in Prairie Village were dissatisfied with the size and form of the municipal government. They wanted to abolish the existing structure and set up a new structure. When the elected officials did not share their dissatisfaction, they looked to the statute for the procedure to effectuate the change they desired. They proceeded through that process, submitting two citizen petitions, one to abandon the existing mayor-council form of government (Abandon Petition) and one to adopt a mayor-council-manager form of government (Adopt Petition). They also wanted to change the method by which elected officials change the zoning laws in the city, believing that some recent changes or suggested changes were detrimental to maintaining the character of the City of Prairie Village. Finally, they sought to change the process for rezoning actions by the City (Rezone Petition).

When the petitions were presented to the City, it brought a lawsuit, called a declaratory judgment action. Such an action calls for the court to determine whether the petitions submitted met the criteria in the statutes for such petitions. The City believed they did not and that it was not required to place the items on the ballot for the voters of Prairie Village to decide. The district court held a hearing and found that, under state law, the Adopt Petition and the Rezone Petition were not proper, but the Abandon Petition was sufficient and should go before the voters. Both sides appealed the decision. The City argued that the Abandon Petition was also improper and the defendants argued that both the Adopt Petition and Rezone Petition were proper. There are several other collateral issues the parties raise, and they will all be addressed in turn. But based on our extensive review of the record, the arguments of the parties, and both the statutory law and the pertinent caselaw, we reverse the district court's decision denying attorney Rex Sharp's motion to dismiss him as a party to the action and affirm the district court's decision in all other respects.

FACTUAL AND PROCEDURAL HISTORY

On April 25, 2023, Sharp, submitted the three petitions at issue here to the Johnson County Counselor, as required by K.S.A. 25-3601(a), for approval as to the form of the question posed on the petitions to be placed on the upcoming November 2023 ballot. They were (1) the Abandon Petition; (2) the Adopt Petition; and (3) the Rezone Petition.

The Johnson County Counselor issued her advisory opinion on May 1, 2023, beginning with a general advisory:

"Kansas law provides for the determination of the sufficiency of the substantive portions of the petition, which requires the exercise of discretionary judgment, as the responsibility of the governing body of the public entity to which the petition is addressed. Accordingly, the sufficiency of the petition and of the questions stated, and form in which the question is presented, will be determined by the City of Prairie Village."

In sum, the county counselor advised Sharp that the Abandon and Adopt Petitions did not comply with K.S.A. 25-3601 because they omitted the language, "'Shall the following be adopted?'" preceding the questions that would be submitted to voters on a potential ballot. The Rezone Petition included that language, so the counselor qualifiedly approved the form of the question on that petition with a caveat that the petition must also "include the entire ordinance or the ordinance title 'generally descriptive of the contents,' as required by K.S.A. 12-3013(b), and you must be sure that the ordinance you propose is in proper form, pursuant to Kansas law."

After the petitions were circulated for signatures without modification, Sharp filed the signed petitions with the appropriate government officials for certification on August 1, 2023. Sharp submitted the Abandon and Adopt Petitions directly to the election

commissioner for signature verification and requested him to "advise if the [questions] will be placed on the ballot for November 7, 2023." Sharp submitted the Rezone Petition to the city clerk, who promptly forwarded them to the election commissioner for signature verification. On August 14, 2023, the election commissioner certified to the city clerk that each petition had the required number of signatures, but advised for each petition that "[w]e will need the City's written confirmation of: 1) Whether the petition is valid; 2) if valid and an election is called, the question for the ballot; and 3) the date requested for the election."

On August 17, 2023, the City filed a declaratory judgment action in the district court, seeking a declaration that each of the petitions was invalid and therefore the City was not required to place them on the ballot. The City argued each of the petitions did not comply with procedural requirements for petitions and proposed substantive changes that were contrary to Kansas law. The City named two defendants: PV United Inc. (PV United) and Sharp, both in their individual capacities and as representatives of an unincorporated association known as "'Stop PV Rezoning,'" which the City alleged was an "unincorporated association of individuals who claim to be residents of the City." The City further alleged that Sharp was a proper defendant because he "organized, circulated and submitted the petitions at issue in this case on behalf of PV United and 'Stop PV Rezoning'" without "claim[ing] to be doing so in his capacity as an attorney, but rather as a resident of Prairie Village."

On August 28, 2023, PV United and Sharp filed a joint answer and moved to dismiss Sharp as a defendant because he did not circulate the petitions as alleged by the City and because he is PV United's attorney. PV United and Sharp also urged the court to dismiss both "unincorporated association 'representative' defendants," arguing there was factually no unincorporated association to represent. Lastly, PV United stated that it would remain in the case to "oppose the City's Petition for Declaratory Judgment so that the issue can be joined and resolved in time [before the November 2023 election]."

The district court heard the parties' arguments on the Abandon and Adopt Petitions at a hearing on August 30, 2023, and their arguments on the Rezone Petition at a hearing on August 31, 2023. The hearing was apparently well attended and the court admonished those in attendance that they were not to record anything. On the second day of the hearing, the judge was required to issue another admonishment after a photograph of the hearing was posted on the "Stop PV Rezoning" Facebook group.

The morning of September 6, 2023, the district court held a hearing to announce its ruling. The court began by explaining that it would render an oral decision, followed by a short written order to meet the 20-day statutory deadline for the court to render a decision in K.S.A. 25-3601(e) and because "the Election Office needs to know something by today so that they know what can and cannot go on the ballot." The court added that it was working on "a pretty detailed and extensive order that . . . I am going to amend later on that will fill in all of the details and reasons that support the decision that I made." The detailed ruling would be "filed later this week."

The district court first addressed the Rezone Petition, finding that the form of the question posed on the petition substantially complied with the relevant law but that it was not eligible to be placed on the ballot because it proposed an administrative ordinance based on *McAlister v. City of Fairway*, 289 Kan. 391, 212 P.3d 184 (2009). Second, the court found that the Abandon Petition "does not substantially comply with the statute in that it fails to state the term limitations for the offices which it seeks to abandon and that is more than a technical issue. That is a substantial noncompliance with the statute." Third, the court found the Adopt Petition "does substantially comply with the statute" and there were "no issues that would prohibit it from being placed on the ballot."

The City's attorney requested a "[p]oint of clarification," to inquire if the district court had "confused" the Abandon and Adopt Petitions. The court apologized and corrected the record. It should be noted that the descriptions of the petitions that she

noted were accurate. So it was clearly just a slip of the tongue, with her intention being clear.

Later that day—around 4 p.m.—the district court entered a written memorandum decision, reiterating the order was "a condensed Memorandum Decision to comply with K.S.A 25-3601(e) and the election office deadlines. A detailed decision will be rendered within 7 days." Unfortunately, the court's written decision again confused the Abandon Petition and the Adopt Petition, by title only. Again, the judge's description of what the petition included was correct, they were just improperly named.

Around 11 p.m. that same evening, the City moved to amend or correct the district court's memorandum decision because it did not reflect the court's final oral ruling. The City also pointed out that the statutes cited in the section devoted to the Abandon Petition were inapplicable. See K.S.A. 12-1039(b) (governing adoption of new form of government); K.S.A. 12-1041 (governing abandonment of commission-manager, mayor-council-manager, or council-manager forms of government). The next morning, the City also filed a conditional motion to certify the memorandum decision for appeal and for a stay of the order pending appeal.

PV United and Sharp promptly responded with their own written filings, first opposing amendment or correction of the memorandum decision, and asserting the court's written ruling showed the judge "reflected on her decision" and "returned to her original, initial ruling." They also asserted at the end of this filing that "Defendants' motion to dismiss should be ruled upon since it has remained unopposed." PV United also opposed certification for the purpose of appeal and a stay of the court's order, asserting either side could now appeal because the court's order was a final judgment.

The district court promptly took up these motions at a Zoom hearing on September 7, 2023. After hearing the parties' positions on whether to correct or amend the

memorandum decision, the court asked the City how its motion to amend impacted the 20-day deadline "if the Court were to make any changes after the written decision from yesterday?" The City responded that "the statutory directive to rule within 20 days only goes to the form of the question in the petition" and that "[t]he Court is under no such deadline to rule with regard to the substantive validity of the petitions." Sharp disagreed that the issues raised by the City were not considered part of the "form of the question," and questioned the court's authority to amend its decision beyond the 20-day deadline. The court explained that it would consider the parties' motions and arguments, reiterating that it intended to issue a final journal entry but would refrain from issuing any other oral rulings to avoid further confusion.

On September 15, 2023, the district court issued an amended memorandum decision and decided to "reinstate[]" its oral decision rendering the Rezoning Petition and Adoption Petition not eligible to be submitted to a vote before the electors of Prairie Village, Kansas and the Abandonment Petition may be submitted." Beginning with the Rezone Petition, the court explained that K.S.A. 12-3013(e)(1) excludes administrative ordinances from the initiative petition process, which Kansas courts have assessed using the four guidelines outlined in *McAlister*. Although the court found the second guideline was "not helpful to the analysis," the court determined the other three factors showed the ordinance proposed in the Rezone Petition was "overwhelmingly administrative in nature." A more detailed recitation of the court's analysis on each of the guidelines will be provided later in this opinion.

As for the Adopt Petition, the district court found it "complied with the basics of K.S.A. 25-3601 and K.S.A. 12-184, however its failure to fully comply with K.S.A. 12-1039(b) and (c) is what prevents the Petition from being put forth before the voters." In short, the court concluded the Adopt Petition failed to comply with K.S.A. 12-1039(b) because it did not establish the term of office for the mayor other than stating that the current mayor would serve a reduced two-year term. The court also found the Adopt

Petition improperly "seeks to adopt a new mayor-council-manager government and a new city council at the same time," which the court concluded was "in direct conflict of [K.S.A. 12-1039(b)]."

Finally, as for the Abandon Petition, the district court found it was legally sufficient to be submitted to the ballot. The court explained the Abandon Petition complied with K.S.A. 12-1041 "by replacing the words 'adoption' or 'adopt' with the words 'abandonment' and 'abandon' in K.S.A. 12-1039." The court also found the petition had the required number of qualified signatures and there were no technical deficiencies to "prevent the question from being put forth on the ballot as it substantially complies to statute and is consistent with *City of Wichita v. Peterjohn*, 62 Kan. App. 2d 750[, 522 P.3d 385] (2022)."

PV United filed a notice of appeal.

After this court docketed the appeal, the district court filed an entry of final judgment by agreement of the parties on October 5, 2023. The City then filed a notice of cross-appeal.

After briefing, but before oral argument, this court requested supplemental briefing on an issue brought to its attention in appellants' brief. Appellants argued that the district court had failed to rule on its motion to dismiss. Orders which do not dispose of all parties or of all claims are interlocutory and not subject to review. *Pioneer Operations, Co., Inc. v. Brandeberry*, 14 Kan. App. 2d 289, 291, 789 P.2d 1182 (1990). Oral argument was ordered to proceed as scheduled, but the parties were to present supplemental briefing related to whether the district court's decision was final and appealable. The parties submitted their supplemental briefs in compliance with the deadline of October 25, 2024.

ANALYSIS

While Kansas law places the power to adopt and amend legislative ordinances with a city's governing body, individual citizens are also able to directly influence the legislative process with the initiative petition procedures outlined in several statutes. This appeal concerns three such petitions which sought voter approval by the residents of Prairie Village. The parties argue both procedural and substantive aspects of the statutes and judicial procedure in this case. We will begin with the procedural issues.

I. PROCEDURAL ISSUES

In response to our request for supplemental briefing, all parties argued that the district court's decision was a final appealable decision, although the focus changed slightly. In supplemental briefing, the appellants abandon any argument that the court *failed* to rule on its motion, instead arguing that the district court implicitly ruled on its motion by entering judgment. And the appellee agrees. The appellants then proceed with the argument that the district court erred in denying the motion because neither Sharp nor PV United were proper parties. Since both parties agree that the district court made a decision to deny the motion to dismiss, albeit implicit, we retain jurisdiction and address that issue first.

Resolving both procedural questions requires statutory interpretation, which this court conducts using an unlimited standard of review. *Roe v. Phillips County Hospital*, 317 Kan. 1, 5, 522 P.3d 277 (2023).

A. The district court did not err in failing to dismiss PV United in its representative capacity, but did err in failing to dismiss Rex Sharp from the case.

The first statute we review is K.S.A. 25-3601. It allows "[a]ny person" to challenge the "validity of the form of a question" on an initiative petition by filing an action "in the district court within 20 days after such petition has been filed with the county election officer." K.S.A. 25-3601(b), (e). Although this statute does not restrict who can sue or be sued in an action challenging the validity of a petition—or even precisely how a challenge should be filed—we turn to the declaratory judgment statute for guidance since that was the method chosen by the City here.

"When declaratory relief is sought, all persons who have or claim any interest which would be affected by the declaration shall be joined as parties who have or claim any interest which would be affected by the declaration, and no declaration shall be binding against persons not so joined as parties to the proceeding." K.S.A. 2024 Supp. 60-1712. The statute further defines "person" to mean "any person, partnership, limited partnership, joint venture, joint stock company, unincorporated association, or society, or municipal or other corporation of any character whatsoever." K.S.A. 60-1714.

So, the City has standing to seek a declaratory judgment on the validity of the initiative petitions because they are a municipal corporation with a direct interest that would be affected by the declaration sought. The three initiative petitions raised questions that would be usurping the governing body's legislative and administrative authority, so the City has a right to seek a judicial declaration clarifying its duty toward the initiative petitions.

The next question is whether Sharp and PV United were proper parties.

i. PV UNITED IS A PROPER DEFENDANT IN BOTH ITS CORPORATE CAPACITY AND ITS REPRESENTATIVE CAPACITY

There is no dispute PV United Inc. is a corporate entity. The definition of "person" in the declaratory judgment statute also includes any corporation. K.S.A. 60-1714. PV United Inc. was sued in its corporate capacity as well as a representative of itself and Stop PV Rezoning. Its stated purpose is to "oppose a rezoning of RI to include multifamily housing in Prairie Village, KS." To the extent it is sued in its own corporate capacity and as representative of itself, it admitted throughout the proceedings in district court that it was a proper party, including in its motion to dismiss and its brief on appeal. In fact, PV United argues that it is the only proper party to the case and only in its individual capacity. Although PV United suggests to the contrary at one point in its brief, alleging it took this position "because time was of the essence," it subsequently doubles down on its position that PV United "is the only viable defendant." "A party is not allowed to raise an issue on appeal not presented previously to the district court or inconsistent with the position taken before the district court." *Mynatt v. Collis*, 274 Kan. 850, 869, 57 P.3d 513 (2002).

We agree it is a proper party despite its stipulation. With Sharp acting as its attorney, it was the petition filer, which is sufficient, as is set out in more detail below. So it is undisputed that the City has named at least one proper party in its declaratory judgment action.

PV United's objection is to also being named as a representative of Stop PV Rezoning, which it claims is at most, an unincorporated association—which it contends has no capacity to sue or be sued except in the limited context of a class action. See K.S.A. 2024 Supp. 60-223b (allowing members of an unincorporated association to be named as "representative parties" but "only if it appears that those parties will fairly and adequately protect the interests of the association and its members"); *Prime v. Beta*

Gamma Chapter of Pi Kappa Alpha, 273 Kan. 828, 831, 47 P.3d 402 (2002) ("The rule in Kansas is that an unincorporated association can neither sue nor be sued."). In the alternative, it argues that Stop PV Rezoning is a nonexistent entity.

First, as to its claim that an unincorporated association cannot be sued, the claim is inaccurate as it relates to a declaratory judgment action. In an action for a declaratory judgment, an unincorporated association is included in the definition of a person who must be joined if it has a claim or interest which would be affected by the declaration. K.S.A. 2024 Supp. 60-1712; K.S.A. 60-1714. So there would be no procedural limitations that prevented the City from naming PV United as a representative defendant of an unincorporated association.

The question is whether it is an entity whose interests are aligned and therefore is subject to compulsory joinder under K.S.A. 2024 Supp. 60-1712. We believe that the evidence supports that it is and that it was prudent for the City to add it to the action, either separately or as aligned with the interests of PV United. This became apparent when it was shown to have a Facebook page upon which it posted pictures taken during the first hearing. The interests were clearly aligned.

ii. SHARP IS NOT A PROPER DEFENDANT

As stated, according to PV United—in its individual capacity—it is the only "viable" defendant in this case because Sharp was not a petition circulator. We will first examine whether he should be dismissed because he was not a petition circulator.

As support for their claim, PV United points to *City of Prairie Village v. Morrison*, No. 104,918, 2011 WL 6310196, at *1 (Kan. App. 2011) (unpublished opinion). In that case, the panel found that the statutory provisions requiring the circulator of a petition to verify they personally witnessed the signing of the petition by

each elector "support[s] a conclusion that it is the circulator of a petition that is responsible not only for the form of the question but stands in a representative capacity for the electors that signed the petition." 2011 WL 6310196, at *4. This was in response to Morrison's argument that every single elector who signed a petition must be named.

Morrison is not binding on this court because it is an unpublished decision, but it also does not hold that a petition circulator is the *only* possible defendant who can represent the interests of the signed electors to a petition. Instead, the Morrison panel recognized merely that a petition circulator *can* stand in a representative capacity because their role in verifying they personally witnessed the signatures on the petition makes them responsible for the form of the question on the petition. Contrary to PV United's position, the person who files an initiative petition with the appropriate government authorities under the petition process outlined in Kansas law takes on a similar role.

None of the statutes governing the submission of the three initiative petitions at issue here state that the petition circulator must also be the person who submits or files it with the appropriate government official. For instance, the statute governing adoption or abandonment of any form of city government provides that "[a]ny petition requesting the submission of a question hereunder shall be filed with the county election officer of the county in which the city is located." K.S.A. 12-184(c). Likewise, the statute governing petitions for proposed ordinances provides the "ordinance and petition shall be filed with the city clerk." K.S.A. 12-3013(a). And K.S.A. 25-3601(a), which generally governs the process for certifying the validity of any petitions, states a copy of the petition "shall be submitted" to either the county attorney, district attorney, or county counselor, who must then furnish an advisory opinion as to the legality of the form of the question contained therein.

The common thread across these provisions is the use of passive voice without specifying who is tasked with submitting or filing the petition, which effectively means it

can be done by any person. Because none of these statutes specify the petition circulator must also be the person who submits or files the petition, it stands to reason that a petition filer takes on a similar role as a petition circulator. In other words, a person who submits or petitions also has standing to represent the interests of the electors who signed the petition in a case seeking a declaration on the validity of the form of the question on the petition.

So the argument that Sharp is not a proper party because he was not a petition circulator fails. He was a petition filer. With that clarification in mind, we can turn to the appellants' argument that Sharp is not a proper defendant because he is PV United's legal counsel.

There is no doubt that given Sharp's personal involvement in this issue as a resident of Prairie Village and having a spouse who was running in the primary for city council, the lines may have at first appeared to be blurred. But the City understood Sharp was a lawyer. In fact, he had appeared in court before challenging the actions of the City. See *State v. Morrison*, 302 Kan. 804, 359 P.3d 60 (2015). Everything he submitted to government officials leading up to this case was on his law firm letterhead or, as to emails, with his law firm email address. Responses were addressed to him and sent to his law office, and he was copied on correspondence from county officials as "Rex Sharp, legal counsel for petitioners." The City Attorney was also copied on the same correspondence. The City makes no allegation that he was one of the electors that signed any of the petitions. Even if Sharp drafted the petitions and actually filed the petitions, this would still be consistent with him being the attorney for PV United, making it the actual filer.

We find it is disingenuous for the City to argue that, at the time it filed this action, there was nothing to indicate Sharp was acting as an attorney in the case and that he somehow violated his ethical duties. There is absolutely nothing to support the City's

claim that it was entitled to "assume that Mr. Sharp was submitting the petition as an individual resident of the City, and he was therefore a proper defendant." In fact, as noted, all the documentary evidence is to the contrary. The City appears to understand the folly of its argument when it suggests in its briefing that it is either abandoning the claim or no longer contesting Sharp's inclusion as a defendant. The City argues on appeal that "[t]his is largely an academic dispute though, because . . . PV United, Inc. agreed that it was a proper party defendant, so there was no procedural impediment to the District Court's ruling."

It is and always has been crystal clear that Sharp is and was always the attorney representing PV United. He was improperly named as a defendant in this case, although we are in no position to comment on the motives for the City's action. Accordingly, we reverse the district court's decision, explicit or implicit, denying Sharp's motion to dismiss him as a party in the litigation.

B. Although the requirement that a decision be filed within 20 days is directory, not mandatory, and of questionable constitutionality, the court met the 20-day deadline.

PV United argues the district court failed to rule within 20 days as required by K.S.A. 25-3601(e), thus depriving the citizens of Prairie Village of their right to vote on the initiatives proposed in the petitions. In their view, the district court's noncompliance with the statute should have resulted in the petitions being deemed valid and thus eligible for submission to the ballot. Their arguments are far from persuasive and border on frivolous.

i. THE 20-DAY DEADLINE WAS MET

When a party files an action challenging the form of a question in a petition, they are required under statute to file it within 20 days after the petition is filed with the

election commissioner. K.S.A. 25-3601(e). By the clear and unambiguous language of the statute, the court is required to render a decision only on the form of the question within 20 days after such petition has been filed. K.S.A. 25-3601(e) ("The court shall render an opinion in any action filed to challenge the validity of the form of a question in a petition within 20 days after the date such action is filed with the court."). As it relates to this case, if the petition states the title, number, and exact language of the ordinance and the title of the petition states: "Shall the following ordinance, or resolution, become effective?" the form of the question is presumed to be valid. K.S.A. 25-3601(c). Of course, that is just a presumption. There may be other language that would also be valid, and we will address that later in this opinion. The person challenging the validity of the form of the question has the burden of proving to the district court that it is invalid. K.S.A. 25-3601(b).

The petition in the case was filed on August 17, 2023. Under the statute, a decision on the form of the question was due by September 6, 2023, or 20 days later.

PV United and Sharp filed a motion to dismiss and their answer on August 28, 2023. Although the statute provides 20 days from the date of the filing of the petition for the court to render its decision, nothing shortens the amount of time that named parties have to answer the petition—which is 21 days. K.S.A. 60-212. So PV United and Sharp argue that the court was basically left with nine days to hold a hearing and enter a decision. And it further argues that this is not a "narrow issue, it includes everything that will be placed on the ballot for the people to vote on." And they take it one step further to argue that if the court fails to make a decision in that time frame, the petition must be declared valid and placed on the ballot.

First, miraculously the district court entered a decision on the form of the question *and* the substantive matters within 20 days. It is disingenuous of the appellants to argue otherwise.

The district court held two days of hearings in this case on August 30 and August 31. With the intervening Labor Day holiday, that gave the court just three business days to enter its decision. The judge was aware of the 20-day deadline. She set a court date on the 20th day to announce her decision. On that day she orally announced her decision, indicating that a written decision would follow. She held that the form of the question on the Rezone Petition was compliant with the statute, but it had substantive infirmities that prevented it from being on the ballot. She explained what those were. She found the form of the question noncompliant on what she termed the Abandon Petition although she referred to the problem as not designating terms of office. The terms of office were only identified in the Adopt Petition. Similarly, she found that the form of the question on the Adopt Petition was sufficient and there was nothing substantive to keep it off the ballot.

The judge's error was immediately apparent, and when the City pointed it out, she quickly corrected it, announcing it was the form of question on the Adopt Petition that was inadequate, and the form of the question on the Abandon Petition was fully compliant. She issued her written order later that day. Unfortunately, she again confused—in the same way—the Adopt Petition with the Abandon Petition.

At 11 p.m. that evening the City pointed out the decision did not reflect the correction made at the hearing earlier that day and filed a motion to amend or correct it. The judge took the matter up the very next day. She indicated that she would issue a more detailed decision in seven days, but was not going to make any more oral findings in case she would misspeak, and she just wanted to "get this right."

As promised, on September 15, the judge entered an in-depth, 11-page opinion, finding the same way she ruled from the bench, after correcting herself, on September 6. The form of the question on the Abandon Petition was compliant and that matter could be placed on the ballot. The form of the question on the Adopt Petition was not compliant and would not be placed on the ballot. And finally, the form of the question on the

Rezone Petition was compliant, but there were substantive reasons to keep it off the ballot.

It is well settled that a court may correct "a clerical mistake or a mistake arising from oversight or omission whenever one is found in a judgment, order or other part of the record. The court may do so on motion, or on its own, with or without notice" as long as it is done before an appeal is docketed. K.S.A. 2024 Supp. 60-260(a); *Lee v. Brown*, 210 Kan. 168, 171, 499 P.2d 1076 (1972) (Such "errors in the journal entry do not render a judgment void. They may be corrected by the court at any time on its own initiative."). And important here, such a correction does not affect the judgment's finality or suspend its operation. K.S.A. 2024 Supp. 60-260(c).

Because, under K.S.A. 2024 Supp. 60-258, a judgment is effective when the journal entry of judgment is filed, the City filed a motion to amend the journal entry under K.S.A. 2024 Supp. 60-259(f) on September 6. See *Ross-Williams on behalf of Sprint Nextel Corporation v. Bennett*, 55 Kan. App. 2d 524, 564, 419 P.3d 608 (2018) ("The purpose of a motion to alter or amend under K.S.A. 2017 Supp. 60-259[f] is to allow a district court to correct a prior error."). By granting the City's motion, the district court agreed that it had erred in its September 6 written journal entry by deviating from the oral ruling given at the end of the hearing earlier that day and reinstated that ruling. PV United does not explain in any of its appellate briefing why it was improper for the district court to reconsider its September 6 decision under K.S.A. 2024 Supp. 60-259(f) or provide any relevant contrary authority. See *In re Adoption of Baby Girl G.*, 311 Kan. 798, 803, 466 P.3d 1207 (2020) (issues not briefed are waived or abandoned); *In re Adoption of T.M.M.H.*, 307 Kan. 902, 912, 416 P.3d 999 (2018) (failing to support a point with pertinent authority or show why it is sound despite lack of supporting authority is like failing to brief an issue).

In conclusion, any suggestion that the court's order was not timely lacks merit. We are, frankly, amazed that the district judge was able to render a decision and outline the reasons for that decision in the very short time the statute required.

ii. FAILURE TO RULE WITHIN 20 DAYS DOES NOT REQUIRE THAT THE COURT PLACE THE PETITIONS ON THE BALLOT

Even if we were to agree with PV United that the judge's decision was untimely, the suggestion that a court failing to rule within 20 days creates a rebuttable presumption of validity that automatically requires a question proposed in a petition to be submitted to a ballot is unsupported by the statute. K.S.A. 25-3601(a) and (c) do create rebuttable presumptions of validity, but the statute still allows any person to file an action in the district court challenging the validity of the form of the question in a petition within 20 days of the petition being filed with the county election officer. K.S.A. 25-3601(e). In other words, these presumptions alone do not indicate that the presumption becomes irrebuttable upon the lapse of time.

Although, statutory deadlines for the entry of either administrative or judicial decisions are historically not uncommon in Kansas statutes, when the consequences for noncompliance are not listed in the statute, our courts have found such deadlines to be directory rather than mandatory. See *In re L.C.W.*, 42 Kan. App. 2d 293, 296, 211 P.3d 829 (2009) ("shall" is directory where no provision for penalty or negative consequence for noncompliance is provided in statute). Such is the case here. Failure to comply with the deadline has no consequences under the statute.

And, if the purpose of the statute is to somehow expedite the process of getting a question on the ballot, the statute does not contain any corresponding language to prevent timely motions to reconsider the court's decision or appeals of the court's decision—both of which would result in a decision significantly exceeding 20 days, easily defeating any

such purpose. Procedural rules are adopted to promote not only the expeditious resolution of disputes, but a just resolution. See K.S.A. 2024 Supp. 60-102 ("The provisions of this act shall be liberally construed, administered and employed by the court and the parties to secure the just, speedy and inexpensive determination of every action and proceeding."). Black's Law Dictionary 1030 (12th ed. 2024) defines "just" as "[l]egally right." Coincidentally, this is the same language the trial court judge in this case used in describing her actions, she just wanted to "get this right."

So even if we were to find that her decision was untimely under the statute, which it was not, PV United is not entitled to the remedy it seeks.

iii. THE CONSTITUTIONALITY OF LEGISLATIVELY IMPOSED JUDICIAL DEADLINES IS SUSPECT

Finally, we would be remiss if we did not note our Supreme Court decision in *State v. Buser*, 302 Kan. 1, 8-9, 2015 WL 4646663 (2015), in which it found that the mandatory judicial decision deadline in K.S.A. 2014 Supp. 20-3301(c) was unconstitutional—a violation of the separation of powers.

One legal commentator has described the heart of the problem when a court has been required to make the best decision it could within a legislatively allotted time: "Under the separation of powers principles . . . , such a decision should be reversed, because the court has permitted the time limit to interfere with its [decision making] processes in such a way as to increase the risk of an arbitrary decision." Ryan, *Rush to Judgment: A Constitutional Analysis of Time Limits on Judicial Decisions*, 77 B.U. L. Rev. 761, 806 (Oct. 1997).

Overall, "[w]hen one of the other branches interferes with the processes through which the judiciary reaches its judgments, the legitimacy of those judgments suffers." 77 B.U. L. Rev. at 798.

II. SUBSTANTIVE ISSUES

A panel of this court succinctly stated the purpose and importance of initiative petitions, like the ones at issue here, in *City of Wichita v. Peterjohn*, 62 Kan. App. 2d 750, 754-55, 522 P.3d 385 (2022):

"Given the power and lasting effect of an initiative petition—compelling the adoption of a policy by some percentage of previous voters, but potentially less than the voting majority who elected the city council members—Kansas law imposes various procedural safeguards to ensure 'the validity of the proponents' support.' For example, the initiative petition must be accompanied by the specific language of the proposed ordinance so those signing the petition 'have the opportunity to become fully aware of the exact, unalterable ordinance being proposed to become the law of their city.' And like other petitions seeking elections, an initiative petition must 'pertain[] to a single issue or proposition.' Petitions that fail to comply with these requirements are 'null and void' and do not trigger any further action by the city council. [Citations omitted.]"

PV United is seeking a voter referendum to abandon the current Prairie Village form of government, adopt a new form of government in its place, and—unrelated to the form of government—pass a zoning ordinance limiting the governing body's ability to modify the zoning code. The City believes each petition is noncompliant and is not required to be placed on a future ballot. We will address each petition in turn, including any related issue in the City's cross-appeal. We will start with the Rezone Petition, then go to the Abandon Petition, and finally the Adopt Petition.

Resolving the merits of the declaratory judgment action requires interpretation of statutes and a written instrument (the petitions), both of which are legal questions over which this court exercises unlimited review. *Roe*, 317 Kan. at 5; *State ex rel., Schmidt v. City of Wichita*, 303 Kan. 650, 659, 367 P.3d 282 (2016). In addition, unlimited review is appropriate whenever, as here, the facts necessary to a decision are not in dispute. *McAlister v. City of Fairway*, 289 Kan. 391, 399, 212 P.3d 184 (2009). Finally, we are not required to give any deference to the district court's decision.

A. *The Rezone Petition*

i. BACKGROUND

It is helpful to understand the language of the proposed ordinance by considering the reason the ordinance was proposed in the first place. In other words, it is important to put this case in context, by examining the record to determine the "wrong" perceived by the 3,213 residents who signed the Rezone Petition. K.S.A. 12-3013.

In January 2021, the city council adopted a Comprehensive Plan (Plan). It was properly brought forward for a vote from the city planning commission, replacing the 2007 plan. Such plans are authorized under state statute and "constitute the basis or guide for public action to insure a coordinated and harmonious development or redevelopment which will best promote the health, safety, morals, order, convenience, prosperity and general welfare as well as wise and efficient expenditure of public funds." K.S.A. 12-747(c).

The Plan reveals that the planning process for its adoption began in 2019 and was arrived at through feedback from residents, property owners, business owners, and city leaders. Although PV United disputes that the process had "legitimate" citizen input, it made no argument regarding the validity of the Plan to the district court in writing or as

part of either hearing. Issues not raised before the district court cannot be raised on appeal. See *In re N.E.*, 316 Kan. 391, 407, 516 P.3d 586 (2022).

The Plan listed, as part of its vision, creating strong neighborhoods by "[diversifying] the size, type, and price point of the housing portfolio in Prairie Village." It identified a demand for alternative and lower cost housing. One such alternative suggested to meet this demand was "Accessory Dwelling Units" or ADUs. These were further defined as "'granny flats', 'mother-in-law suites', etc." The Plan provided a detailed discussion of the benefits and draw backs of such units and suggested that implementation required a "nuanced consideration to preserve the unique physical characteristics of Prairie Village neighborhoods." The Plan recommended that the City develop a Comprehensive Housing Strategy and encouraged City staff to explore the "[p]rovision of accessory dwelling units as a strategy for adding lower cost housing stock and potentially increasing the financial feasibility of housing preservation."

PV United claims in its brief that following the adoption of the Plan, the mayor appointed an ad hoc housing committee which recommended second dwellings be allowed in R-1 Single Family Residential Zones with citywide implementation for June 2023. It further asserts that the City did not consider this a rezoning. Therefore, presumably, it would need to define it specifically as a rezoning to prevent it from being allowed. However, PV United fails to cite to the record to support this statement and many other statements in its brief related to the process leading up to the petitions.

PV United seems to suggest a nefarious motive to the City's position that the plan for second dwellings in R-1 districts would not constitute a rezoning. In its brief it notes that after failing to ask for a legal opinion, the City Council "instead, claim[ed] that its proposed actions did not constitute rezoning." But such an interpretation is consistent with the general understanding of approved uses in zoning districts. If the City allowed these types of accessory dwelling units in R-1 districts, placing one there may require

building permits or perhaps special use permits based on the regulation adopted, but it would not be a rezoning. It would be a permitted use in the existing zoning district. A review of the Prairie Village Municipal Code reveals that some accessory buildings are now and have been allowed since at least 2018 as permitted uses in R-1 Single Family Residential Districts P.V.M.C. § 19.06.020. Even accessory living quarters have been allowed, with some restrictions. P.V.M.C. § 19.34.045.

This background, from PV United's perspective, was also outlined by counsel for PV United in oral argument before this court.

"What's going on here is a the city council had an idea that they wanted to destroy R-1, which is single family residential zoning which is 90% of the entire city and they wanted to destroy that by allowing everybody to put a rental what they call an accessory dwelling unit in the backyard of their house and they could do that without any rezoning, without any notice to neighbors, without any opportunity to be heard, and remarkably without even the consent of the owner of the properties saying 'that's what I want.' And so that was the idea, they were just trying to run roughshod over the citizens and the citizens said stop." Oral Argument, archived, October 16, 2024 Docket (afternoon).

A review of the record does not indicate whether the recommendation was ever codified, although the City indicates, also with no cite to the record, that the Rezone Petition was an attempt to preempt any action by the City Council to implement the suggestion.

ii. THE ORDINANCE PROPOSED

The Rezone Petition sought voter approval of "AN ORDINANCE REGARDING LIMITING REZONING THAT WOULD ALLOW ACCESSORY DWELLING UNITS OR OTHER DWELLINGS FOR MORE THAN ONE FAMILY TO RESIDE ON A LOT

IN A SINGLE FAMILY RESIDENTIAL ZONING DISTRICT" that included the following language:

"Section 1: The Code of the City of Prairie Village, Kansas shall have added Section 19.02.422 entitled 'Rezoning' stating: *Rezoning* means changing a lot from a more restrictive zone to a less restrictive zone, such as permitting two or more families living or dwelling on a lot in a currently single-family residential zone (R-1), or permitting three of [sic] more families living or dwelling on a lot in a currently two-family residential zone (R-2).

"Section 2: The Code of the City of Prairie Village, Kansas shall have added Section 19.52.006 entitled 'Rezoning By Governing Body', stating:

- a. The governing body and/or the planning commission can initiate rezoning in an R-1 zone district only one lot at a time and only with the written consent of all owner(s) of the lot.
- b. Rezoning initiated by the governing body and/or the planning commission for each lot must comply with all notice, opportunity to be heard, and protest rights of surrounding neighbors as set forth in Sections 19.52.015 through 19.52.045.
- c. Rezoning initiated by the governing body and/or the planning commission shall post a rezoning sign on each lot to be rezoned in the same manner as required [sic] Section 19.28.025 substituting 'rezoning application' for 'special use permit' on the sign.
- d. Under rezoning initiated by the governing body and/or the planning commission, the planning commission and the governing body shall make findings of fact by clear and convincing evidence of the same factors set forth in Section 19.52.030 as well as for the factors in Section 19.28.035 except that each of the factors shall be addressed in writing to justify rezoning."

iii. DETERMINING WHETHER THE PROPOSED ORDINANCE IS
ADMINISTRATIVE AND PROHIBITED OR LEGISLATIVE AND ALLOWED

With that background, we turn to the nature of the Rezone Petition. Whether the Rezone Petition met the procedural requirements of K.S.A. 25-3601 et seq. is not in

dispute. The district court found the Rezone Petition invalid because of its subject-matter, specifically because K.S.A. 12-3013(e)(1) does not allow initiative petitions to propose adopting "[a]dministrative ordinances." PV United challenges that ruling.

The Kansas Supreme Court has interpreted this legislative/administrative limitation to mean that an ordinance adopted through the initiative petition process must be "quite clearly and fully legislative and not principally executive or administrative." *McAlister*, 289 Kan. at 402. But this does not mean the proposed ordinance must be solely or purely legislative. Instead, a court must determine under the facts of each case whether the essential character of a proposed ordinance is legislative or administrative using the following guidelines:

- "1. An ordinance that makes new law is legislative; while an ordinance that executes an existing law is administrative. Permanency and generality are key features of a legislative ordinance.
 - "2. Acts that declare public purpose and provide ways and means to accomplish that purpose generally may be classified as legislative. Acts that deal with a small segment of an overall policy question generally are administrative.
 - "3. Decisions which require specialized training and experience in municipal government and intimate knowledge of the fiscal and other affairs of a city in order to make a rational choice may properly be characterized as administrative, even though they may also be said to involve the establishment of policy.
-
- "[4.] '[I]f the subject is one of statewide concern in which the legislature has delegated decision-making power, not to the local electors, but to the local council or board as the state's designated agent for local implementation of state policy, the action receives an 'administrative' characterization, [and] hence is outside the scope of the initiative and referendum.' [Citations omitted.]" 289 Kan. at 403-04.

No one guideline necessarily controls over the others, but the particular facts of a case can result in one guideline weighing so heavily toward a final decision that a

proposed ordinance is administrative in nature. Each guideline should be considered before the court reaches a final decision. 289 Kan. at 405. Again, because the facts are undisputed, the parties agree that this court's review is unlimited. 289 Kan. at 399. So although PV United points to what it believes are errors in the district court's reasoning, we are not bound by that reasoning, nor do we have a duty to address it at all.

iv. WE REVIEW AND APPLY THE MCALISTER FACTORS

We begin by analyzing the proposed rezoning ordinance under *McAlister* to determine whether it is administrative and prohibited or legislative and allowed. Whether it is poorly worded or achieves its desired purpose or just creates chaos, as the City argues, is not directly part of the analysis, although it may bear on some of the factors.

Guideline 1 - Does the Rezone Petition create new law or policy?

Under the first guideline, the proposed rezoning ordinance does not create new law.

While the proposed ordinance would technically result in new law if adopted, that is true of any ordinance proposed through the initiative petition process. See *Peterjohn*, 62 Kan. App. 2d at 762. So the fact that the proposed ordinance has provisions in it that are different from existing law, misses the point. Zoning ordinances cannot be considered in isolation but must be considered with the overall plan. *McAlister*, 289 Kan. at 414.

The City already has a comprehensive set of extensive zoning regulations, which include general procedures for proposed zoning changes. See P.V.M.C. §§ 19.52 et seq. Thus, a proposed ordinance that creates a definition of rezoning contrary to the common and universally used definition of the term and constrains the governing body's ability to initiate rezoning consistent with its overarching ordinances and Plan, would be directing

the execution of the city's existing laws, making it administrative. We share the district court's view that the restrictions that exist in the proposed ordinance serve as a "constructive bar" to the City's existing ability to execute its existing policies. This weighs in favor of considering the proposal administrative rather than legislative.

And this is consistent with what we find to be similar to controlling and persuasive Kansas cases.

In *City of Lawrence v. McArdle*, 214 Kan. 862, 863, 522 P.2d 420 (1974), the electors submitted a proposed ordinance seeking the "equalization of firemen's salaries with those of policemen" within the same pay classification. The *McArdle* court said a comprehensive plan or policy regarding the personnel administration of city government, which also considered the city's financial resources, tax potential, and a unified budget, would be legislative. In contrast, the court said an ordinance to equalize only firemen's pay, which dealt with a segregated portion of the city's personnel, was administrative in nature. See 214 Kan. at 866, 871-72. Likewise, here, the electors seek to address only one issue—the treatment of accessory buildings in R-1 zoning districts—in a much larger legislative scheme.

In *McAlister*, 289 Kan. at 413-14, the Supreme Court found that a petition that sought to restrict rezoning in Fairway and prohibit it from rezoning residential property for certain purposes, was not a new law, but rather pertained to "a segment of the City's existing development plans and ordinances and would prevent the City's execution of its existing law," making it administrative in character.

Similarly, in *City of Wichita v. Fitzgerald*, 22 Kan. App. 2d 428, 434, 916 P.2d 1301 (1996), a panel of this court held that the fact that the proposed ordinance would repeal several existing zoning ordinances was sufficient to find that the ordinance proposed was administrative. Although the ordinance in the Rezone Petition does not

expressly repeal any existing ordinances, according to the declaration of Chris Brewster, it is inconsistent and in conflict with many other provisions of the existing zoning code, as well as internally inconsistent and with poorly defined terms.

The *City of Wichita v. Fitzgerald* case similarly distinguished zoning changes specific to particular classifications to changes to a comprehensive plan.

"Thus, where a comprehensive zoning ordinance has been passed and the power to change certain zoning or grant exemptions has been committed to the mayor or city council, the zoning of particular property is an administrative matter. Conversely, the passing of the general comprehensive zoning plan is typically legislative. [Citations omitted.]" 22 Kan. App. 2d at 434.

Guideline 2 - Does the Rezone Petition declare a public purpose and provide a means to accomplish that purpose?

Under the second guideline, PV United suggests this court cannot exercise meaningful appellate review because the district court's ruling was conclusory. However, we exercise unlimited review. Given that the facts are undisputed, we are perfectly capable of determining the application of Guideline 2.

PV United is correct that the Rezone Petition states the public purpose of the proposed ordinance was "to allow owners of land to have control over the zoning of their land, and those nearby to have notice, opportunity to be heard, and protest if something is done which may impact their quiet enjoyment of their single family dwelling." But the proposed ordinance is not legislative simply because it states a public purpose. First, "quiet enjoyment" is but one feature of property ownership, meaning the proposed purpose only affects a small segment of the overall policy of protecting the rights of property owners.

Moreover, the Rezone Petition indicates that it is an ordinance that would limit "rezoning that would allow accessory dwelling units or other dwellings for more than one family to reside on a lot in a single family residential zoning district." Yet the proposed ordinance does not once mention accessory dwellings and where they are permitted or prohibited. In other words, the title of the ordinance, and its stated public purpose of allowing the quiet enjoyment of land by not allowing accessory dwelling units, does not provide or explain a means of accomplishing its stated public purpose.

This guideline weighs in favor of finding the proposed ordinance is administrative.

Guideline 3 - Does the Rezone Petition intrude into areas of government requiring specialized training and expertise?

Under the third guideline, the focus of the Rezone Petition was to limit the ability of the City to allow accessory dwelling units on R-1 properties without the approval of landowners or neighboring landowners, but it goes much farther. As PV United points out, the decision to rezone residential properties requires determining the "impacts of increased density" on the City, which includes "more street parking, stormwater runoff, trash, traffic, noise, utility burdens, school overcrowding, and increased rental housing increasing a transitory population." These are all examples of considerations that require specialized knowledge of municipal government, intimate knowledge of a city's fiscal responsibilities to all its citizens and its ability to meet those responsibilities, city engineering recommendations and impact, and the impact on numerous non-city services and social concerns. This alone establishes the need for specialized training.

Residents directly impacted by any zoning change certainly have legitimate concerns that must be taken into account by the city governing body, but so too do other related entities and the business community. A city must carefully weigh all of these. There is no better example of this than the requirements the Supreme Court outlined in

Golden v. City of Overland Park, 224 Kan. 591, 584 P.2d 130 (1978). When the decision goes from the broad development of a zoning scheme or comprehensive plan to the rezoning urged on specific tracts of land or the requirement for rezoning in particular zones, the governing body must weigh the evidence, balance the equities, apply the rules, consult the professionally prepared and adopted Plan, and resolve specific issues. It must consider the character of the property, the zoning and uses of property nearby, the suitability of the property for the restriction uses, the extent to which removal of the restriction would be detrimental to nearby properties, how long the property has remained vacant, and the gain to the public compared to the hardship of the property owner. See 224 Kan. at 596-98.

The proposed ordinance severely limits "'rezoning'" as "only refer[ring] to a change from a more restrictive zone to less restrictive zones," and gives a nonexclusive example of the wrong it is attempting to correct. But the language is not limiting and would apply city wide to all types of rezoning, thereby usurping the City's ability to do what it is required to do and what it has the special knowledge and expertise to do.

As a panel of this court pointed out in *Peterjohn*, specialized considerations such as these might have contributed to the Kansas Legislature's decision to delegate and entrust zoning actions to the city councils under K.S.A. 12-741. 62 Kan. App. 2d at 767 (referring to the Historic Preservation Act, K.S.A. 75-2715).

We conclude that this guideline also weighs in favor of finding the proposed ordinance administrative in nature.

Guideline 4 - Does the Rezone Petition address matters of statewide concern?

The subject of an ordinance is of statewide concern if the

""[L]egislature has delegated decision-making power, not to the local electors, but to the local council or board as the state's designated agent for local implementation of state policy, the action receives an "administrative" characterization, [and] hence is outside the scope of the initiative and referendum."" *Rauh v. City of Hutchinson*, 223 Kan. 514, 519-20, 575 P.2d 517 (1978).

State law delegates the decision-making power to enact planning and zoning laws to cities. K.S.A. 12-741. The planning and zoning power of a municipality is derived solely from the grant contained in K.S.A. 12-741 et seq. *Genesis Health Club, Inc. v. City of Wichita*, 285 Kan. 1021, 1032, 181 P.3d 549 (2008). The term "zoning" is defined broadly as the regulation or restriction of the location and uses of buildings and uses of land. K.S.A. 12-742(a)(10). "[Z]oning regulations" are defined as the "lawfully adopted zoning ordinances of a city." K.S.A. 12-742(a)(11).

Because the ordinance restricted the City's ability to rezone land, it impedes on the authority given by the Legislature to the City.

For example, K.S.A. 12-757(c)(2) legislatively gives a City the ability to rezone a property from a less restrictive to a more restrictive zoning classification when 10 or more contiguous or noncontiguous lots, tracts, or parcels of the same zoning classification having five or more owners of record submit an application. It also provides limits related to the protest petition process in such a situation. K.S.A. 12-757(c). Under the proposed ordinance, rezoning would be defined to only include changing a lot from a more restrictive zone to a less restrictive zone, requires it be only one lot at a time and only with the written consent of the owner.

In another example, K.S.A. 12-757(a) provides that any rezoning request that is in "accordance with the land use plan or the land use element of a comprehensive plan, shall be presumed to be reasonable." The proposed ordinance removes any consideration of the comprehensive plan.

Accordingly, the fourth guideline also weighs toward the proposed ordinance being administrative.

In sum, we agree with the decision of the district court and find that the ordinance proposed in the Rezone Petition is predominantly administrative and therefore cannot be adopted through the initiative process. K.S.A. 12-3013(e)(1).

v. THE CITY'S CROSS-APPEAL BASED ON THE VERIFICATION OF THE SIGNATURES

Although we do not need to address this issue given our decision that the Rezone Petition is not valid, we briefly note that the City's notice of cross-appeal only references the district court's ruling that "the 'Abandonment Petition' was appropriate for placement on the ballot." It is a fundamental proposition of Kansas appellate procedure that appellate courts only obtain jurisdiction over rulings identified in the notice of appeal. *Associated Wholesale Grocers, Inc. v. Americold Corporation*, 293 Kan. 633, 637, 270 P.3d 1074 (2011); *In re Adoption of E.D.*, 57 Kan. App. 2d 500, 505, 453 P.3d 1202 (2019). Even though this court construes this requirement liberally and generally avoids dismissing an appellant's case for lack of jurisdiction based on technical violations of notice of appeal filing requirements, the City took care to specifically limit its notice of cross-appeal. Thus, we conclude, even though our other rulings make the City's claim irrelevant, we note that we lack jurisdiction to review this aspect of the City's cross-appeal.

B. *The Abandon Petition*

The City cross-appeals the district court's conclusion that the Abandon Petition substantially complied with the procedural requirements as to the form of the question. They argue that substantial compliance is insufficient and that K.S.A. 25-620 required the

Abandon Petition to include the phrase, "Shall the following be adopted?" preceding the proposition that voters would be asked to approve. We disagree.

The Abandon Petition stated as follows:

"PETITION FOR AN ELECTION OF THE CITY OF PRAIRIE VILLAGE, KANSAS
TO VOTE ON THE ABANDONMENT OF THE MAYOR-COUNCIL FORM OF
GOVERNMENT

"TO THE GOVERNING BODY OF THE CITY OF PRAIRIE VILLAGE, KANSAS:

"The City of Prairie Village shall submit the following question for ballot:

"Shall the City of Prairie Village, Kansas abandon the mayor-council form of
government?"

The county counselor's advisory opinion disapproved of the Abandon Petition because it did not include the phrase: "Shall the following be adopted?" and the City asserts it was invalid for the same reason. We note that we give no deference to the county counselor's opinion. It is not binding on our determination.

A close examination of the statutes at issue resolves this question.

Whenever the law provides for an election on the adoption or the abandonment of any form of city government, the petition requesting the submission of the question must conform with the requirements of article 36 of chapter 25 of the Kansas Statutes Annotated. K.S.A. 12-184(c). Under K.S.A. 2024 Supp. 25-3602(b)(1), the *petition* must "[s]tate the question which petitioners seek to bring to an election in the form of a question as it should appear upon the ballot in accordance with the requirements of K.S.A. 25-620 and 25-3601, and amendments thereto."

K.S.A. 25-620 states: "On the *ballot* there shall be printed the proposition or question to be voted on. Each proposition or question shall be preceded by the words, 'Shall the following be adopted?'" (Emphasis added.) This statute applies to the ballot, not the petition.

The only logical way to reconcile these statutes is by their clear and unambiguous language that the ballot must include the phrase, "Shall the following be adopted?" and the petition only needs to include the "proposition or question to be voted on."

Even so, if the petition states the title, number, and exact language of the ordinance and the title of the petition states, "'Shall the following ordinance . . . become effective?'" the form of the question is presumed to be valid. K.S.A. 25-3601(c). Because it is a rebuttable presumption, we must conclude that other language may also be acceptable. So even if these two statutes were not distinguishable by the document they target, the petition is still subject to a review for substantial compliance. See *Peterjohn*, 62 Kan. App. 2d at 756-57. The City has the burden of proving the language used is invalid. K.S.A. 25-3601(b).

To determine substantial compliance, we examine whether the petition includes the essential matters necessary to assure the objective of the statute has been met. See *Stueckemann v. City of Basehor*, 301 Kan. 718, Syl. ¶ 1, 348 P.3d 526 (2015).

The City's sole argument regarding substantial compliance is that in *Peterjohn* the distinction was between the statutory language, "'Shall the following be adopted?'" and the actual language, "'Shall the following ordinance . . . become effective?'" 62 Kan. App. 2d at 757. The City summarily concludes that in this case, "the required question was missing altogether." It provides no analysis of the sufficiency of the question that did appear on the petition, "Shall the City of Prairie Village, Kansas abandon the mayor-council form of government?" Accordingly, it has failed to meet its burden of proof.

The clear purpose of the statute is to make sure those signing the petition understand what they are signing. We can find no substantial difference between, "Shall the following ordinance become effective?" and, "Shall the City of Prairie Village, Kansas abandon the mayor-council form of government?" It contains all the information the signer needs.

We affirm the district court's finding that the Abandon Petition was in proper form to be placed on the ballot.

C. *The Adopt Petition*

PV United next challenges the district court's decision finding the Adopt Petition was not eligible to be submitted to the ballot. The district court concluded that the Adopt Petition "complied with the basics of K.S.A. 25-3601 and K.S.A. 12-184, however its failure to fully comply with K.S.A. 12-1039(b) and (c) is what prevents the Petition from being put forth before the voters." In other words, the court (1) found the form of the question substantially complied with the procedural requirements for ballot petitions, but (2) disapproved substantive aspects of the proposed changes, particularly that the Adopt Petition failed to establish the membership and terms of office of the new governing body and attempted to adopt a new form of government and a new city council at the same time. PV United's challenge concerns only the substantive portion of the court's decision.

i. THE GENERAL PROCEDURE FOR A CITIZEN INITIATED ELECTION

As it applies here, K.S.A. 25-3601 requires that any petition for a city election be submitted to the county counselor for an advisory opinion "as to the legality of the form of the question contained on the petition." K.S.A. 25-3601(a). Although a necessary step, the petition can still be circulated for signatures or filed with the county election officer "prior to obtaining the advisory opinion required by this subsection." K.S.A. 25-3601(a).

A favorable advisory opinion creates "a rebuttable presumption that the form of any question . . . complies with the requirements of this act," while an unfavorable advisory opinion must "state specific grounds to support such determination." K.S.A. 25-3601(a).

"When any other statute imposes specific requirements which are different from the requirements imposed by K.S.A. 25-3601 et seq., and amendments thereto, *the provisions of the specific statute shall control.*" (Emphasis added.) K.S.A. 25-3601(d). In addition, "[e]ach petition shall consist of one or more documents pertaining to a single issue or proposition under one distinctive title." K.S.A. 2024 Supp. 25-3602(a).

ii. THE SPECIFIC REQUIREMENTS FOR A PETITION ADOPTING A NEW FORM OF GOVERNMENT

There are two statutes with specific requirements that apply to the Adopt Petition: K.S.A. 12-184 et seq. and K.S.A. 12-1039 et seq.

The statutory authority for a petition proposing a ballot question on the adoption of any form of city government is K.S.A. 12-184. One of those forms of government is the mayor-council-manager form of government that PV United seeks. K.S.A. 12-184b(a)(4).

K.S.A. 12-1039(a) allows any city to adopt the mayor-council-manager form of government "in the manner herein provided." A petition proposing a ballot question on the adoption of any manager form of government:

"[S]hall be headed 'Petition for an election of the city of _____, Kansas, to vote on the adoption of the _____ (commission-manager, mayor-council manager or council manager) form of government.' and shall be addressed to the governing body of the city, and be filed with the election officer of the county in which the city is located." K.S.A. 12-1039(a).

This statute further provides that a petition proposing the adoption of a manager form of government "shall establish the membership and terms of office of the governing body." K.S.A. 12-1039(b).

Finally, "[i]f a majority of the votes cast shall be in favor of adopting the . . . mayor-council manager . . . plan of government, then at the next regular city election the governing body of the city shall be elected as provided in the resolution or petition." K.S.A. 12-1039(c).

iii. THE TEXT OF THE ADOPT PETITION

Shall the City of Prairie Village, Kansas, adopt the mayor-council-manager form of government and become a city operating under such form of government?

Pursuant to K.S.A. 12-1039(b), the membership of the Prairie Village City Council under the new mayor-council-manager form of government shall be one member from each of the six wards plus an at large mayor, all with staggered terms as follows:

"Only the 2023 elected City Council member from each ward shall continue to serve in the new City Council along with the currently elected at large Mayor. Those 2023 elected City Council members from Wards 1, 2, and 3 shall serve four year terms, while those 2023 elected City Council members from Wards 4, 5, and 6 as well as the current at large Mayor shall serve two year terms. Thereafter, all wards will elect just one member to the City Council to serve four year terms."

iv. THE DEFICIENCIES IN THE ADOPT PETITION

a. *Failure to set out the mayor's term of office as required by K.S.A. 12-1039(b)*

The Adopt Petition sets out the membership and terms of office of all the members of the governing body, except the mayor. It fails to state what the mayor's term of office will be in the same manner it does other councilmembers. PV United does not contest the fact that the Adopt Petition omits the mayor's term, instead it asserts that existing laws would fill in that gap in the petition. See Prairie Village Municipal Code § 6-106(a) (setting mayor's term of office at four years). PV United asserts the statute only requires a petition to state the terms of office for the "first governing body," not "in perpetuity" for "successive governing bodies." They correctly point out the new governing body would still have the power to change the mayor's term of office by ordinance. See K.S.A. 12-184b(c)(2); K.S.A. 12-1040(a). This is basically a "no harm, no foul" approach.

We recognize along with the *Peterjohn* panel, that courts should exercise extreme caution when rejecting citizens' initiative or referendum petitions on mere technicalities. 62 Kan. App. 2d at 756. And if this were the only problem with the Adopt Petition we may be tempted to overlook it. But we need not make that determination, because it is the related issues of the complete restructuring of the duties of the council and mayor without outlining those changes in the Adopt Petition, and the implications of K.S.A. 12-1039(c) that moves beyond the realm of technicalities.

b. *Addressing more than one issue is prohibited by K.S.A. 2024 Supp. 25-3602(a).*

Under K.S.A. 2024 Supp. 25-3602(a): "Each petition shall consist of one or more documents pertaining to a single issue or proposition under one distinctive title." Although the question posed on the Adopt Petition is whether the City should adopt the

mayor-council-manager form of government, the proposed ordinance does much more than that. And it does so without advising the potential signatories of the extent of changes over and above the change in the form of government.

The opening sentence of the Adopt Petition described the "Prairie Village City Council under the new mayor-council-manager form of government" as "one member from each of the six wards *plus an at large mayor*." (Emphasis added.) Under Kansas law, the mayor is not a member of the city council but is "considered part of the city governing body for the purpose of voting on the passage of a charter ordinance." K.S.A. 12-104; see also P.V.M.C. § 1-201 ("The governing body shall consist of a mayor and city council to be elected as set out in chapter 6 of this Code."). Moreover, in Prairie Village, the mayor currently has veto powers over "any ordinance passed by the council," except "with respect to ordinances on which he or she casts the deciding vote and appropriation ordinances." P.V.M.C. § 1-905. But based on the plain language of the Adopt Petition, the mayor would now be a member of the city council, presumably with powers to vote as an equal member of the council.

There are also existing inconsistent or conflicting ordinances establishing the form of government, membership of the governing body, terms of office, and how the governing body conducts its business. See, e.g., P.V.M.C. § 1-201 ("The governing body shall consist of a mayor and city council to be elected as set out in chapter 6 of this Code."); P.V.M.C. § 1-204 (requiring quorum of eight councilmembers "to do business" of the governing body); P.V.M.C. § 1-804(a) ("The council committee of the whole shall consist of the 12 members of the city council and the mayor."); P.V.M.C. § 1-905 (giving mayor veto powers); P.V.M.C. § 6-106(a) (setting four-year terms of office for all city officials elected after November 6, 2019). All of these ordinances would need to be amended or repealed and replaced if the Adopt Petition were approved by a majority of the voters, so it is not unreasonable that the Legislature intended to require a petition

seeking to adopt a new form of government to address how existing ordinances will be affected by the transition and provide a solution.

That said, the petition does not need to anticipate every possible conflict with existing ordinances because other applicable statutes provide that "[a]ll existing ordinances and charter ordinances relating to a city's form of government . . . shall remain in effect until amended or repealed by such city" when a new form of government is adopted. K.S.A. 12-184a(b). Moreover, as PV United points out, the governing body retains the power to address any conflicts that arise by passing new ordinances. See K.S.A. 12-184b(c); K.S.A. 12-1039(a). But on these facts, some changes proposed by the Adopt Petition were either unnecessary to carry out the proposition to adopt a new form of government or unclear, particularly those relating to the mayor's role in the governing body. These changes would need to be implemented by amending or repealing ordinances beyond the scope of the proposition to adopt a new form of government.

In sum, K.S.A. 12-1039(b) requires a petition seeking a proposition to adopt a new form of government to establish basic requirements—like the membership and terms of office for all members of the governing body—to be valid. But the statute does not allow such a petition to propose changes to the structure of the governing body or the powers of its members without clearly establishing in the petition how existing ordinances must be changed.

c. The proposed ordinance conflicts with K.S.A. 12-1039(c).

Based on its language, it was clear the Adopt Petition ordinance was to be on the November 2023 ballot. Again, some background is necessary to gain context to this, the most serious problem with the Adopt Petition.

Prairie Village has 12 council members, 6 of those positions were up for election in 2023. The Adopt Petition provides that the form of government should be changed and "[o]nly the 2023 elected City Council member from each ward shall continue to serve in the new City Council." (Emphasis added.) In other words, the Adopt Petition changed the form of government *and* elected the new city council, apparently removing the remaining six council members, elected to a four-year term in 2021, from office. So this did not just change the form of government, it elected that new government.

This is contrary to the unambiguous and plain language of K.S.A. 12-1039.

The statute has three parts. Subsection (a) enables a citizen petition to change the form of government to a mayor-council-manager system, requires it be put before the voters at a city primary or general election, and sets out the general form of the ballot question. Subsection (b) outlines that it must establish the membership and terms of office of the governing body. And finally, Subsection (c) states that "[i]f a majority of the votes cast shall be in favor of adopting the [mayor-council-manager] plan of government, then at the next regular city election the governing body of the city shall be elected as provided in the resolution or petition."

It is clear. The governing body is not selected at the same time as the ordinance changing the form of government. Section (c) allows the electorate to have time to adjust to the change in government, including any necessary or desired collateral ordinance changes and for candidates to announce their candidacy for the new form of government.

PV United asserts the "effective date" of the new form of government happens upon the certification of the election and Kansas law does not prohibit a petition from specifying that council members elected at the November 2023 election would remain in their positions under the new form of government. We do not find this argument persuasive in light of the plain and unambiguous language of the statute.

Although not directly applicable to the Adopt Petition, other statutes provide some guidance on how a petition must handle the transition to a different form of government. For instance, K.S.A. 12-1041 states when voters approve a proposition to abandon any of the manager forms of government, "the city shall operate under the *alternative form of government* established in the . . . petition." (Emphasis added.) In other words, a petition to abandon a manager form of government necessarily must establish an alternative form of government. Similarly, K.S.A. 12-10a01 states when voters approve a proposition to adopt a modified mayor-council form of government,

"then at the next regular city election the mayor and members of the council hereinafter provided for as constituting the governing body of the city shall be elected as provided herein; and upon their election and qualification the rights, powers and duties of the commissioners or mayor and members of the council of such city shall cease and terminate."

Granted, although these statutes give some guidance as to the legislatively mandated process to effectuate a change in the form of government, we recognize they apply to different circumstances.

Even so, an election on a proposition to adopt a new form of government is considered a "[q]uestion submitted election" under Kansas law. K.S.A. 25-2104(a) ("Question submitted election" means any election at which a special question is to be voted on by the electors of the state or a part of them."). This differs from a "[c]ity election." K.S.A. 25-2103 ("City election" means the election of such city officers as are provided by law to be elected."). This distinction matters because a question submitted election on whether to adopt a new form of government can occur "at any primary or general election" under K.S.A. 12-1039, while K.S.A. 12-1039(c) requires the members of the governing body to be elected at "the next regular city election." By definition, "the next regular city election" must be a general election because members of the governing body are not elected at a primary election.

Thus, the Adopt Petition violated Kansas law by purporting to have voters approve adopting a new form of government *and* electing the members of the governing body under that new form of government at the same election. The plain language of the statute requires the members of the governing body to be elected at the next regular city election following the approval of a proposition adopting a new form of government.

For these reasons, the district court did not err in concluding that the Adopt Petition was invalid to be included on the November 2023 ballot.

v. THE CITY'S CROSS-APPEAL ON THE FORM OF THE QUESTION IN THE ADOPT PETITION

The City also argues on cross-appeal that the district court erred in concluding the form of the question on the Adopt Petition substantially complied with the procedural requirements. Because the City failed to include this in its notice of appeal, we lack jurisdiction to consider this argument.

It is a fundamental proposition of Kansas appellate procedure that appellate courts only obtain jurisdiction over rulings identified in the notice of appeal. *Associated Wholesale Grocers, Inc.*, 293 Kan. at 637; *In re Adoption of E.D.*, 57 Kan. App. 2d at 505. Even though this court construes this requirement liberally and should avoid dismissing an appellant's case for lack of jurisdiction based on technical violations of notice of appeal filing requirements, the City took care to specifically limit its notice of cross-appeal. Although the City combines discussion of this issue with its identical challenge based on the Abandon Petition, the notice of cross-appeal only references the district court's ruling that "the 'Abandonment Petition' was appropriate for placement on the ballot."

In sum, we affirm the district court's opinion on each issue, with the exception of the failure to remove Sharp as an individual and representative defendant. We reverse that decision and order Sharp removed as a defendant.

Affirmed in part and reversed in part.

IN THE SUPREME COURT OF THE STATE OF KANSAS

ORDER

The court denies the petitions for review filed in the following cases and notes any response and reply.

No. 124,959, *State of Kansas v. Samuel Ross Seck*

No. 126,078, *State of Kansas v. Maurice Antonio Hall*

No. 126,238, *State of Kansas v. Levi William Kemp*

No. 126,411, *Curtis Rodina v. Alberto Castaneda, D.D.S.*

No. 126,469, *State of Kansas v. Carlos Henry Mendez*

No. 126,521, *Citizen's Bank, N.A. v. Gregory Gaskins and Darlene Gaskins*

No. 126,679, *State of Kansas v. Eric D. Lipp*

No. 126,881, *City of Prairie Village, Kansas, a Municipal Corporation v. PV
United, Inc., and Rex Sharp*

No. 126,891, *Howard Ray Pruitt v. State of Kansas*

No. 127,006, *State of Kansas v. Kaylee Michelle Hogue*

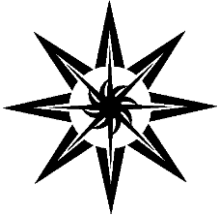
Dated this 27th day of June 2025.

FOR THE COURT



MARLA LUCKERT
Chief Justice

Wilson, J., not participating.



Noise Ordinance Discussion

BACKGROUND

At their July 7 Council meeting, the City Council directed staff to investigate opportunities to address project nuisances through enhanced fees, enforcement and fines. This staff report outlines current options related to construction noise and is seeking direction.

Construction Noise Hours

Recently, there have been increased complaints about construction noise outside of the noise ordinance allowed times. Our current noise ordinance which was updated in 2020 permits the following:

Summer Construction Hours (May 15 - September 15)

- Monday through Friday (excluding Federal holidays): 7:00 a.m. until 8:00 p.m.
- Saturday and Sunday (and Federal holidays): 8:00 a.m. until 8:00 p.m.

Non-Summer Construction Hours (September 16 - May 14)

- Monday through Sunday: 8:00 a.m. until 8:00 p.m.

We looked at the noise ordinances in other cities, the majority of which permit construction noise beginning between 7 a.m. and 8 a.m. and usually ending by 9 p.m. or 10 p.m. The exact hours for each of the cities is attached. It appears Prairie Village's times are still in line with other cities, and more restrictive than many. Several are more restrictive, not allowing work on Sundays. Some issues with shortening construction hours or removing days could include unintended consequences of extension of the overall construction timeline and preventing homeowners from doing their own work on a weekend day.

The majority of complaints City staff receives regarding the noise ordinance are regarding contractors starting work before 7 a.m. When this happens, the resident should contact the Police Department at the non-emergency number to report the issue (913-642-6868), as we cannot issue a citation or warning without evidence of a violation.

Beginning in 2020, City staff added the permitted construction hours directly to building permit. We also communicate to all contractors when they receive their building permit that they must abide by the permitted construction hours.

Construction Noise Enforcement

Since the July 7 Council meeting, the Police and Codes Departments have been providing enhanced enforcement on the issue.

The Police Department's standard procedure for non-public safety-related ordinance violations has been to educate and warn offenders. This practice ensures consistency and fairness, and it establishes the necessary foundation to ensure any subsequent citations are upheld in court.

In direct response to feedback from the last council meeting and further concerns from residents and Council, the Department has implemented a more stringent, proactive approach beginning today. Our goal is to resolve resident complaints more rapidly while continuing to meet our legal obligations. The following actions have been completed:

1. Formal Written Warning: The Codes Department has sent a formal email to all current new single family home permit holders, advising them of the ordinance, resident concerns, and the new enforcement posture. This email serves as an official first warning.
2. Information Sharing: The PD has been provided a complete list of the construction sites that received this official warning.
3. Directive for Immediate Citation: Patrol supervisors have been directed to have officers issue citations for any noise ordinance violations at these specified locations. Because a formal warning has already been issued to the permit holder, a verbal on-site warning is no longer the required first step.

This new protocol enables officers to provide immediate resolution for residents. We are confident that this process is both responsive to community concerns and legally sound.

Since this protocol began, there seems to have been a decrease in noise complaints. From 1/1/2025 - 7/6/2025, there were 24 noise complaints of construction starting before allowable time. Of those complaints the officers issued warnings in 21. Since the enhanced enforcement beginning after 7/7/2025, there have been 4 noise complaints, of which 2 were issued verbal warnings. For perspective, there are over 900 active building permit applications YTD that could cause construction noise.

Construction Noise Violation Municipal Court Fines

Council also asked for additional information about fines. The penalty for 8-503 is not stated in that article; therefore, it would revert to the penalty section 11-603:

- First conviction not more than \$500
- Second conviction not more than \$1,000 (within one year of the first conviction)
- Third or subsequent not more than \$2,500 (within one year of the first conviction)

There are several other sections that could relate to noise (8-511 Noise Level or 11-219 Disturbing the Peace) but these sections either have undefined or lower fine levels.

OPTIONS FOR CONSIDERATION

Staff believe that generally these approaches are working. However if the City Council would like to amend the noise ordinance, staff is requesting direction for which idea to pursue. Some ideas include:

- Require separate construction hour signage to be posted at certain building sites (could include tear down/rebuilds, heavy renovations, etc). A fee for the cost of the sign could be added at permitting.
- In addition to or in place of the typical Court process, explore the idea of imposing a permit fee violation through the building permit process. This would need to be vetted with the City Attorney.

ATTACHMENTS

- Summary of other City's construction noise hours

PREPARED BY

Nickie Lee, Deputy City Administrator

Eric McCullough, Police Chief

Date: July 30, 2025

City	Permitted Hours for Construction Noise
Fairway	7 a.m. - 9 p.m. weekdays and 9 a.m. to 9 p.m. weekends and holidays
Leawood	7 a.m. - 9 p.m., no work on Sundays
Lenexa	7 a.m. - 7 p.m.
Mission	7 a.m. - 10 p.m. weekdays; 8 a.m. – 10 p.m. on Sundays
Mission Hills	8 a.m. - 8 p.m. weekdays, 8 a.m. - 6 p.m. Saturday; Not permitted on Sunday
Olathe	7 a.m. - 11 p.m.
Overland Park	7 a.m. – 10 p.m.
Prairie Village	7 a.m. - 8 p.m. weekdays; 8 a.m. - 8 p.m. on weekends from May 15 - September 15; 8 a.m. - 8 p.m. from September 16 - May 14
Roeland Park	7 a.m. - 9 p.m.
Shawnee	7 a.m. - 10 p.m. weekdays; 8 a.m. – 9 p.m. weekends; 6 a.m. start time June-August M-F
Westwood	7 a.m. to 9 p.m. on weekdays, 8 a.m. to 10 p.m. on weekends

Information as of July 29, 2025. Several of these cities have exceptions or variances to these hours but for simplicity's sake they are summarized above.

MAYOR'S ANNOUNCEMENTS
Monday, August 4, 2025

Planning Commission	08/05/2025	6:00 p.m.
Tree Board	08/06/2025	6:00 p.m.
Diversity Committee	08/12/2025	4:30 p.m.
City Council	08/18/2025	6:00 p.m.

=====

INFORMATIONAL ITEMS
August 4, 2025

1. Arts Council meeting minutes – May 14, 2025
2. JazzFest Committee meeting minutes – July 22, 2025
3. VillageFest Committee meeting minutes – July 24, 2025
4. August plan of action

Prairie Village Arts Council – Meeting Minutes

May 14, 2025

In attendance: Nickie, Bonnie, Bob, Maddie, Ian, Abby, Joanna, Laurel, Grant, Amy, Renee, Chi

5:38 Call to Order

Approval of Agenda – Ian made motion, Laurel second – unanimous approval

Public Participation – None

Consent Agenda – Ian made motion, Laurel second – unanimous approval

City Council Report from Ian

- Discussed and approved 2026 budget – Councilor brought up concerns about Arts Council providing complementary alcohol at events, did not impact approval. Council brought up concerns about non-elected officials serving as committee chairs – did not volunteer to join a committee, no other issues.
- New City Hall moving forward with space for art.
- June 2nd Meeting will include a council preview of design for new building – include 3D art space & natural light!

Current Year Financial Update by Nickie

- \$10k transfer from city complete – cash on hand was low prior to transfer
- Art of Photography entry fee was raised to \$37, but we didn't receive as many entries as last year.

Old Business

- Public Art Policy – discussed idea of proposing an Impact Fee for Commercial Developers with an option for Developers to put public art on their site in lieu of paying fee. Ian to introduce this to council in late 2025. Nickie to bring back to next meeting – how to tie into current Art Fund language.

New Business

- Kansas Arts Network membership – Amy made motion, all seconded – unanimous approval

Adjourn at 6:30

Prairie Village Jazz Fest 2025
Committee Meeting
Tuesday July 22, 2025, 5:30 p.m.
Multipurpose Room

Attendees

J.D. Kinney	Special Events Coordinator, Committee Chair
Elissa Andre	Marketing Chair
Mary Ann Watkins	Member at Large
Dave Hassett	Food and Beverage Chair
Amanda Hassett	VIP Hospitality Chair
Tyler Agniel	City Council Liaison
Will Fisher	Member at Large
John Wilinski	Backstage Chair
Mike Polich	Rented Infrastructure Chair
Jim Barnes	Stage and Tech Chair

Committee Chair's Report

No update

Talent

All professional musical acts are contracted and deposits have been paid

F&B

Ragusa's, Eat Schmidt, The Mad Greek, Marigolds and Polar Oasis, Hungry Hatch and Butterfluff have completed and signed contracts.

Queen of Acorns agreement pending.

KC Ice (new vendor) bid to supply ice has been approved

Beverage selection with Travis at Crawford Distributors scheduled for August.

Need to begin laying out proposed site map of the Harmon Playground Parking Lot for food trucks.

Stage/Technical

Jim Barnes has heard from multiple artists regarding any backline needs.

Jim to request invoice from SECT so checks can be issued for deposit.

JD to confirm piano.

Infrastructure

Tents, tables and chairs order through AAA Rental will be issued in this week.

Mike Polich to contact United Rentals – Olathe who is a supplier to Public Works to rent a utility vehicle to augment the one provided by Public Works for set-up and tear-down.

UHaul truck has been reserved.

Marketing

Lineup fans approved. 1500 to be ordered. May arrive in time for KU Kickoff August 8. Brooke Morehead to coordinate distribution through Bank of PV tailgate at the event.

Yard signs and stakes to be ordered. Creative pending final approval.
Elissa to design handbills and Village Voice layout using basic fan design.
JD to produce 40 handbills for Will and Mary Ann to distribute by July 29.
Park vinyls to be updated this week.
Mission Road banners to be put up second week of August.

Volunteers

Volunteers needed for the VIP tent requested from Claridge Court
Volunteer tshirts are ordered.
Joyce Hagen Mundy is sending requests for volunteer signups for admissions gates.
Dave Hassett to send requests for beverage tent

City Committees/Exhibitor Tents

KC Jazz Orchestra has requested a tent

The next JazzFest Committee meeting is scheduled for Tuesday August 26, 2025.
The meeting concluded at 6:25 p.m
Respectfully submitted: JD Kinney

VillageFest 2025

Meeting Information	
Location	Multipurpose Room - PV City Hall
Date & Time	Thursday, July 24, 2025 5:30PM - 6:15PM
Attendees	• Amber Fletcher • JD Kinney • Toby Fritz • Steve Meyer

Discussion Notes	
Pancake Breakfast	• Next year we will need to raise the price of the pancake breakfast to cover the increase from Chris Cakes. • Need more volunteers to work the pancake breakfast. • Consider moving the line for getting sausage and drinks so volunteers are not standing in the sun for hours. • Consider adding something to show where the line forms for payment.
Patriotic Program	•
Spirit Awards	•
KS National Guard History Museum and Display	• SGM Byers and JD talked about 2026. Unless they are deployed, they would like to return and recommend that we ask for multiple vehicles. JD will talk with him again in January.
History Display	• History display will probably be larger given it will be during the PV 75th Anniversary.

Vendors and Exhibitors	• We may want to expand the food offerings by the carnival ride area.
Live Entertainment	•
Pie Contest	• 42 submissions • Need more volunteers • Consider making the judging form digital to speed up the winner announcement. • Taking photos slows the process down, with more volunteers it could be fine.
Giveaways	•
Bike Parade	• There was some confusion over what time the parade started, but it has been cleared up for next year.
Infrastructure	•
Info Tent	• The most asked question was where is the bathroom. Consider making signage pointing to bathrooms.
Marketing	•

Next committee meeting is scheduled for the 4th Thursday of January 2026.

THE CITY OF PRAIRIE VILLAGE

STAR OF KANSAS

DATE: August 1, 2025

TO: Mayor Mikkelson
City Council

FROM: Wes Jordan 

SUBJECT: AUGUST PLAN OF ACTION

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

- Ballot Resolution - Wes/Alex (08/25)
- Sept/Oct Village Voice - Ashley (08/25)
- Back to School with a Firefighter - Meghan/PV Foundation (08/25)
- Crime Stats 6 Month Review - Chief (08/25)
- 2026 Budget - Jason (08/25)
 - Publish Budget
- State of the Arts - Nickie/Arts Council (08/25)
- Lancer Day - PD/Mayor (08/25)
- Ward Meeting Facilitation - Meghan/Ashley (08/25)
- End of Pool Season Wrap-up/Dog Swim - Suzanne/Meghan (08/25)
- PD National Night Out - Chief (08/25)
- Drone as a First Responder (DFR) - Chief (08/25)
- 10-year Meadowbrook Park Agreement Review - Wes (08/25)

In Progress

- 2026 Budget Process - Jason (07/25)
 - Mission Hills Budget - Chief
- KU Kickoff Permitting - Adam (07/25)
- JazzFest Planning - Meghan/JD (1/25)
- Annual CID Report - Jason (06/25)
- Construction Noise Ordinance Review - Nickie/Chief (07/25)
- Annual statutory maintenance program - Meghan (4/25)
- Newsletter printing and mailing RFP - Ashley (11/24)
- 2024 Building Code Review Process - Nickie (04/24)
- Safe Streets for All Grant/Citywide Traffic Study - Keith (01/24)
- Climate Action Plan, community phase - Meghan/Ashley (6/24)
- Subdivision Regulations Amendments/Easement Vacation - Nickie/Chris (04/22)
- 2026 Budget Process - Staff (06/25)

Completed

- Amend E-Bike/Scooter Ordinance - Chief/Alex (07/25)
- Additional Sustainability Items - Municipal Campus - Melissa/Keith (07/25)
- 2026 Budget Process - Jason (07/25)
 - Resolution to Exceed the Revenue Neutral Rate
- E-Bike/Scooter Regulation(s) Presentation - Chief (07/25)
- Crossing Guard Contract - Chief (07/25)
- Compost program kickoff and promotion - Meghan/Ashley (07/25)
- 2nd Quarter KORA Requests - Adam (07/25)
- 2nd Quarter Financial Report - Jason (07/25)
- VillageFest - Meghan/JD/Staff (07/25)

Ongoing

- City Hall/PD Project - Melissa/Staff (04/3/22)
- Disaster Recovery Plan - Dan/Tim (03/22)
- 75th Anniversary Preparation - Meghan/Staff (4/25)

On Hold

- Carbon Reduction/EV Charging Station - Wassmer Park - Keith (01/24) [Grant funding in question after Federal Executive Order]
- Research Federal Infrastructure/Job Act Grants - Jason/Nickie/Keith (12/22) [Grant funding in question after Federal Executive Order]

Tabled initiatives

- Review & Update the City Code/Ordinances
- Review & update City Policies