

City Hall will remain closed to the public due to the COVID-19 pandemic.
Members of the Governing Body will participate by video call-in only.
The public will be able to view the meeting at
<https://www.facebook.com/CityofPrairieVillage>

**COUNCIL MEETING AGENDA
CITY OF PRAIRIE VILLAGE
Council Chambers
Monday, May 18, 2020
6:00 PM**

- I. **CALL TO ORDER**
- II. **ROLL CALL**
- III. **PLEDGE OF ALLEGIANCE**
- IV. **APPROVAL OF THE AGENDA**
- V. **PRESENTATIONS**

Public Works Week proclamation

- VI. **PUBLIC PARTICIPATION**

All comments must be submitted in writing to cityclerk@pvkansas.com prior to 5 p.m. on May 18 to be shared at the meeting.

- VII. **CONSENT AGENDA**

All items listed below are considered to be routine by the Governing Body and will be enacted by one motion (Roll Call Vote). There will be no separate discussion of these items unless a Council member so requests, in which event the item will be removed from the Consent Agenda and considered in its normal sequence on the regular agenda.

By Staff

- 1. Approval of regular City Council meeting minutes - May 4, 2020

- VIII. **COMMITTEE REPORTS**
- IX. **MAYOR'S REPORT**
- X. **STAFF REPORTS**
- XI. **OLD BUSINESS**
- XII. **NEW BUSINESS**

- COU2020-17 Consider 2021-2025 CARS application
Keith Bredehoeft
- COU2020-18 Consider construction contract for the 2020 residential street
rehabilitation program
Keith Bredehoeft
- COU2020-19 Consider construction administration agreement with Trekk Design
Group for 2020 construction projects
Keith Bredehoeft
- COU2020-20 Consider Amendment #3 with McCownGordon for sanitary sewer
construction at the Public Works facility
Keith Bredehoeft
- COU2020-21 Consider Ordinance No. 2418 regulating public offenses within the
City of Prairie Village, Kansas, amending Chapter 11 (Public Offenses
& Traffic), Article 2 (Local Regulations) of the Code of the City of
Prairie Village to require the wearing of face coverings or masks
during the COVID-19 public health emergency and recovery
David Waters

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

Budget Update:

(1) CIP Discussion

(2) Annual road condition report

Keith Bredehoeft and Melissa Prenger

XIV. **ANNOUNCEMENTS**

XV. **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 385-4616, no later than 48 hours prior to the beginning of the meeting.

If you are unable to attend this meeting, comments may be received by e-mail at cityclerk@pvkansas.com

CITY OF PRAIRIE VILLAGE

Proclamation

National Public Works Week

May 17 through May 23, 2020

WHEREAS, public works professionals focus on infrastructure, facilities and services that are of vital importance to sustainable and resilient communities and to the public health, high quality of life and well-being of the people of the City of Prairie Village; and,

WHEREAS, these infrastructure, facilities and services could not be provided without the dedicated efforts of public works professionals, who are engineers, managers and employees at all levels of government and the private sector, who are responsible for rebuilding, improving and protecting our nation's transportation, water supply, water treatment and solid waste systems, public buildings, and other structures and facilities essential for our citizens; and,

WHEREAS, it is in the public interest for the citizens, civic leaders and children in the City of Prairie Village to gain knowledge of and to maintain a progressive interest and understanding of the importance of public works and public works programs in their respective communities; and,

WHEREAS, the year 2020 marks the 60th annual National Public Works Week sponsored by the American Public Works Association;

Now, therefore, I, Eric Mikkelson, Mayor of the City of Prairie Village, formally designate the week of

May 17 – 23, 2020 as National Public Works Week

in the City of Prairie Village, Kansas, and urge all citizens to join with representatives of the American Public Works Association and government agencies in activities, events and ceremonies designed to pay tribute to our public works professionals, engineers, managers and employees and to recognize the substantial contributions they make to protect our national health, safety, and quality of life.

Mayor Eric Mikkelson

Adam Geffert, City Clerk



**CITY COUNCIL
CITY OF PRAIRIE VILLAGE
MAY 4, 2020**

The City Council of Prairie Village, Kansas, met in regular session on Monday, May 4, 2020, at 6:00 p.m. Due to the COVID-19 pandemic, Councilmembers attended a virtual meeting via the Zoom software platform. Mayor Mikkelson presided.

ROLL CALL

Roll was called by the City Clerk with the following Council Members in attendance remotely via Zoom: Chad Herring, Jori Nelson, Inga Selders, Ron Nelson, Tucker Poling, Bonnie Limbird, Sheila Myers, Piper Reimer, Dan Runion, Courtney McFadden, Ian Graves and Terrence Gallagher. Staff present via Zoom: Tim Schwartzkopf, Chief of Police; Keith Bredehoeft, Director of Public Works; City Attorney David Waters, attorney with Lathrop & Gage; Wes Jordan, City Administrator; Jamie Robichaud, Deputy City Administrator; Lisa Santa Maria, Finance Director; Meghan Buum, Assistant City Administrator; Adam Geffert, City Clerk.

PLEDGE OF ALLEGIANCE

APPROVAL OF AGENDA

Mr. Nelson made a motion to approve the agenda for May 4, 2020. Ms. Nelson seconded the motion. A roll call vote was taken with the following votes cast: “aye”: Herring, J. Nelson, Selders, R. Nelson, Poling, Limbird, Myers, Reimer, Runion, McFadden, Graves, Gallagher. The motion passed 12-0.

PRESENTATIONS

Mayor Mikkelson read a proclamation designating the week of May 10 through May 16, 2020, as “National Police Week”. Additionally, he recognized Overland Park Police Officer Mike Mosher, who had been killed in the line of duty the previous day.

PUBLIC PARTICIPATION

The Mayor stated that a number of emails had been received regarding the proposed pool closure, and noted that the Council would discuss the item later in the meeting.

CONSENT AGENDA

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



1. Approval of regular City Council meeting minutes - April 20, 2020

Mr. Nelson made a motion to approve the consent agenda as presented. A roll call vote was taken with the following votes cast: “aye”: Herring, J. Nelson, Selders, R. Nelson, Poling, Limbird, Myers, Reimer, Runion, McFadden, Graves, Gallagher. The motion passed 12-0.

COMMITTEE REPORTS

- Mr. Runion stated that the Police Pension Committee met the prior week and recommended a funding level of \$850,000 for 2021, the same amount as the current year. The recommendation was based on conversations with an actuarial consultant.

MAYOR'S REPORT

- Mayor Mikkelson said the first quarter financial report showed that the City was in a good financial position. He added that upcoming quarters would likely be difficult due to the COVID-19 pandemic.
- Shawnee Mission East was ranked the #1 high school in Johnson County and #2 in the state of Kansas.
- Verbena, the new restaurant at Meadowbrook Park, was forced to delay its opening due to the pandemic. However, they have been able to keep staff on the payroll by having them prepare and deliver 50 meals a day to St. Luke's Hospital medical staff.
- The Mayor stated that the Johnson County Task Force to Reopen the County tabled its plan in favor of the Governor's statewide order. Johnson County will maintain its stay-at-home order an additional week, ending on May 11.
- The Mayor noted that Brighton Gardens, a long-term care facility in Prairie Village, had experienced a high number of Coronavirus infections and several deaths. He added that the Center for Disease Control (CDC) and County Health Department were monitoring the situation closely.
- The Mayor said that the Summer Salt Ice Cream Company would be opening soon in the former Mely's location at Corinth Square.

STAFF REPORTS

Mr. Jordan stated that the May Plan of Action was included in the meeting packet.

OLD BUSINESS

COU2020-11 Consider approval for citywide survey for compost and glass recycling program

Mrs. Robichaud said that a survey had been developed to give Prairie Village residents an opportunity to offer feedback on curbside glass recycling and compost collection. The



survey was similar to the one provided to pilot program participants, with some additional questions recommended by Councilmembers.

Mr. Herring asked whether residents living in neighborhoods that opted out of the City's trash collection contract would have the opportunity to take the survey and participate in the proposed glass and recycling program. Mrs. Robichaud said that it would be up to the Council to make that determination.

Mr. Gallagher shared concern that residents might be oversaturated with information due to the pandemic crisis, and asked what response rate would be considered a success. Mrs. Robichaud said that no specific number had been established, and that the survey was just a tool to obtain input from residents.

Ms. Reimer asked whether some of the survey language should be adjusted to be more applicable to residents who did not participate in the City's trash contract. Mr. Herring stated questions #3 and #9 could be changed in order to state that the amount paid per year for trash service was only applicable to residents that participated in the City's program. Ms. Reimer suggested using the phrase "many residents" or "most residents" to clarify the issue.

Mrs. Myers made a motion for Council to approve the survey with the suggested modifications to questions #3 and #9. The motion was seconded by Mr. Herring. A roll call vote was taken with the following votes cast: "aye": Herring, J. Nelson, Selders, R. Nelson, Poling, Limbird, Myers, Reimer, McFadden, Graves, Gallagher; "nay": Runion. The motion passed 11-1.

Ms. Nelson read a statement in which she recommended that the Council create an Ordinance requiring individuals to wear face coverings while inside businesses where the public is invited, based on recommendations from the CDC. The requirement would not apply to people walking, biking or jogging on City streets or at parks.

Mayor Mikkelson suggested that a discussion be held to determine whether the Council would like the proposed Ordinance to be included on a future formal agenda, since draft language had not yet been developed.

Ms. Nelson made a motion for Council to direct David Waters to create an Ordinance requiring masks or other face coverings in businesses where the public is invited. Mr. Poling seconded the motion.

Mr. Herring stated that he supported the motion, but that a decision should be made by Council at its next meeting so as not to delay a final vote. Mrs. McFadden shared concern that the Ordinance would be confusing since surrounding communities would not have similar restrictions in place.



Chief Schwartzkopf expressed reservations on the proposed Ordinance and said that he was concerned about the impact of available resources to enforce the Ordinance on a consistent basis. He also shared concerns about the department's reputation being at stake if officers are asked to take enforcement actions. Mr. Waters added that the Governor's order allowed cities to enact more restrictive policies, but that those actions could not affect essential functions.

After further discussion, Mr. Runion moved to amend the motion to direct David Waters to draft an Ordinance requiring the wearing of face coverings including masks to the maximum extent legally permissible. Mr. Nelson seconded.

A roll call vote on the motion to amend the motion was taken with the following votes cast: "aye": Herring, J. Nelson, R. Nelson, Poling, Limbird, Myers, Reimer, Runion, Graves, Gallagher; "nay": Selders, McFadden. The motion passed 10-2.

Ms. Nelson further clarified her motion, stating that Council would vote on the draft Ordinance at its May 18 meeting.

A roll call vote on the amended motion was taken with the following votes cast: "aye": Herring, J. Nelson, Selders, R. Nelson, Poling, Limbird, Myers, Reimer, Runion, Graves, Gallagher; "nay": McFadden. The motion passed 11-1.

NEW BUSINESS

COU2020-12 Consider construction contract for the 2020 CARS Program

Mr. Bredehoeft stated the contract was related to a street rehabilitation project on Roe Avenue, from 83rd Street to 91st Street. The project was selected for the County Assistance Road System (CARS) program, and as such, 50% of the funding would be provided by the County, and the remaining 50% from the City's CIP fund.

J. M. Fahey provided the lowest bid of the three that were received. Mr. Bredehoeft added that a \$50,000 change order authority had been included to cover any unforeseen expenses.

Mr. Poling made a motion to approve the contract as presented. Mr. Nelson seconded the motion. A roll call vote was taken with the following votes cast: "aye": Herring, J. Nelson, Selders, R. Nelson, Poling, Limbird, Myers, Reimer, Runion, McFadden, Graves, Gallagher. The motion passed 12-0.

COU2020-13 Consider approval of contract with Vance Brothers, Inc., for the 2020 Crack Seal/Micro Surfacing Program



Mr. Bredehoeft said that the program was implemented annually to maintain the City's roads, and noted that a map of the streets that would be repaired in 2020 was included in the meeting packet. Vance Brothers' bid was the lowest of the two bids received.

Mr. Nelson made a motion to approve the contract as presented. Mrs. Myers seconded the motion. A roll call vote was taken with the following votes cast: "aye": Herring, J. Nelson, Selders, R. Nelson, Poling, Limbird, Myers, Reimer, Runion, McFadden, Graves, Gallagher. The motion passed 12-0.

COU2020-14 Consider approval of an alternate concept for the 2020 VillageFest event

Ms. Buum stated that as a result of the COVID-19 pandemic and the associated restrictions on large gatherings, a traditional VillageFest event could not be held in 2020. The VillageFest Committee met and unanimously recommended moving forward with an alternate event that would include a drive-through component and other elements to be determined later.

Mr. Gallagher made a motion to approve the proposed concept as presented. Ms. Selders seconded the motion.

Mrs. Myers asked if the event would follow the same timeframe as other years, running between 9:00 a.m. and 1:00 p.m. on July 4. Ms. Buum said that it would likely be a shorter period of time, as "goodie bags" would be handed out to residents until there were none left. Ms. Reimer asked that individuals using other forms of transportation, such as walking and biking, be allowed to participate as well.

A roll call vote was taken with the following votes cast: "aye": Herring, J. Nelson, Selders, R. Nelson, Poling, Limbird, Myers, Reimer, Runion, McFadden, Graves, Gallagher. The motion passed 12-0.

COU2020-15 Consider closure of the pool for the 2020 swim season

Ms. Buum said that the recommendation to keep the pool closed was initially based on the recommendation made by the Johnson County Task Force on Reopening, which was tabled in favor of the Governor's plan. That plan allows pools to open in Phase 2, which would permit gatherings of up to 30 people. She noted that the Prairie Village pool generally had 30 employees working at the facility each day, which would prohibit the entry of guests in Phase 2. Phase 3, which limits gatherings to 90 people, would also be challenging, and Phase 4, during which gathering restrictions are lifted, would not begin until June 15 at the earliest.

Ms. Buum shared the primary reasons for the decision, which were based on public health considerations:



- Consideration of the safety of staff and residents. Seasonal staff is composed of minors under the age of 18.
- How to provide required lifeguard certification training while maintaining 6 feet of separation between guards.
- Enforcement of gathering limits, distancing requirements, and the high likelihood of conflict regarding gathering limits.
- Ability to accommodate social distancing practices among staff and patrons, as well as sanitary conditions in the concession area, break room, and locker rooms.
- Coordination with other Northeast Johnson County cities, and avoiding an increased burden on pools that attempt to stay open should other area pools close.
- To be fair to seasonal staff so they can seek other employment opportunities.

Mr. Gallagher asked if any lifeguards from previous seasons would be returning, and whether the pool might still be able to open for the second half of the season. Ms. Buum said that even though approximately 30 previously certified guards did plan to work at the pool again, the City required a yearly certification to ensure maximum safety, which they might be unable to obtain. Additionally, due to the number of guards that stop working in August, it would be difficult to keep operations going with a very limited staff.

Ms. Limbird asked if the City could restrict entry to Prairie Village residents only. Mr. Waters said that, legally, it could be done, but that complications could arise in scenarios such as when residents bring guests with them that do not live in the City.

Mr. Poling suggested that more time be given to consider options, and made a motion to table the item until the next meeting. Mrs. Myers seconded the motion. A roll call vote was taken with the following votes cast: “aye”: J. Nelson, Poling, Limbird, Myers, Graves, Gallagher; “nay”: Herring, Selders, R. Nelson, Reimer, Runion, McFadden. The motion tied 6-6, and failed on a tiebreaking vote by Mayor Mikkelson.

Mr. Nelson made a motion to close the pool complex for the 2020 season based on staff recommendation. Mr. Graves seconded the motion. A roll call vote was taken with the following votes cast: “aye”: Herring, J. Nelson, Selders, R. Nelson, Limbird, Reimer, Runion, McFadden, Graves, Gallagher; “nay”: Poling, Myers. The motion passed 10-2.

COU2020-16 Consider approval of Resolution No. 2020-02 extending the Mayor’s Declaration of a State of Local Emergency for Prairie Village, Kansas

The Mayor noted that the existing State of Local Emergency Declaration had previously been extended by Council to May 8, and would therefore expire later in the week. He added that there were three reasons that made extending the Declaration appropriate:

1. To quickly address any public health issues that arise on a local basis.



2. To provide a local enforcement remedy for violations.
3. To potentially aid the City in receiving emergency reimbursement funding.

Mr. Poling stated the Governor's orders were the law, and that there was not a necessity to declare a state of emergency at the local level. The Mayor said having the Declaration in place allowed for more immediate enforcement by local authorities if needed, as described in Chapter 1, Article 13 of the Municipal Code.

Mr. Herring noted that the Council had a responsibility to continue to review the item regularly, and proposed a 45-60 day extension rather than 90 days as stated in the draft Resolution.

Mrs. Myers made a motion to extend the Declaration of a State of Local Emergency an additional six weeks, to June 15, 2020. Mr. Nelson seconded the motion.

After further discussion, Mr. Herring made a motion to amend the motion, adding the following sentence to Section 2 of the Resolution: "Amendments to this order shall be subject to ratification by the City Council within seven days following the amendment." The motion to amend was seconded by Mr. Poling.

A roll call vote on the motion to amend the motion was taken with the following votes cast: "aye": Herring, J. Nelson, Selders, Poling, Limbird, Reimer, Runion, McFadden, Gallagher; "nay": R. Nelson, Myers, Graves. The motion passed 9-3.

A roll call vote on the original motion as amended was taken with the following votes cast: "aye": Herring, J. Nelson, Selders, R. Nelson, Poling, Limbird, Myers, Reimer, Runion, McFadden, Graves, Gallagher. The motion passed 12-0.

COUNCIL COMMITTEE OF THE WHOLE

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

ANNOUNCEMENTS

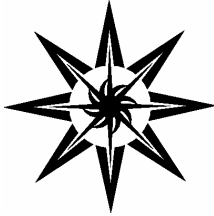
Announcements were included in the Council meeting packet.

ADJOURNMENT

Mrs. Myers made a made a motion to adjourn the meeting. A roll call vote was taken with the following votes cast: "aye": Herring, J. Nelson, Selders, R. Nelson, Poling, Limbird, Myers, Reimer, Runion, McFadden, Graves, Gallagher. The motion passed 12-0.

Mayor Mikkelson declared the meeting adjourned at 10:02 p.m.

Adam Geffert
City Clerk



PUBLIC WORKS DEPARTMENT

Council Meeting Date: May 18, 2020

COU2020-17

CONSIDER 2021-2025 CARS APPLICATION

RECOMMENDATION

Staff recommends the City Council approve the 2021-2025 County Assistance Road System (CARS) program.

BACKGROUND

In order to receive CARS funds, the City must annually submit an application containing a list of streets and the estimated costs. The following streets are recommended for the five-year CARS program, 2021-2025. The Public Works Department compiled the list of possible projects below. The work will include, where necessary, full depth pavement repair, curb and gutter replacement, sidewalk repair, new sidewalk, new ADA ramps, milling/overlaying the pavement or UBAS.

Program Year		Street Segment	From	To	CARS Eligible Costs	PV Cost
2021	1U	79 th Street	Roe	Lamar	\$388,000	\$194,000
	*	Mission Road	85 th Street	95 th Street	\$1,016,000 <i>w/ Leawood and JCWW</i>	\$112,250
2022	1	Nall Avenue	79 th Street	83 rd Street	\$1,290,000	\$645,000
	2	State Line Road	71 st Street	75 th Street	\$320,000 <i>w/ KCMO</i>	\$80,000
2023	1	Nall Avenue	67 th Street	75 th Street	\$2,393,000 <i>w/ OP</i>	\$744,150
2024	1	Mission Road	63 rd Street	67 th Terrace	\$730,000 <i>w/ Mission Hills</i>	\$240,900
	2	Nall Avenue	75 th Steet	79 th Street	\$750,000	\$375,000
	3	Roe Avenue	N City Limit	63 rd Street	\$424,964 <i>w/ Fairway and Mission</i>	\$5,914
2025	1U	75 th Street	State Line	Mission	\$761,250	\$380,810
	2U	Somerset	State Line	Reinhardt	\$686,667 <i>w/ Leawood</i>	\$257,500
	3U	Nall Avenue	63 rd Street	67 th Street	\$295,000 <i>w/ Mission</i>	\$73,750

**This project is for information only. We are completing the 2018 CARS project mill and overlay which was on hold to allow JCW to construct new sanitary main on Mission Road.*

Cities are generally guaranteed to have their first priority project funded but can have multiple projects approved if funds allow.

It should be noted that the City submits an application annually and can revise future year requests. The 2021 projects are the only projects that the City is committing to fund and construct. The costs include construction and construction administration. Design costs are not included, as the CARS program does not fund design.

FUNDING SOURCE

Funding will be programmed in the CIP.

ATTACHMENTS

Map of Project Locations

PREPARED BY

Melissa Prenger, Sr Project Manager

May 6, 2020



- 2021
- 2022
- 2023
- 2024
- 2025

2025 UBAS
Nall Ave, 63 to 67
With Mission

2024 Overlay
Roe Ave, Limits to 63
With Fairway

2024 Overlay
Mission Rd, 63 to 67
With Mission Hills

LEGEND OF SYMBOLS

- CITY LIMITS
- == STREETS
- 2024 Overlay
- Shopping Center
- City Buildings
- Fire Station

2023 Overlay and Signal
Nall Ave, 67 to 75
With OP

With OP

2024 Overlay
Nall Ave, 75 to 79

2021 UBAS
79TH, ROE TO LAMAR

2025 UBAS
75th, State Line to Mission

2022 Overlay
State Line, 71 to 75
With KCMO

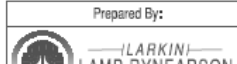
2025 UBAS
Somerset, State Line to Reinhardt
With Leawood

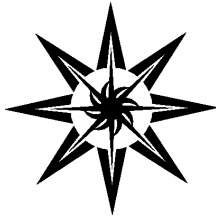
2022 Overlay
Nall Ave, 79 to 83

STREET INDEX

- 1900 STATE LINE
- 2000 CAMBRIDGE
- 2100 EATON
- 2200 SAGAMORE
- 2300 RAINBOW
- 2400 HIGH DRIVE
- 2500 BOOTH
- 2600 SPRINGFIELD
- 2700 BELINDER
- 3800 HOWE
- 3900 MISSION RD
- 4000 ALHAMBRA
- 4100 BUENA WSTA
- 4200 CATALINA
- 4300 DELMAR
- 4400 EL MONTE
- 4500 FONTANA
- 4600 GRANADA
- 4700 ROE
- 4800 LINDEN
- 4900 CEDAR
- 5000 BRIAR
- 5100 JUNIPER
- 5200 ROSEWOOD
- 5300 ASH
- 5400 BIRCH
- 5500 NALL
- 5600 MAPLE
- 5700 REEDS
- 5800 OUTLOOK
- 5900 WOODSON
- 6000 DEARBORN
- 6100 BEVERLY
- 6200 HORTON
- 6300 LAMAR
- 6400 RUSSELL
- 6500 WALMER

2021 OVERLAY
MISSION, 85 TO 95
WITH LEAWOOD
FOR INFORMATION ONLY:
COMPLETION OF 2018 PROJECT





PUBLIC WORKS DEPARTMENT

Council Meeting Date: May 18, 2020

COU2020-18

CONSIDER CONSTRUCTION CONTRACT FOR THE 2020 RESIDENTIAL STREET REHABILITATION PROGRAM

RECOMMENDATION

Move to authorize the Mayor to sign the construction contract with O'Donnell and Sons Construction for the 2020 Residential Street Rehabilitation Program for \$2,710,000.

BACKGROUND

This project includes work on many streets throughout the City and includes new curb/gutter, sidewalk, and an asphalt mill and overlay. It is funded by the 2020 Residential Street Rehabilitation Program.

On May 7, 2018, the Governing Body authorized staff to bring a contract before Council with a selected Contractor for award for the 2018-2020 Paving Program. The Contractor, O'Donnell and Sons was selected based on an evaluation of services and competitive pricing from 2015-2018. This is our third year of the three year process. The City Staff is pleased with the response from the Contractor on any issue during construction to date and on their proactive on-street public meetings with residents prior to construction. We also utilize the "one-stop" email for residents which allows them to email pvstreets@odonnell-sons.com to put them in contact with representatives from the Contractor and the City which resolves their issues or answers questions in a timely fashion.

The Engineer and City Staff have reviewed the bid proposal submitted for the 2020 Program and has confirmed the reasonableness of the offered unit pricing based upon established bids from neighboring communities for projects of similar nature.

This project award also includes \$90,000 to remedy a sight triangle issue encountered by southbound drivers at Springfield turning onto 75th Street. While the construction on 75th Street did not change the location of the retaining wall (back of sidewalk), the geometric configuration on 75th Street itself has created a poor line of sight.

The contract will be awarded for \$2,710,000. Change order authorization up to \$200,000 additional dollars from the unallocated street account is part of this approval and will allow for quick approval of possible changes required to complete the project. The Public Works Director will authorize all necessary change orders.

FUNDING SOURCE

PAVP2020	\$2,620,000
75ST0001	\$ 90,000
TOTAL	\$2,710,000

ATTACHMENTS

1. Construction Agreement with O'Donnell and Sons Construction
2. Map of 2020 Program

PREPARED BY

Melissa Prenger, Senior Project Manager

May 11, 2020

CONSTRUCTION AGREEMENT



**PAVP2020
2020 RESIDENTIAL STREET PROGRAM**

BETWEEN

CITY OF PRAIRIE VILLAGE, KS

AND

**Superior Bowen DBA
O'DONNELL AND SONS CONSTRUCTION**

CONSTRUCTION CONTRACT
FOR
PAVP2020 | 2020 RESIDENTIAL STREET PROGRAM

BETWEEN
THE CITY OF PRAIRIE VILLAGE, KANSAS
AND
O'DONNELL AND SONS CONSTRUCTION

THIS AGREEMENT, is made and entered into this ____ day of _____, 20____, by and between the City of Prairie Village, Kansas, hereinafter termed the “**City**”, and Superior Bowen DBA O'Donnell and Sons Construction, hereinafter termed in this agreement, “**Contractor**”, for the construction and completion of Project 2020 RESIDENTIAL STREET PROGRAM, (the “**Project**”) designated, described and required by the Project Manual and Bid Proposal, to wit:

WITNESSETH:

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

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

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

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

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

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

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

1.1 Following words are given these definitions:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2. ENTIRE AGREEMENT:

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

3. INTENT AND INTERPRETATION

- 3.1 The intent of the Contract is to require complete, correct and timely execution of the Work. Any Work that may be required, including construction, labor, materials, tools, equipment and transportation, implied or inferred by the Contract Documents, or any one or more of them, as necessary to produce the intended result, shall be provided by the Contractor for the Contract Price.
- 3.2 All time limits stated in the Contract Documents are of the essence of the Contract.
- 3.3 The Contract is intended to be an integral whole and shall be interpreted as internally consistent. What is required by any one Contract Document shall be considered as required by the Contract.

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

- 3.13 The apparent silence of the Project Manual as to any detail, or the apparent omission from them of a detailed description concerning any point, shall be regarded as meaning that only the best general practice is to be used. All interpretations of the Project Manual shall be made on the basis above stated.
- 3.14 The conditions set forth herein are general in scope and are intended to contain requirements and conditions generally required in the Work, but may contain conditions or requirements which will not be required in the performance of the Work under contract and which therefore are not applicable thereto. Where any stipulation or requirement set forth herein applies to any such non-existing condition, and is not applicable to the Work under contract, such stipulation or requirement will have no meaning relative to the performance of said Work.
- 3.15 KSA 16-113 requires that non-resident contractors appoint an agent for the service of process in Kansas. The executed appointment must then be filed with the Secretary of State, Topeka, Kansas. Failure to comply with this requirement shall disqualify the Contractor for the awarding of this Contract.

4. CONTRACT COST

The City shall pay the Contractor for the performance of the Work embraced in this Contract, and the Contractor will accept in full compensation therefore the sum (subject to adjustment as provided by the Contract) of TWO MILLION, SEVEN HUNDRED TEN THOUSAND AND 00/100 DOLLARS (\$2,710,000) for all Work covered by and included in the Contract; payment thereof to be made in cash or its equivalent and in a manner provided in the Contract Documents.

5. WORK SUPERINTENDENT

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

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

6. PROJECT MANAGER

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

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

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

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

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

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

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

- 6.13 The Project Manager's decisions in matters relating to aesthetic effect shall be final if consistent with the intent of this Contract.
- 6.14 The Project Manager will **NOT** be responsible for Contractor's means, methods, techniques, sequences, or procedures or construction, or the safety precautions and programs incident thereto and will not be responsible for Contractor's failure to perform the Work in accordance with the Project Manual. The Project Manager will not be responsible for the acts or omissions of the Contractor or any Subcontractor or any of its or their agents or employees, or any other person at the site or otherwise performing any of the Work except as may otherwise be provided.
- 6.15 Any plan or method of work suggested by the Project Manager, or other representatives of the City, to the Contractor, but not specified or required, if adopted or followed by the Contractor in whole or in part, shall be used at the risk and responsibility of the Contractor, and the Project Manager and the City will assume no responsibility therefore.
- 6.16 It is agreed by the Contractor that the City shall be and is hereby authorized to appoint or employ, either directly or through the Project Manager, such City representatives or observers as the City may deem proper, to observe the materials furnished and the work performed under the Project Manual, and to see that the said materials are furnished, and the said work performed, in accordance with the Project Manual therefore. The Contractor shall furnish all reasonable aid and assistance required by the Project Manager, or by the resident representatives for proper observation and examination of the Work and all parts thereof.
- 6.17 The Contractor shall comply with any interpretation of the Project Manual by the Project Manager, or any resident representative or observer so appointed, when the same are consistent with the obligations of the Project Manual. However, should the Contractor object to any interpretation given by any subordinate Project Manager, resident representative or observer, the Contractor may appeal in writing to the City Director of Public Works for a decision.
- 6.18 Resident representatives, observers, and other properly authorized representatives of the City or Project Manager shall be free at all times to perform their duties, and intimidation or attempted intimidation of any one of them by the Contractor or by any of its employees, shall be sufficient reason, if the City so decides, to annul the Contract.
- 6.19 Such observation shall not relieve the Contractor from any obligation to perform said Work strictly in accordance with the Project Manual.
- 7. WORK SCHEDULE:**
- 7.1 The Work is comprised of one large project (sometimes referred to as "**Total Project Work**") and, in some cases, is partitioned into smaller subprojects referred to in this Agreement as "**Project Segments.**" A Contract Time shall be stated in the Contract Documents for both the Total Project Work and, when applicable, the Project Segments.
- 7.2 At the time of execution of this Contract, the Contractor shall furnish the Project Manager with a schedule ("**Work Schedule**") setting forth in detail (in the critical path method) the sequences proposed to be followed, and giving the dates on which it is expected that Project Segments will be started and completed within the Contract Time. The Work Schedule is subject to approval by the City.

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

8. DELAYS AND EXTENSIONS OF TIME

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

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

9. ADVERSE WEATHER:

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

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

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

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

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

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

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

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

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

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

10. LIQUIDATED DAMAGES

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

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

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

11. PAYMENT PROCEDURE

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

- 11.7 The Project Manager will, upon receipt of a written Application for Payment from the Contractor, review the amount of Work performed during the preceding period and the value thereof at the unit prices contracted. From the amounts so ascertained, there shall be deducted ten percent (10%) to be retained until after final completion of the entire Work to the satisfaction of the City. The Project Manager will submit an estimate each month to the City for payment to the Contractor, except that no amount less than \$500.00 will be submitted unless the total amount of the Contract remaining unpaid is less than \$500.00.
- 11.8 Deductions will be made from progress payments if the Contract includes a provision for a lump sum or a percentage deduction. Lump sum deductions will be that portion of the stated lump sum computed as the ratio that the amount earned bears to the Contract Price. Percentage deductions will be computed at the stated percentage of the amount earned.
- 11.9 No progress payment, nor any use or occupancy of the Work by the City, shall be interpreted to constitute an acceptance of any Work not in strict accordance with this Contract.
- 11.10 The City may decline to make payment, may withhold funds, and, if necessary, may demand the return of some or all of the amounts previously paid to the Contractor, to protect the City from loss because of:
- Defective Work not remedied by the Contractor;
 - Claims of third parties against the City or the City's property;
 - Failure by the Contractor to pay Subcontractors or others in a prompt and proper fashion;
 - Evidence that the balance of the Work cannot be completed in accordance with the Contract for the unpaid balance of the Contract Price;
 - Evidence that the Work will not be completed in the time required for substantial or final completion;
 - Persistent failure to carry out the Work in accordance with the Contract;
 - Damage to the City or a third party to whom the City is, or may be, liable;
 - Evidence that the Work is not progressing according to agreed upon schedule by both parties.
- 11.11 In the event that the City makes written demand upon the Contractor for amounts previously paid by the City as contemplated in this subparagraph, the Contractor shall promptly comply with such demand and refund such monies to the City.
- 11.12 Neither the observation by the City or any of the City's officials, employees, or agents, nor any order by the City for payment of money, nor any payment for, or acceptance of, the whole or any part of the Work by the City or Project Manager, nor any extension of time, nor any possession taken by the City or its employees, shall operate as a waiver of any provision of this Contract, or of any power herein reserved to the City, or any right to damages herein provided, nor shall any waiver of any breach in this Contract be held to be a waiver of any other or subsequent breach.

12. COMPLETION AND FINAL PAYMENT

- 12.1 Upon Total Completion, when the Contractor is ready for a final inspection of the Total Project Work, it shall notify the City and the Project Manager thereof in writing. Thereupon, the Project Manager will make final inspection of the Work and, if the Work is complete in accordance with this Contract, the Project Manager will promptly issue a final Certificate for Payment certifying to the City that the Work is complete and the Contractor is entitled to the remainder of the unpaid Contract Price, less any amount withheld pursuant to this Contract. If the Project Manager is unable to issue its final Certificate for Payment and is required to repeat its final inspection of the Work, the Contractor shall bear the cost of such repeat final inspection(s), which cost may be deducted by the City from the Contractor's full payment.
- 12.2 The Contractor shall not be entitled to any payment unless and until it submits to the Project Manager its affidavit that all payrolls, invoices for materials and equipment, and other liabilities connected with the Work for which the City, or the City's property might be responsible, have been fully paid or otherwise satisfied; releases and waivers of lien from all Subcontractors and Suppliers of the Contractor and of any and all other parties required by the City; and consent of Surety, if any, to final payment. If any third party fails or refuses to provide a release of claim or waiver of lien as required by the City, the Contractor shall furnish a bond satisfactory to the City to discharge any such lien or indemnify the City from liability.
- 12.3 The City shall make final payment of all sums due the Contractor within thirty days of the Project Manager's execution of a final Certificate for Payment.
- 12.4 Acceptance of final payment shall constitute a waiver of all claims against the City by the Contractor except for those claims previously made in writing against the City by the Contractor, pending at the time of final payment, and identified in writing by the Contractor as unsettled at the time of its request for final inspection.

13. CLAIMS BY THE CONTRACTOR

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

- Subparagraph shall constitute a waiver by the Contractor of any claim arising out of or relating to such concealed or unknown condition.
- 13.4 If the Contractor wishes to make a claim for an increase in the Contract Price, as a condition precedent to any liability of the City therefore, the Contractor shall give the City written notice of such claim within seven (7) days after the occurrence of the event, or the first appearance of the condition, giving rise to such claim. Such notice shall be given by the Contractor before proceeding to execute any additional or changed Work. The failure by the Contractor to give such notice and to give such notice prior to executing the Work shall constitute a waiver of any claim for additional compensation.
- 13.5 The City reserves the right to increase or decrease quantities, and alter the details of construction including grade and alignment as the Project Manager may consider necessary or desirable, by approved Change Order. Such modifications shall not invalidate the Contract nor release the surety. Unless such alterations and increases or decreases change the total cost of the Work, based on the originally estimated quantities and the unit prices bid, by more than 25 percent, or change the total cost of any major item, based on the originally estimated quantities and the unit price bid, by more than 25 percent, the Contractor shall perform the work altered, increased or decreased, at a negotiated price or prices. (A major item shall mean any bid item, the total cost of which exceeds 12-1/2 percent of the total Contract Price based on the proposed quantity and the contract unit price).
- 13.6 When the alterations cause an increase or decrease in excess of the 25 percent indicated above, either the Contractor or the Project Manager may request an adjustment of the unit price to be paid for the item or items.
- 13.7 If a mutually agreeable adjustment cannot be obtained, the City reserves the right to terminate the Contract as it applies to the items in question and make such arrangements as may be deemed necessary to complete the Work.
- 13.8 In connection with any claim by the Contractor against the City for compensation in excess of the Contract Price, any liability of the City for the Contractor's costs shall be strictly limited to direct costs incurred by the Contractor and shall not include standby costs, indirect costs or consequential damages of the Contractor. The City shall not be liable to the Contractor for claims of third parties.
- 13.9 If the Contractor is delayed in progressing any task which at the time of the delay is then critical or which during the delay becomes critical, as the sole result of any act or neglect to act by the City or someone acting in the City's behalf, or by changes ordered in the Work, unusual delay in transportation, unusually adverse weather conditions not reasonably anticipated, fire or any causes beyond the Contractor's control including delays resulting from the COVID-19 pandemic, 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 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, 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. 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 reasons outside the control of the contractor, an equitable adjustment in the Contract Sum and/or the Contract Time shall be made to the Contract as the City may reasonably decide.
- 13.13 In addition to the Project Manual particular to Mobilization found elsewhere in this document, additional mobilization shall not be compensable for work outside of the designated areas for work deemed essential by the City. A quantity of work equal to as much as 10% of the total Contract may be required to be performed beyond the boundaries of the designated work areas.

14. CHANGES IN THE WORK

- 14.1 Changes in the Work within the general scope of this Contract, consisting of additions, deletions, revisions, or any combination thereof, may be ordered without invalidating this Contract, by Change Order or by Field Order.
- 14.2 The Project Manager shall have authority to order minor changes in the Work not involving a change in the Contract Price or in Contract Time and consistent with the intent of the Contract. Such changes shall be effected by verbal direction and then recorded on a Field Order and shall be binding upon the Contractor. The Contractor shall carry out such Field Orders promptly.

- 14.3 Any change in the Contract Price resulting from a Change Order shall be by mutual agreement between the City and the Contractor as evidenced by the change in the Contract Price being set forth in the Change Order, and, together with any conditions or requirements related thereto, being initialed by both parties.
- 14.4 If no mutual agreement occurs between the City and the Contractor relative to a change in the Work, the Contractor shall proceed with the Work that is the subject of the Change Order, and the change in the Contract Price, if any, shall then be determined by the Project Manager on the basis of the reasonable expenditures or savings of those performing, deleting or revising the Work attributable to the change, including, in the case of an increase or decrease in the Contract Price, a reasonable allowance for direct job site overhead and profit. In such case, the Contractor shall present, in such form and with such content to the City, as the Project Manager requires, an itemized accounting of such expenditures or savings, plus appropriate supporting data for inclusion in a Change Order. Reasonable expenditures or savings shall be limited to the following: reasonable costs of materials, supplies or equipment, including delivery costs, reasonable costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and worker's compensation insurance, reasonable rental costs of machinery and equipment exclusive of hand tools, whether rented from the Contractor or others, permit fees, and sales, use or other taxes related to the Work, and reasonable cost of direct supervision and job site field office overhead directly attributable to the change. In no event shall any standby time or any expenditure or savings associated with the Contractor's home office or other non-job site overhead expense be included in any change in the Contract Price. Further, in no event shall the Contractor's overhead expense exceed ten (10%) percent of the reasonable expenditures. Pending final determination of reasonable expenditures or savings to the City, payments on account shall be made to the Contractor on the Project Manager's Certificate for Payment.
- 14.5 If unit prices are provided in the Contract, and if the quantities contemplated are so changed in a proposed Change Order that the application of such unit prices to the quantities of Work proposed would cause substantial inequity to the City or to the Contractor, the applicable unit prices shall be equitably adjusted.
- 14.6 The execution of a Change Order by the Contractor shall constitute conclusive evidence of the Contractor's agreement to the ordered changes in the Work, this Contract as thus amended, the Contract Price and the Contract Time. The Contractor, by executing the Change Order, waives and forever releases any claim including impact against the City for additional time or compensation for matters relating to or arising out of or resulting from the Work included within or affected by the executed Change Order.

15. INSURANCE AND BONDS.

- 15.1 The Contractor shall secure and maintain, throughout the duration of the agreement, insurance (on an occurrence basis unless otherwise agreed to) of such types and in at least such amounts as required herein. Contractor shall provide certificates of insurance and renewals thereof on forms acceptable to the City. The City shall be notified by receipt of written notice from the insurer or the Contractor at least thirty (30) days prior to material modification or cancellation of any policy listed on the Certificate.
- 15.2 The Contractor, upon receipt of notice of any claim in connection with this Agreement, shall promptly notify the City, providing full details thereof, including an estimate of the amount of loss or liability. The Contractor shall monitor and promptly notify the City of any reduction in

limits of protection afforded under any policy listed in the Certificate (or otherwise required by the Contract Documents) if the Contractor's limits of protection shall have been impaired or reduced to such extent that the limits fall below the minimum amounts required herein. The Contractor shall promptly reinstate the original limits of liability required hereunder and shall furnish evidence thereof to the City.

15.3 Minimum Requirements Commercial General Liability Policy Limits -

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

Policy MUST include the following conditions:

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

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

Limits (Same as Commercial General Liability) -

Combined Single Limits, Bodily Injury and Property Damage - Each Accident:

Policy MUST include the following condition:

NAME CITY OF PRAIRIE VILLAGE AS "ADDITIONAL INSURED"

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

Limits -

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

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

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

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

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

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

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

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

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

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

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

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

16. INDEMNITY

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

"The Contractor" means and includes Contractor, all of his/her affiliates and subsidiaries, his/her Subcontractors and material men and their respective servants, agents and employees; and "Loss" means any and all loss, damage, liability or expense, of any nature whatsoever, whether incurred as a judgment, settlement, penalty, fine or otherwise (including attorney's fees and the cost of defense), in connection with any action,

proceeding, demand or claim, whether real or spurious, for injury, including death, to any person or persons or damages to or loss of, or loss of the use of, property of any person, firm or corporation, including the parties hereto, which arise out of or are connected with, or are claimed to arise out of or be connected with, the performance of this Contract whether arising before or after the completion of the work required hereunder.

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

17. SUCCESSORS AND ASSIGNS

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

fifty-five percent (55%) of the total Contract Price. Approval by the City of any Subcontractor shall not constitute a waiver of any right of the City to reject Defective Work, material or equipment not in compliance with the requirements of the Contract Documents. The Contractor shall not make any substitution for any Subcontractor accepted by the City unless the City so agrees in writing.

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

18. NON-DISCRIMINATION LAWS

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

agreement in whole or in part. The parties do not intend this provision to subject any party to liability under local, state or federal laws unless it applies.

- D. If the Contractor fails to comply with the manner in which the Contractor reports to the commission in accordance with the provisions of K.S.A. 44-1031 and amendments thereto, the Contractor shall be deemed to have breached the present contract and it may be cancelled, terminated or suspended, in whole or in part, by the contracting agency;
 - E. If the Contractor is found guilty of a violation of the Kansas Act Against Discrimination under a decision or order of the Commission which has become final, the Contractor shall be deemed to have breached the present contract and it may be cancelled, terminated or suspended, in whole or in part, by the contracting agency; and
 - F. The Contractor shall include the provisions of Subsections A through D in every subcontract or purchase order so that such provisions will be binding upon such Subcontractor or vendor.
 - G. The provisions of this Section shall not apply to a contract entered into by a Contractor: (1) Who employs fewer than four employees during the term of such contract; or (2) Whose contracts with the City cumulatively total \$5,000 or less during the fiscal year of the City.
- 18.2 The Contractor further agrees that it shall abide by the Kansas Age Discrimination In Employment Act (K.S.A. 44-1111 et seq.) and the applicable provision of the Americans With Disabilities Act (42 U.S.C. 12101 et seq.) as well as all other federal, state and local laws.

19. FEDERAL LOBBYING ACTIVITIES

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

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

20. RELATIONS WITH OTHER CONTRACTORS:

- 20.1 The Contractor shall cooperate with all other contractors who may be performing work on behalf of the City, and workers who may be employed by the City, or any other entity on any work in the vicinity of the Work to be done under this Contract, and the Contractor shall so conduct his/her operations as to interfere to the least possible extent with the work of such contractors or workers. The Contractor shall be responsible for any injury or damage, that may be sustained by other contractors, workers, their work or employees of the City, because

of any fault or negligence on the Contractor's part, and shall, at his/her own expense, repair or pay for such injury or damage. If the work of the Contractor is delayed because of any acts or omissions of any other Contractor or Contractors, the Contractor shall have no claim against the City on that account other than for an extension of time.

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

21. RIGHT OF CITY TO TERMINATE

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

this contract. Contractor shall not be entitled to any anticipatory profits, consequential damages or other costs other than direct costs of demobilization.

22. MISCELLANEOUS:

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

- 22.6 The right of general administration of the City shall not make the Contractor an agent of the City, and the liability of the Contractor for all damages to persons, firms, and corporations, arising from the Contractor's execution of the Work, shall not be lessened because of such general administration, but as to all such persons, firms, and corporations, and the damages, if any, to them or their property. The Contractor herein is an independent Contractor in respect to the work.
- 22.7 For a period of time, from the inception of the Contract to three (3) years from the date of final payment under the Contract, the Contractor and subcontractors shall maintain books, accounts, ledgers, invoices, drafts, pages and other records pertaining to the performance of this Contract. At all reasonable times during this period these records shall be available within the State of Kansas at a field or permanent business office for inspection by authorized representatives of the City or of any other agency, which has contributed funds in connection with the Contract or to which the City is obligated to make such inspections available. In addition, this requirement shall be included in all subcontracts entered into in connection with this Contract.
- 22.8 Titles, subheadings used herein, and other Contract Documents are provided only as a matter of convenience and shall have no legal bearing on the interpretation of any provision of the Contract Documents.
- 22.9 No waiver of any breach of this Contract shall be construed to be a waiver of any other subsequent breach.
- 22.10 Should any provision of this Agreement or other Contract Documents be determined to be void, invalid, unenforceable or illegal for whatever reason, such provision(s) shall be null and void; provided, however, that the remaining provisions of this Agreement and/or the other Contract Documents shall be unaffected thereby and shall continue to be valid and enforceable.
- 22.11 Without in any manner limiting Contractor's responsibilities as provided elsewhere in the Contract Documents, the Contractor shall assume full responsibility for the protection of all public and private property, structures, sewers, and utilities, for both above ground and underground facilities, along, beneath, above, across or near the site or sites of the Work being performed under this Agreement, or which are in any manner affected by the prosecution of the Work or the transportation of men/women or materials in connection therewith. Barriers shall be kept in place at all times to protect persons other than those engaged on or about the Work from accident, and the Contractor will be held responsible for all accidents to persons or property resulting from the acts of Contractor or its employees.
- 22.12 The Contractor shall keep fully informed of all existing and current regulations of the City, county, state, and federal laws, which in any way limit or control the actions or operations of those engaged upon the work, or affecting materials supplied, to or by them. The Contractor shall at all times observe and comply with all ordinances, laws, and regulations, and shall protect and indemnify the City and the City's officers and agents against any claims or liability arising from or based on any violation of the same.
- 22.13 Nothing contained in the Contract Documents shall create, or be interpreted to create, privity or any other contractual agreement between the City and any person or entity other than the Contractor.

- 22.14 Duties and obligations imposed by the Contract Documents, rights, and remedies available hereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.
- 22.15 No action or failure to act by the City, Project Manager or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval or acquiescence in a breach hereunder, except as may be specifically agreed in writing.
- 22.16 Contractor specifically acknowledges and confirms that: (i) it has visited the site, made all inspections it deems appropriate and has read and fully understands the Contract Documents, including all obligations and responsibilities undertaken by it as specified herein and in other Contract Documents and knowingly accepts the same; (ii) it has furnished copies of all Contract Documents to its insurance carrier(s) and its surety(ies); and (iii) its insurance carrier(s) and surety(ies) agree to be bound as specified herein, in the Contract Documents and in the insurance policy(ies) and bonds as to liability and surety coverage.
- 22.17 It is specifically agreed between the parties executing this Agreement that the Contract Documents are not intended to create any third party beneficiary relationship nor authorize anyone not a party to this Agreement to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of this Agreement. The duties, obligations and responsibilities of the parties to this Agreement with respect to third parties shall remain as imposed by law.
- 22.18 This Agreement is entered into, under and pursuant to, and is to be construed and enforceable in accordance with the laws of the State of Kansas. Venue of any litigation arising in connection with this Agreement shall be the State courts of Johnson County, Kansas.

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

CITY OF PRAIRIE VILLAGE

Superior Bowen DBA
O'DONNELL AND SONS CONSTRUCTION
(typed company name)

By: _____
(signed)

By: _____
(signed)

Eric Mikkelson _____

Patrick O'Donnell _____
(typed name)

Mayor _____

Vice-President _____
(typed title)

City of Prairie Village _____

Superior Bowen DBA
O'Donnell and Sons Construction
(typed company name)

7700 Mission Road _____

15301 Broadmoor Street _____
(typed address)

Prairie Village, Kansas 66208 _____

Overland Park, Kansas 66223 _____
(typed city, state, zip)

913-385-4647 _____

913-681-2155 _____
(typed telephone number)

(date of execution)

(date of execution)

SEAL

ATTEST:

APPROVED BY:

City Clerk, Adam Geffert

City Attorney, David Waters

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

GENERAL CONSTRUCTION PROVISIONS

1. DEFINITIONS: Capitalized terms not defined herein shall have the meanings set forth in the Construction Contract for the Project dated _____, 20____.
- 1.1. Following words are given these definitions:
 - Alternate Bid or alternate** is an amount stated in the bid to be added to or deducted from the amount of the base bid, if the corresponding change in the work, as described in the Bid Documents, is accepted.
 - Base Bid** is the sum stated in the bid for which the bidder offers to perform the work described in the Project Manual, without inclusion of any alternate bids.
 - Concrete** shall mean Portland cement concrete.
 - Day** shall mean a calendar day unless otherwise described.
 - Pavement** shall be a rigid or flexible type riding surface placed upon a previously prepared sub-grade or base.
 - Street** shall mean the whole area of any roadway within the right-of-way limits.
 - Sub-Grade** shall be that portion of the construction area which has been prepared, as specified, and upon which a layer of specified material, base, sub-base course, pavement or other improvement is to be placed.
 - Temporary Construction Easement** shall mean the land provided by the City for temporary use by the Contractor during the construction of the work.
- 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 that 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 City 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 City and/or 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. ABBREVIATIONS

- 2.1. Wherever in this Project Manual the following abbreviations are used, they shall be understood to mean as follows. The serial designation of each reference shall be the latest year of adoption or revision, unless otherwise specified. See the plan sheet for the material abbreviation's legend.

AAN	-	American Association of Nurserymen
AASHTO	-	American Association of State Highway & Transportation Officials
ACI	-	American Concrete Institute
AGC	-	Associated General Contractors of America
AIA	-	American Institute of Architects
ANSI	-	American National Standards Institute
APWA	-	Kansas City Metropolitan Chapter of the American Public Works Association
ASCE	-	American Society of Civil Engineers
ASLA	-	American Society of Landscape Architects
ASME	-	American Society of Mechanical Engineers
ASTM	-	American Society for Testing Materials
ATSSA	-	American Traffic Safety Services Association
CARS	-	Johnson County Assistance Road System
CRSI	-	Concrete Reinforcing Steel Institute
FHWA	-	Federal Highway Administration - Department of Transportation
ISSA	-	International Slurry Seal Association
ITE	-	Institute of Traffic Engineers
KCMMB	-	Kansas City Metropolitan Materials Board
KDOT	-	Kansas Department of Transportation
MCIB	-	Mid-West Concrete Industry Board, Inc.
MUTCD	-	Manual on Uniform Traffic Control Devices for Streets & Highways
NEC	-	National Electrical Code, National Fire Protection Association
NEMA	-	National Electrical Manufacturers Association
SAE	-	Society of Automotive Engineers

3. Standard Detailed Specifications

- 3.1. The first level of reference for standard detailed specifications shall be those promulgated by the City of Prairie Village, KS, Public Works Department.
- 3.2. The second level of reference will be the current edition of the standard detailed specifications of the American Public Works Association (APWA) Kansas City Metro Chapter.
- 3.3. The third level of reference will be the latest edition of the Kansas Department of Transportation "Standard Specifications for Road and Bridge Construction".
- 3.4. For traffic specifications, the latest edition of the Manual On Uniform Traffic Control Devices as published by Federal Highway Administration.
- 3.5. All reference material shall be the latest edition for this project as though fully set forth herein, except as modified or superseded by these construction specifications.

4. Drawings To Be Furnished By Contractor

- 4.1. The Contractor shall furnish all shop, fabrication, assembly, foundation, and other drawings required by the Project Manual, including but not limited to, drawings of equipment and devices, offered by the Contractor for review of the Project Manager, in sufficient detail to show adequately the construction and operation thereof.
- 4.2. Drawings submitted for consideration by the Project Manager shall show the essential details of any change in design of construction proposed by the Contractor in lieu of design or arrangement required by the Contract, or any item of extra work, and all required wiring and piping layouts.
- 4.3. No less than three (3) copies (one for Contractor, one for Project Manager, and one for on site as-builts) of each such drawing shall be submitted to the Project Manager for checking and review.
- 4.4. The Contractor shall maintain at the site modified drawings recording the dimensions and other pertinent details of the work and any changes in the work.
- 4.5. No work shall be performed in connection with the fabrication or manufacture of material or equipment shown by any drawing thereof, nor shall any accessory, appurtenance or device not fabricated or manufactured by the Contractor or its subcontractor, be purchased until the drawing or drawings therefore have been reviewed as stipulated, except at the Contractor's own risk and responsibility.
- 4.6. The Project Manager's review of drawings submitted by the Contractor will be for general conformity to the Project Manual and will not constitute a blanket approval of all dimensions, quantities, and details of the material or equipment shown, nor shall such review relieve the Contractor of responsibility for errors contained in such drawings. Project Manager's review shall not constitute approval of safety precautions, construction means or methods.

5. Responsibility Of Contractor

- 5.1. The Contractor shall furnish all transportation, tools, equipment, machinery, and plant, and all suitable appliances, requisite for the execution of the Project Manual and shall be solely answerable for the same and for the safe, proper, and lawful construction, maintenance, and use thereof including responsibility for hazardous materials.
- 5.2. The Contractor will use equipment and tools suitable for the work. All equipment and tools will be in near-original working condition.
- 5.3. The Contractor shall cover and protect his/her Work from damage and all injury to the same from any source.
- 5.4. The Contractor shall be solely answerable for all damage to the City or the property of the City, to other contractors or other employees of the City, to the neighboring premises, to any person or to any private or personal property, due to improper, illegal, or negligent conduct of Contractor or his/her subcontractors, employees, or agents in and about said work, or in the execution of the work covered by this Contract, or any extra work undertaken as herein provided.

- 5.5. The Contractor shall be responsible to the City for defect in, or the improper use of, any scaffolding, shoring, apparatus, ways, works, machinery, or plant.
- 5.6. The Contractor shall notify all affected utilities of the work and coordinate with the utilities to avoid interruption of utility service and damage to utility lines and property. This notice requirement shall also apply as to the owner/operator of any affected underground facility. Any project delay, damages or increase in construction costs dues to utility relocation delays shall be at the Contractor's risk.
- 5.7. The project site shall be kept clean, neat, and orderly as possible at all times. Stockpiling of debris and unsuitable materials beyond normal working demands shall not be allowed. Immediately after construction operations are complete, all equipment, debris and unsuitable materials shall be completely removed from the site in order to minimize the damage to finished work and inconvenience to the public and adjoining property owners. The work site shall be left "broom clean" at the end of each workday and in case of dispute the City may clean the site and charge the Contractor.
- 5.8. The Contractor shall take precaution to ensure that excessive dust does not become airborne during any construction activities. The Contractor shall comply with all State and Federal regulations that apply to airborne matter in the geographic area of the Work. When directed by the Project Manager, the Contractor shall take immediate and appropriate dust control measures satisfactory to the Project Manager.
- 5.9. The Contractor shall not allow the site of the work or neighboring properties to become littered with trash and waste material, but shall maintain the same in a neat and orderly condition on a daily basis throughout the construction period. The City, or the Project Manager on the City's behalf, shall have the right to determine what is or is not trash or waste material.
- 5.10. On or before the completion of the work the Contractor shall, without charge therefore, carefully clean out all pits, pipes, chambers, or conduits, and shall tear down and remove all temporary structures built by the Contractor, and shall remove all rubbish of every kind from the tracts or grounds which it has occupied and shall leave them in first-class condition. Any trash receptacles on the site shall be covered.
- 5.11. The Contractor shall take whatever steps necessary to provide access for the City and the Project Manager to the Work at all times from commencement of the Work through final completion.
- 5.12. The Contractor alone shall be responsible for the safety, adequacy and efficiency of its plant, equipment, and methods, and for the means, methods, techniques, sequences and procedures of construction.
- 5.13. The review of the Project Manager of any plan or method of work proposed by the Contractor shall not relieve the Contractor of any responsibility therefore, and such review shall not be considered as an assumption by the City, Project Manager, or any officer, agent, or employee thereof, of any risk or liability.
- 5.14. The Contractor is admonished that the crews will be properly attired, refrain from abusive language, refrain from improper behavior, and be aware that they are representing the City.

- 5.15. All operations of the Contractor shall be conducted within the right-of-way of the roadway or established easements and the limits of the earthwork and grading, as shown on the Plans. While working under this contract, no agreement shall be made between Contractor and resident, as it pertains to any additional work on private property not paid for by the City.

6. Safety Rules

- 6.1. The Contractor shall be responsible for enforcing safety rules to assure protection of the employees and property of the City, to assure uninterrupted production and to assure safe working conditions for the Contractor and Subcontractors and their employees and to assure the safety of the general public.
- 6.2. In addition to any other rights the City might exercise, the Contractor and/or Subcontractor failing to follow safety rules shall be subject to eviction from the job site and may be refused reentry.
- 6.3. The Contractor is expected to establish and enforce a comprehensive safety program on this project for the protection of its personnel, its Subcontractor's personnel, City's employees and all other persons exposed to hazards resulting from the Contractor's operations. As a minimum requirement, the Contractor shall review and discuss the details of its program with the City at the first project meeting. The items to be covered shall include, but not necessarily be limited to:
- Personal protective equipment;
 - First aid-personnel and facilities;
 - Arrangements for medical attention;
 - Sanitary facilities;
 - Fire protection;
 - Signs, signals, and barricades;
 - Security regulations;
 - Safety inspections;
 - Designation of persons responsible for the program;
 - Reporting forms and procedures;
 - Material handling and storage;
 - Lines of communication;
 - Determination of potential hazards;
 - Personnel safety meetings and education;
 - Access to work areas;
 - Subcontractors involvement in the program;
 - Inspections and corrective action
- 6.4. The Contractor shall maintain at all times, as required by the conditions and progress of the Work, all necessary safeguards for the protection of life, the Work, supplies, materials and equipment on the project site not yet incorporated in the Work, City's property and adjacent property.
- 6.5. The Contractor shall comply with all instructions from the City regarding prevention of accidents, fires or for the elimination of any unsafe practice and shall observe all the applicable recommendations of the National Fire Protection Association Standard No. 241 (or other, later revision) "Standards For Safeguarding Building Construction and Demolition

Operations”.

- 6.6. The Contractor shall post danger signs warning against the hazards created by such features of construction as protruding nails, hod hoists, well holes, elevator hatchways, scaffolding, window openings, stairways, falling materials, open trenches, other excavations, obstructions and similar conditions. It shall designate a responsible member of its organization on the project whose duty shall be the prevention of accidents. The name and position of the person so designated shall be reported to the City by the Contractor.
- 6.7. In emergencies affecting the safety of persons or the Work or property at the site or adjacent thereto, Contractor, without special instruction or authorization from Project Manager or City, is obligated to act, at its discretion, to prevent threatened damage, injury, or loss.
- 6.8. The Contractor shall give prompt written notice of any significant changes in the Work or deviations from the Project Manual caused or necessitated by the emergency. A Change Order shall thereupon be issued covering the changes and deviations involved in such bona fide emergency. If Contractor believes that additional work done in an emergency, which arose from causes beyond its control, entitles it to an increase in the Contract Price or an extension of the Contract Time, the Contractor may make a claim therefore as provided herein.
- 6.9. The Contractor shall develop and maintain an up-to-date emergency action plan, taking into account fires, hazardous materials, explosions, adverse weather, floods, etc., which shall be in compliance with all federal, state and local laws and ordinances. The procedures should outline specific action to be taken to protect life and to secure and protect the building materials, constructed work, buildings, equipment, and the position of cranes. The Contractor shall be fully responsible for the contents of and procedures outlined in said plan, including deficiencies therein, whether or not the City shall have reviewed said plan.
- 6.10. 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 thereof, such costs shall be deducted from any amounts due or to become due the Contractor.
- 6.11. 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.

7. Approval of Equals

- 7.1. “Approved Equals”, where permitted by the Project Manual or otherwise made feasible by market conditions, shall be approved as follows:
 - 7.1.1. The Contractor shall notify the City in writing if it elects to use an approved equal specifically

named in the Project Manual.

- 7.1.2. If the Contractor desires to use an “equal” not specifically named in the Project Manual, it must inform the City and receive written approval for such substitutions. The City has no obligation to approve such request and is not responsible for any delay or cost incurred or caused by Contractor’s making such request.
- 7.2. The Contractor shall be solely responsible for design risks, delays and other claims arising out of any approved alternates.

8. Cutting, Patching and Digging

- 8.1. The Contractor shall do all cutting, fitting or patching of his/her work that may be required to make its parts come together properly and fit it to receive or be received by work of others shown upon or reasonably implied by the Project Manual.
- 8.2. The Contractor shall not endanger any property of the City or any other individual or entity, or the work by cutting, digging or otherwise and shall not cut or alter the work of others except with the written consent of the City.
- 8.3. The Contractor shall assume responsibility for the patching or repairs, by the proper trade, of damages caused by work under this Contract.
- 8.4. The Contractor shall comply with all local ordinances dealing with cutting, patching and digging and shall obtain all necessary permits.

9. Temporary Facilities/Utilities

- 9.1. Except where special permission has been granted by the City to use existing toilet facilities belonging to the City, the Contractor shall provide and maintain sanitary temporary toilet facilities located where directed by the City for accommodation of all persons engaged on the work. Temporary toilets shall be enclosed and weatherproof, kept in sanitary, and in an approved condition at all times. After use for it has ceased, the Contractor shall remove the temporary toilet facilities from the City’s premises, disinfect, and fill any vaults.
- 9.2. The Contractor shall provide and maintain any necessary temporary offices, storerooms, roadways, etc, as may be required for its work. It shall be located and constructed in an approved manner acceptable to the City. Upon completion of work or when requested by the City, the Contractor shall remove it from City’s premises and leave the area in a clean and orderly condition.
- 9.3. The Contractor shall provide and maintain temporary heat as required to protect all work and material against injury from dampness and/or cold to the satisfaction of the City.
- 9.4. Unless otherwise specified in the Project Manual, the Contractor shall provide, at his/her cost and expense, temporary power, wiring, water and lights from City’s provided source as may be required for its operations.
- 9.5. The operations of the Contractor shall be in full conformity with all of the rules and regulations of boards and bodies having jurisdiction with respect to sanitation. The Contractor shall

supply safe and sufficient drinking water to all employees. The Contractor shall obey and enforce all sanitary regulations and orders, and shall take precautions against infectious disease and the spread of the same.

- 9.6. All water used in the course of the Work shall be hauled in or purchased from the local Water Company's distribution system at the Contractor's own cost and expense.

10. Right-Of-Way Limits

- 10.1. The Contractor shall confine construction operations to the construction limits and easements provided for and labeled in the Project Manual. Equipment or materials shall not be stored beyond these limits without the express written approval of the owner of such property.
- 10.2. No person, firm or corporation shall park or store for any period of time any construction vehicles, equipment or materials while constructing or improving any street or while working on any public works project of any kind within the city, on behalf of the city, or any other governmental agency, or any utility, public or private, unless a permit has been previously issued by the Director of Public Works. The person, firm or corporation who parks, or allows the parking or storing of any construction vehicles, equipment, or materials without first obtaining said permit or who parks or stores or allows said parking or storage contrary to the terms and conditions of any permit issued by the City, shall be deemed guilty of a misdemeanor and upon conviction thereof, shall be punished as provided in the Prairie Village Municipal Code. Each day such violation is committed or permitted to continue constitutes a separate offense and shall be punishable as such hereunder.
- 10.3. The Director of Public Works is authorized to issue a permit to authorize and allow the temporary parking, staging and storage of construction vehicles, equipment, and materials on public streets of the City or on public property, church property or property zoned C-0 through C-2 and CPO through CP-2 during periods of construction of public works projects of the city, any other governmental agency, or public or private utility projects within the City of Prairie Village, Kansas.
- 10.4. No permit shall be allowed on property that is residential in nature, provided, however, that property zoned "residential" that is being used as a church, school, or country club may be used with the written permission of the owner.
- 10.5. The only designated haul routes in Prairie Village are: Nall Avenue, Mission Road, 75th Street, and 95th Street. The Contractor must have written approval prior to using any other street or haul route.

11. Completed Work

- 11.1. Before final acceptance of the Work, all mechanical and electrical equipment and devices shall be tested and each part shall be in good condition and working order, or shall be placed in such condition and order at the expense of the Contractor.
- 11.2. All tests of such completed work required under this Contract shall be made in the presence of the Project Manager or its authorized representatives.
- 11.3. All unsatisfactory, faulty or Defective Work and all work not conforming to the requirements to the Project Manual at the time of acceptance thereof, or of such inspections, tests, or

approvals shall be considered defective. Prompt notice of all defects shall be given to the Contractor.

- 11.4. All Defective Work, whether or not in place, may be rejected pending correction thereof. Should the Contractor not correct said Work, the City may do so at Contractor's expense.
- 11.5. The Contractor shall remove from the site of the work, without delay, all rejected and condemned material or structures of any kind brought to or incorporated in the work, or if the Contractor fails to make satisfactory progress in so doing, within forty-eight (48) hours, after the service of a written notice from the Project Manager ordering such removal, the rejected material or structures may be removed by the City at the Contractor's expense.
- 11.6. At the City's discretion, payment for all related items of work may be withheld until all rejected and condemned materials or structures are satisfactorily removed.

12. Maintenance Period

- 12.1. If desired by the City or requested by the Contractor, portions of the Work may be placed in service when completed and the Contractor shall give proper access to the work for this purpose; but such use and operation shall not constitute an acceptance of the Work.
- 12.2. The Contractor shall be liable for defects due to faulty construction until the entire Work under this Contract is finally accepted and for a period of two years or longer thereafter, as stipulated in this Project Manual.
- 12.3. During a period of two years (or longer, if stipulated in the Special Conditions,) from and after the date of the final acceptance by the City of the Work, the Contractor shall make all needed repairs arising out of Defective Workmanship or materials, or both, which, in the judgment of the City, shall become necessary during such period. If within ten (10) days after the mailing of a notice in writing to Contractor, or its agent, the Contractor shall neglect to make or undertake with due diligence to make the aforesaid repairs, City is hereby authorized to make such repairs at the Contractor's expense and charge such against the Maintenance Bond; provided however, that in case of an emergency where, in the judgment of the City, delay would cause serious loss, hazard or damage, repairs may be made without notice being sent to the Contractor, and the Contractor shall pay the cost thereof.
- 12.4. Where maintenance or corrective construction is required, the Contractor shall submit his/her proposed methods and designation of materials to the City, or the City through its Consulting Engineer, for approval in advance of such work.
- 12.5. If, at any time prior to the end of the two year maintenance period, the pavement or walk settles, the Contractor shall, at his/her expense, do all necessary corrective work to eliminate any drainage problem or vertical offset caused by such settlement, provided:
 - 12.5.1. If there is a vertical offset between top of such pavement or walk and top of such structure of more than one-fourth inch.
 - 12.5.2. If around manholes or utility valves, there will be more than one-half (1/2) inch vertical differential between a plane surface passing through the top of the pavement, measured 24 inches horizontally from the edge of top of structure. (This will be measured utilizing a straight edge with one half-inch spacer feet mounted at each end of the straight edge.)

- 12.5.3. If the settlement creates a situation such that the walk is outside of the ADA Accessibility Guidelines, it shall be replaced.
- 12.5.4. If adjacent sections of concrete walk, pavement or curbs settle or heave so that there is more than one-fourth (1/4) inch vertical offset between such adjacent sections.
- 12.5.5. If the flow line of any concrete gutter, or of any concrete curb and gutter pockets water or does not drain properly resulting in three-eighth (3/8) inch of standing water.
- 12.5.6. If, any newly placed pavements surfaced with asphalt concrete pockets water or does not drain properly resulting in three-eighths (3/8) of standing water.
- 12.6. The Contractor shall repair cracks which appear for any reason, but which may or may not indicate failure of sub-grade, base or surface, and which are wide enough in cool weather to be sealed by high standard crack sealing methods. Crack filling shall be done during relatively dry weather and at temperatures when the cracks will be near maximum width. Materials and methods shall be based on width of crack. Materials shall be of such consistency as to minimize whipping out under traffic. Cracks shall be thoroughly blown and cleaned and filler installed without superficial bridging.
- 12.7. The intent of the guarantee period is that the Owner will have a durable and serviceable pavement; that defective materials and workmanship will have been corrected. All materials and construction for such work will be at the Contractor's expense.
- 12.8. All corrective and maintenance work shall be done promptly upon notification by the Owner, in order to prevent unnecessary further deterioration and in order not to inconvenience the traveling public unduly.
- 12.9. All work shall be in accordance with the highest standards of the construction industry and shall be of such nature as to be substantially permanent.

13. Equipment Guaranty

- 13.1. All mechanical and electrical equipment and devices, and every part thereof, which are furnished by the Contractor under the terms of this Contract shall be guaranteed by the Contractor and its surety against Defective Workmanship, faulty design, mechanical and physical defects, leakage, breakage, and other damages or failure, under normal operation of the equipment and devices under specified conditions, for a period of two years from and after the date of acceptance thereof (unless otherwise provided herein) by the City.
- 13.2. Any item of equipment or part thereof, thus proving to be defective within the specified period shall be promptly replaced by and at the expense of the Contractor, when notified by the City. Should the Contractor fail to replace said item within a reasonable time, City may do so at Contractor's expense.
- 13.3. The Contractor shall ensure that a copy of operating and maintenance manuals for all equipment shall be kept on the site during construction of the Work and shall be open to inspection by the City or its agents.

14. Public Complaints

- 14.1. All complaints to the Contractor or any of the Subcontractors or to the Project Manager are to be reported in writing immediately to the City Project Manager. This written report will include the name, address and telephone number of the complainant, a detailed description of the complaint, a detailed description of the actions taken, and by whom to resolve the complaint.
- 14.2. The Contractor shall endeavor, with the cooperation and concurrence of the Project Manager, to communicate with abutting property owners and tenants affected by the work.
- 14.3. The Contractor shall respond to citizen complaints, concerns or inquiries with 48 hours (two work days). The Contractor will submit a copy of the action taken to the Project Manager in a timely manner utilizing forms provided by the City.

15. Notification

- 15.1. As part of this project, the City will be notifying residents by mail of the upcoming work. The Contractor must give the City a minimum notice of three weeks prior to doing **any** work on a street.
- 15.2. The Contractor must give the City three days notice prior to commencing any work that prevents the use of a driveway.
- 15.3. Delays created by failure of the Contractor to notify the City in the above-specified time will be counted against the contract time. The Contractor will not be entitled to an extension of the contract time based on notification delays.
- 15.4. In the event, work does not begin on the designated street within the designated time, the City will re-notify the residents with an explanation of why work did not begin as scheduled and a statement of when work will begin. Work may not begin until 48 hours after mailing the re-notifications.

16. Progress Meetings

- 16.1. Periodic Progress meetings shall be held at a predetermined location on the site. These meetings will be held once every week or sooner as events dictate. These meetings will be organized by the City or Project Manager. Participation in this meeting by representatives of the prime contractor and each of the subcontractors is required. These representatives must be empowered to make decisions affecting the prosecution of the work and shall be the Owner of the construction firm and/or his/her superintendent. The Project Manager will conduct the meetings and the discussion will include, but is not limited to the following:
 - Proposed construction schedule for duration of contract for both Prime and Subcontractors
 - Identification of any known utility/contractor conflicts and proposed resolution of same
 - Coordination of other trades.
 - Specialty items. (Fences, shrubs, monuments, sprinkler systems, etc.)
 - Completion date requirements.
 - Review of traffic control plan as it pertains to area of work.

- Problems and/or complaints and remedial measures taken or proposed.

17. Uncovering and Correcting Work

- 17.1. If any of the Work is covered contrary to the Project Manager's request or to any provisions of this Contract, it shall, if required by the Project Manager or the City, be uncovered for the Project Manager's observation and shall be properly replaced at the Contractor's expense without change in the Contract Time.
- 17.2. If any of the Work is covered in a manner not consistent with the Project Manual, it shall, if required by the Project Manager or City, be uncovered for the Project Manager's observation. If such Work conforms strictly to this Contract, costs of uncovering and proper replacement shall be by Change Order and charged to the City. If such work does not strictly conform to this Contract, the Contractor shall pay the costs of uncovering and proper replacement.
- 17.3. The Contractor, within two weeks of written notification, shall proceed to correct Work rejected by the Project Manager as defective or failing to conform to this Contract. The Contractor shall pay all costs and expenses associated with correcting such rejected Work, including any additional testing and observations, and reimbursement to the City for the Project Manager's services and expenses made necessary thereby.
- 17.4. Nothing contained in this Article shall establish any period of limitation with respect to other obligations, which the Contractor has under this Contract.
- 17.5. If, after two weeks following notification by the Project Manager, the Contractor has not started or completed the corrective work, the Contractor will notify the Project Manager and affected resident of intended schedule to complete work.

18. City May Accept Defective or Non-conforming Work

- 18.1. If the City chooses to accept defective or non-conforming Work, the City may do so. In such event, the Contract Price shall be reduced by the greater of (a) the reasonable cost of removing and correcting the defective or non-conforming Work, and (b) the difference between the fair market value of the Work as constructed and the fair market value of the Work had it not been constructed in such a manner as to include defective or non-conforming Work. If the remaining portion of the unpaid Contract Price, if any, is insufficient to compensate the City for its acceptance of defective or non-conforming Work, the Contractor, upon written demand from the City, shall pay the City such remaining compensation for accepting defective or non-conforming Work.

END OF SECTION

SPECIAL CONDITIONS

These "Special Conditions" contain modifications in the form of additions, deletions and substitutions, to the General Conditions of the Contract, and to other parts of the specifications. Where any part of the "General Conditions" is so modified by the "Special Conditions" the unaltered provisions shall remain in effect.

GENERAL INTENTIONS OF CONSTRUCTION:

1. **Paving Program - Mill & Overlay with concrete repair** - These streets will mill 3 inches of existing asphalt pavement and overlay 3 inches using trackless tack, match existing cross slopes and crown, unless directed otherwise by the Engineer. After milling the Engineer will evaluate pavement condition to determine full depth pavement replacement or overlay. Curb and gutter, driveways, sidewalk, and ramps shall be replaced where indicated on the plans or as directed by the Engineer. These streets shall be completed by **November 15, 2020** unless directed otherwise by the City.
 - Tomahawk Road (71st Street to Roe Avenue)
 - 71st Street (Stateline to Belinder Avenue)
 - Belinder Avenue (71st Street to 71st Terrace)
 - Village Drive (71st Street to 75th Street)

2. **Paving Program - Mill & Overlay with concrete replacement** - These streets will mill 3 inches of existing asphalt pavement and overlay 3 inches using trackless tack, match existing cross slopes and crown, unless directed otherwise by the Engineer. All curb and gutter will be replaced. Some or all driveways and sidewalk shall be replaced as indicated on the plans or as directed by the Engineer. These streets shall be completed by **November 15, 2020** unless directed otherwise by the City.

CONSTRUCTION COST ESTIMATES ARE ABOVE ANNUAL BUDGET. THIS STREET WILL BE HELD TO LAST STREET ON SCHEDULE TO ENSURE BUDGET IS NOT EXCEEDED.

- 82nd Street (Somerset Drive to Roe Avenue)
3. **Paving Program - Mill & Overlay with concrete replacement and concrete pavement of cul de sac bulb** - These streets will mill 3 inches of existing asphalt pavement and overlay 3 inches using trackless tack, match existing cross slopes and crown, unless directed otherwise by the Engineer. All curb and gutter will be replaced. Some or all driveways and sidewalk shall be replaced as indicated on the plans or as directed by the Engineer. Concrete pavement shall be constructed for the culdesac. These streets shall be completed by **November 15, 2020** unless directed otherwise by the City.
 - El Monte Circle (South of 75th Street)
 4. **Paving Program - Mill & Overlay only**
 These streets will mill 2 inches of existing asphalt pavement and overlay 2 inches using trackless tack, match existing cross slopes and crown, unless directed otherwise by the Engineer. **All curb and gutter will be replaced by a separate city contractor prior to start of asphalt mill and overlay.** These streets shall be completed by **November 15, 2020** unless directed otherwise by the City.
 - Fontana Street (67th Street to 69th Street)
 - 74th Terrace (Mission Road to Village Drive)
 5. **Paving Program - Full Depth Pavement Reconstruct with concrete replacement/repair-** These

streets will demolish and full depth reconstruct the pavement, match existing cross slopes and crown, unless directed otherwise by the Engineer. Curb and gutter, driveways, sidewalk, and ramps shall be replaced where indicated on the plans or as directed by the Engineer. These streets shall be completed by **November 15, 2020** unless directed otherwise by the City.

- 69th Street (Fonticello Drive to Nall Avenue)
- 83rd Terrace (Roe Avenue to Briar Street)

6. **Paving Program - Mill & Overlay with storm sewer replacement, full depth pavement reconstruct, concrete repair and sidewalk addition** - This street will mill 3 inches of existing asphalt pavement and overlay 3 inches using trackless tack, match existing cross slopes and crown, unless directed otherwise by the Engineer. Storm sewer structures and pipes will be replaced which will require the demolition and full depth reconstruction of the pavement where indicated in the plans or as directed by the engineer. Curb and gutter, driveways, sidewalk, and ramps shall be replaced where indicated on the plans or as directed by the Engineer. New sidewalk and ramps shall be constructed where indicated on the plans or as directed by the Engineer. These streets shall be completed by **November 15, 2020** unless directed otherwise by the City.

- Belinder Avenue (73rd Street to 75th Street)

7. **General Construction:** Concrete curb and gutter shall be repaired or replaced to ensure positive drainage across intersections or to storm sewer structures. Overlay and pavement shall be constructed to ensure positive drainage to concrete curb and gutter or across intersections. The Contractor shall coordinate with the Engineer prior to placement of concrete or asphalt.

TIME AND LIQUIDATED DAMAGES

The Total Project Work under this Contract for the Paving Program shall be complete by November 15, 2020.

Any street project that is begun must be continuously worked on until completion or as approved by the Engineer. Work will be subject to the Work Inactivity Penalty listed below in the special provisions.

Liquidated Damages, as referenced in the contract agreement, shall be assessed in the amount of \$500.00 per calendar day for Total Project Work; and, \$500.00 for each street project not complete by the dates listed above. Contractor agrees that such assessment is a reasonable estimate of the damages that may be sustained by the City in the event the project is delayed and that such amount is not a penalty.

A schedule must be submitted by the contractor and approved by the City prior to the notice to proceed that indicates order of construction by location and when each location will be completed. No more than three locations in the Paving Program can be active at one time unless approved by the City.

WORK INACTIVITY PENALTY

On individual street projects as listed in the contract, the contractor must commit to the work effort to complete each street location within 30 days. Completion includes all concrete repair and replacements, asphalt milling, and asphalt overlay. If the contractor does not commit to the continuous work effort, excluding weather, then the contractor will be charged a WORK INACTIVITY PENALTY after three consecutive days of no work. The initial penalty will be \$300.00 with an additional \$100.00 being charged for each day thereafter.

GENERAL NOTES AND DETAILS

Prairie Village Standard plan and detail sheets shall apply to all programs. Specific project details and typical sections are provided in project plans.

GENERAL CONDITIONS

Delete sections 9.4, 9.5, 9.6 relative to the CONTRACTOR'S temporary offices and storerooms.

SUB-CONTRACTORS

The Contractor shall not award subcontracts, which total more than forty-five percent (45%) of the contract and shall perform, within its own organization, work amounting to not less than fifty-five percent (55%) of the total contract price.

The Contractor shall submit their list of subcontractors in the bid documents for approval by the City prior to award of the contract.

Section 201 CONSTRUCTION STAKING

The City and its representatives will not perform construction staking.

Section 210 CLEARING AND GRUBBING

All removals not specified will be considered subsidiary to other bid items.

All other clearing and grubbing will be subsidiary to other bid items.

For all project areas the City will remove any trees requiring removal as part of the project prior to the contractor beginning on that specific project.

Section 250 SUB-GRADE MODIFICATION

Base Repair: Measurement and payment for sub-grade modifications shall be made per ton for Base Repair. Base repair shall occur on streets that have been milled 3-inches with isolated areas needing stabilization. Areas needing stabilization shall be approved by the Engineer. An estimated quantity is provided in the bid form.

Base Repair with Geogrid: Base repair with geogrid shall be installed in accordance with the plans on streets requiring full depth pavement reconstruction or pavement demolition. Measurement and payment for sub-grade modifications shall be made per square yard for Base Repair with Geogrid. An estimated quantity is provided in the bid form.

The Aggregate Base materials used for Base Repair and Base Repair with Geogrid shall have the following gradation or be an approved equal:

<u>Sieve Size</u>	<u>Sieve Analysis Square Mesh</u>	
	<u>Lower Limits</u>	<u>Upper Limits</u>
5 inch	0	20
3 inch	15	50
2 inch	30	70
3/8 inch	70	95
No. 200	90	100

Section 310 TACK COAT

Trackless tack will be required on all streets.

Section 320 ASPHALT CONCRETE SURFACE AND BASE

Asphalt surface shall be Superpave and base course shall be APWA Type 1 as specified unless directed otherwise by the Engineer.

Asphalt price indexing will NOT be applied to this project or programs.

Section 380 PAVEMENT REPAIR
DEEP MILL and PAVEMENT DEMOLITION

If a street pavement is decided to be reconstructed after the initial 3-inch milling, a deep mill shall be performed to remove the remaining pavement and base rock. The total removal of remaining asphalt and base will be measured per Square Yard and payment will be made at the contract unit price bid for Deep Milling.

For a street identified as a full depth pavement reconstruction, the existing pavement removal will be measured per Square Yard and payment will be made at the contract unit price bid for Pavement Demolition.

Asphalt price indexing will NOT be applied to this project or programs.

Section 485 CONCRETE STORM STRUCTURES

Field adjustments of the proposed improvements may be necessary due to constraints of the site(s) and shall be approved by the City's Representative prior to completing.

Quantities for structures are based on type and size, regardless of throat opening dimension.

Cantilever lids shall be subsidiary to the structure or modification.

All costs incurred for the abandonment and placement of flowable fill with storm structure changes shall be subsidiary to other bid items.

All inlet throats for the street and drainage project shall be paid for as Concrete Curb and Gutter.

Storm structure modifications - See Section 901

Storm structure tops shall be rebuilt when adjacent to new sidewalk being constructed on a street to match sidewalk elevations and cross slopes and shall be paid for as Inlet Modification. Inlet dimensions and locations shall be field verified by the contractor prior to construction. Cantilever lids shall be constructed where necessary to match back of sidewalk locations.

Measurement will be per inlet and paid as inlet modification.

Section 524 CONCRETE SIDEWALK

Stamped concrete shall be constructed in accordance with these specifications. The concrete mixture shall be full pigment or colored at the concrete plant. The stamp pattern shall be a running bond brick, or similar variation. The color/ pigment shall be brick red, or similar variation. The contractor shall provide a sample or test pour of the concrete with the stamped pattern and pigment for approval by the Engineer.

Stamped concrete shall be measured and paid for at the unit price bid for square yard of Concrete Sidewalk - 4" Stamped. No direct payment shall be made for additional materials, tools, labor and equipment necessary to perform the work.

Granular subbase for areas of sidewalk removal and replacement is subsidiary.

Section 525 DRIVEWAY

Asphalt required to transition from concrete driveway installation into existing asphalt driveways will be subsidiary to driveway to other bid items.

Section 601 EROSION CONTROL

The contractor shall take all necessary measures to prevent erosion and sedimentation from entering storm sewers or streams. The contractor shall be responsible for preparing a stormwater pollution prevention plan and updating the plan as necessary during the project.

Section 610 SOD

Fine grading and topsoil are expected to allow proper sodding. The topsoil shall be uniformly distributed on the designated areas and it shall be a minimum of three inches after firming. Spreading shall be performed in such a manner that sod installation can proceed with a minimum of additional soil preparation and tillage. Any irregularities in the surface resulting from top soiling or other operations shall be corrected in order to prevent the formation of depressions or water pockets.

Topsoil shall be subsidiary to sod bid items as described in this section.

Section 650 LAWN SPRINKLER

Sprinkler head and pipe replacement will only be paid for at locations of new sidewalk construction. At all other locations the Contractor will be fully responsible for any damage to the lawn sprinkler systems caused by the Contractors operations.

Section 701 TRAFFIC CONTROL

The contractor shall only work on one side of the road at a time and no more than two streets at one time unless permitted to do so by the City

Section 722 THERMOPLASTIC PAVEMENT MARKING

The contractor shall provide preformed hot applied thermoplastic pavement marking symbols for all required pavement symbols.

Section 901 MANHOLE AND GATE VALVE ADJUSTMENT

Concrete pavement blockouts shall be constructed per the detail and will be measured by each blockout.

Section 902 UTILITY LINE ADJUSTMENT

All sanitary sewer manholes, sanitary sewer lines and encasement of the sanitary sewer lines shall be in accordance with the requirements of the Johnson County Unified Wastewater District.

Sanitary sewer pipe and sanitary sewer encasement shall be measured by the linear foot for the specified size and/or type, complete and in place. Sanitary Sewer manhole shall be measured per each completed and accepted in place.

The amount of competed and accepted work measured, shall be paid for at the contract unit price per linear foot for Sanitary Sewer and Sanitary Sewer Encasement of the size and/or type specified, and per each for Sanitary Sewer Manhole of the size and type specified. Prices shall be full compensation for furnishing and placing all materials, for all labor, equipment, tools and incidentals to complete the work.

PARABOLIC MIRROR - El Monte Circle

The contractor shall install a 3-foot diameter parabolic mirror approximately 7 feet high above the ground onto the existing light pole at the northeast corner of El Monte Circle and 75th Street. The contractor shall verify proper site distance and triangles with the engineer.

A sign saying "OBJECTS IN MIRROR ARE CLOSER THAN THEY APPEAR" shall be installed under the parabolic mirror. Any existing signs on the light pole shall be moved and replaced as directed by the City. The bid item includes the mirror, new signs and relocation of the existing signs onto new post.

(See next page for an example of an installed parabolic mirror)

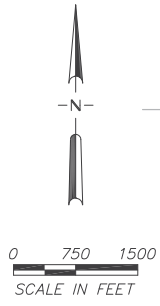


END OF SECTION



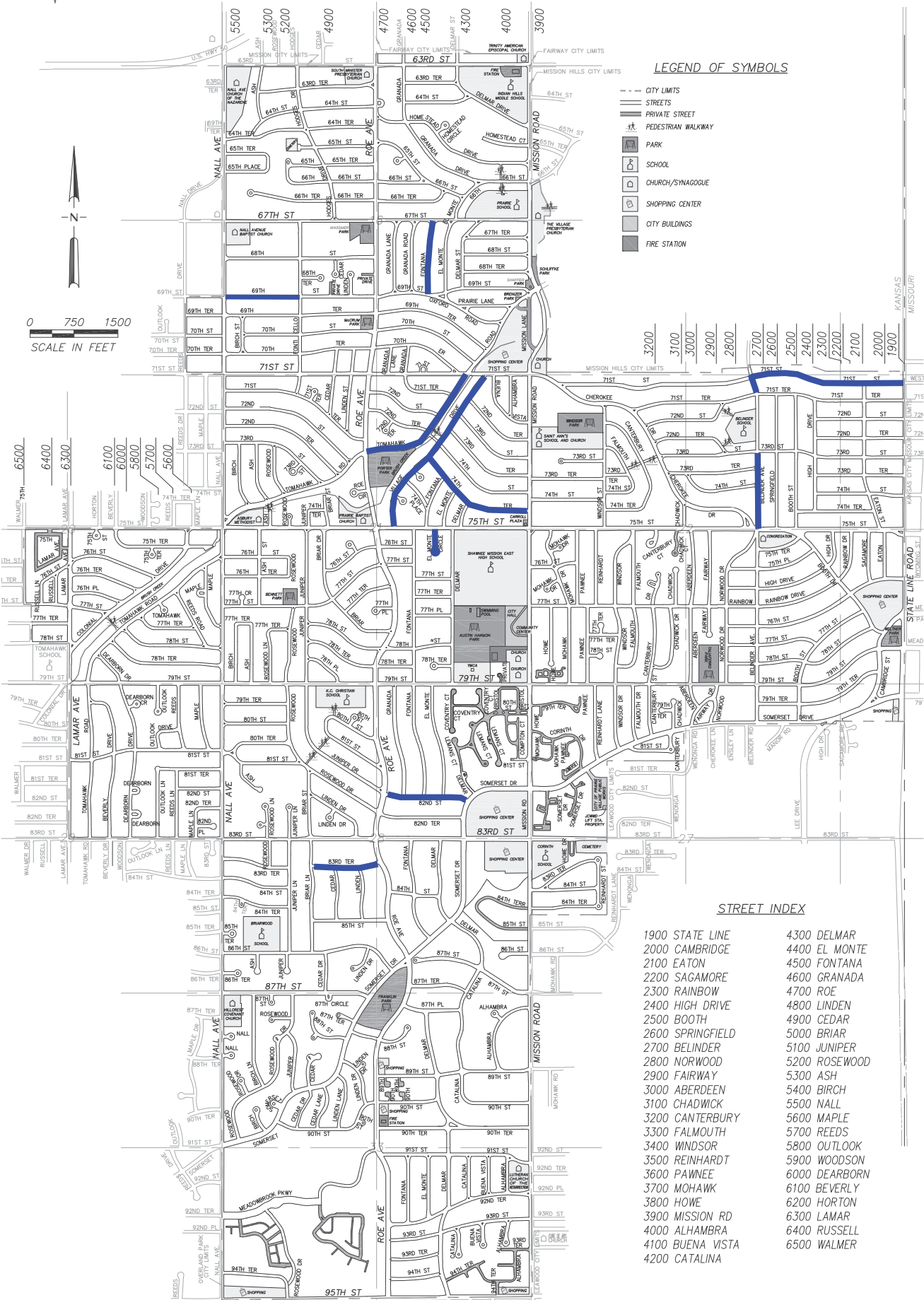
CITY OF PRAIRIE VILLAGE

Star of Kansas



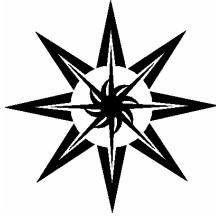
LEGEND OF SYMBOLS

- CITY LIMITS
- == STREETS
- == PRIVATE STREET
- ⚓ PEDESTRIAN WALKWAY
- ⬜ PARK
- ⬜ SCHOOL
- ⬜ CHURCH/SYNAGOGUE
- ⬜ SHOPPING CENTER
- ⬜ CITY BUILDINGS
- ⬜ FIRE STATION



STREET INDEX

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



PUBLIC WORKS DEPARTMENT

Council Meeting Date: May 18, 2020

COU2020-19

CONSIDER CONSTRUCTION ADMINISTRATION AGREEMENT WITH TREKK DESIGN GROUP FOR 2020 CONSTRUCTION PROJECTS

RECOMMENDATION

Move to approve the construction administration agreement with TREKK Design Group for 2020 construction projects for \$169,673.40.

BACKGROUND

The City compliments its own construction inspection forces with consultant inspectors every year. We are moving forward with an extraordinary amount of construction and a diverse type of construction inspection needs this year.

This contract will include construction administration services for the 2020 construction projects, which include the 2020 Paving Program, the Reinhardt drainage improvement and sanitary sewer relocation at the Public Works Facility and Drain19x.

The total construction cost for the projects will be about \$6,100,000. The fee was negotiated with TREKK to be \$169,673.40 or 2.8% of construction costs. This is a reasonable per cent of construction as we are supplementing our staff with assistance during the height of construction season.

Inspection costs are budgeted as part of the 2020 CIP projects.

FUNDING SOURCE

Funding is available in the CIP projects:

PAVP2020	\$49,327.45
REIST0001	\$71,864.75
DRAIN19X	\$48,481.20
TOTAL	\$169,673.40

ATTACHMENTS

1. Agreement with TREKK Design Group

PREPARED BY

Melissa Prenger, Senior Project Manager

May 11, 2020

AGREEMENT FOR PROFESSIONAL CONSULTANT SERVICES

For

CONSTRUCTION ADMINISTRATION

For

2020 PAVING PROGRAM

DRAINAGE IMPROVEMENTS

THIS AGREEMENT, made at the Prairie Village, Kansas, this _____ day of _____, 2020, by and between the City of Prairie Village, Kansas, a municipal corporation with offices at 7700 Mission Road, Prairie Village, Kansas, 66208, hereinafter called the “**City**”, and TREKK Design Group, LLC, a Kansas corporation with offices at 1411 E. 104th Street, Kansas City, MO, 64131, hereinafter called the “**Consultant**”.

WITNESSED, THAT WHEREAS, City has determined a need to retain a professional engineering firm to provide civil engineering services for Construction Administration of 2020 PAVING PROGRAM AND DRAINAGE IMPROVEMENTS hereinafter called the “**Project**”,

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

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

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

ARTICLE I - RESPONSIBILITIES OF THE CITY

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

The CITY shall do the following in a timely manner:

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

ARTICLE II - RESPONSIBILITIES OF THE CONSULTANT

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

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

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

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

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

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

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

The Construction Manager shall have authority to disapprove or reject Contractor's work while it is in progress if, on the basis of such observations, Construction Manager believes that such work will not produce a completed project that conforms generally to the Project Manual or that it will prejudice the integrity of the design concept of the completed project as a functioning whole as indicated in the Project Manual.

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

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

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

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

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

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

The Construction Manager shall:

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

any subsequent adjustments allowed by the Project Manual). The responsibilities of Construction Manager are expressly subject to the limitations set forth herein.

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

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

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

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

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

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

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

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

The duties and responsibilities Construction Manager are as follows:

- 1 Attend meetings with Contractor, such as preconstruction conferences, progress meetings, job conferences and other project-related meetings, and prepare and circulate copies of minutes thereof.
- 2 Serve liaison with Contractor, working principally through Contractor's superintendent, assist in providing information regarding the intent of the Project Manual.

- 3 Obtaining from CITY additional details or information, when required for proper execution of the Work.
- 4 Report when clarifications and interpretations of the Project Manual are needed and transmit to Contractor clarifications and interpretations.
- 5 Record date of receipt of Samples and approved Shop Drawings.
- 6 Receive and examine Samples, which are furnished at the Site by Contractor.
- 7 Review material test reports and inform Senior Project Manager and Contractor of results not meeting specifications. The Construction Manager shall make appropriate recommendations to address results not meeting specifications.
- 8 Advise the Contractor prior to the commencement of any portion of the Work requiring a Shop Drawing or Sample submittal that the submittal has not been received or approved by Construction Manager.
- 9 Consider and evaluate Contractor's suggestions for modifications in Drawings or Specifications and report such suggestions. Transmit to Contractor in writing decisions as issued by Construction Manager.
- 10 Conduct on-Site observations of Contractor's work in progress to determine if the Work is in general proceeding in accordance with the Project Manual.
- 11 Report any part of Contractor's work in progress will not produce a completed Project that conforms generally to the Project Manual or will imperil the integrity of the design concept of the completed Project as a functioning whole as indicated in the Project Manual, or has been damaged, or does not meet the requirements of any inspection, test or approval required to be made; and advise of that part of work in progress that the Construction Manager believes should be corrected or rejected or should be uncovered for observation, or requires special testing, inspection or approval.
- 12 Consult with Contractor in advance of scheduled major inspections, tests, and systems startups of important phases of the Work.
- 13 Verify that tests, equipment, and systems start-ups and operating and maintenance training are conducted in the presence of appropriate CITY personnel, and that Contractor maintains adequate records thereof.
- 14 Observe, record, and report appropriate details relative to the test procedures and systems start-ups.
- 15 Accompany visiting inspectors representing public or other agencies having jurisdiction over the Project, record the results of these inspections.
- 16 Maintain orderly files for correspondence, reports of job conferences, reproductions of original Project Manual including all Change Orders, Field Orders, Work Change Directives, Addenda, additional Drawings issued subsequent to the execution of the Contract, clarifications and interpretations of the Project Manual, progress reports, Shop Drawing and Sample submittals received from and delivered to Contractor, and other Project-related documents.
- 17 Prepare a daily report recording Contractor's hours on the Site, weather conditions, data relative to questions of Change Orders, Field Orders, Work Change Directives, or changed conditions, Site visitors, daily activities, decisions, observations in general, and specific observations in more detail as in the case of observing test procedures; and send copies to Senior Project Manager.

- 18 Record names, addresses, fax numbers, e-mail addresses, web site locations, and telephone numbers of all Contractors, subcontractors, and major suppliers of materials and equipment.
- 19 Maintain records for use in preparing Project documentation.
- 20 Upon completion of the Work, furnish original set of all Project documentation to Senior Project Manager.
- 21 Furnish to Senior Project Manager periodic reports as required of progress of the Work and of Contractor's compliance with the progress schedule and schedule of Shop Drawing and Sample submittals.
- 22 Draft and recommend to Senior Project Manager proposed Change Orders, Work Change Directives, and Field Orders. Obtain backup material from Contractor.
- 23 Furnish copies of all inspection, test, and system start-up reports.
- 24 Immediately notify Senior Project Manager of the occurrence of any Site accidents, emergencies, acts of God endangering the Work, damage to property by fire or other causes, or the discovery of any Constituent of Concern.
- 25 Review Applications for Payment with Contractor for compliance with the established procedure for their submission and forward with recommendations to Senior Project Manager, noting particularly the relationship of the payment requested to the schedule of values, Work completed, and materials and equipment delivered at the Site but not incorporated in the Work.
- 26 During the course of the Work, verify that materials and equipment certificates, operation and maintenance manuals and other data required by the Specifications to be assembled and furnished by Contractor are applicable to the items actually installed and in accordance with the Project Manual, and have these documents delivered to Senior Project Manager for review prior to payment for that part of the Work.
- 27 Participate in a Completion inspection, assist in the determination of Completion and the preparation of lists of items to be completed or corrected.
- 28 Participate in a final inspection in the company of Senior Project Manager, and Contractor and prepare a final list of items to be completed and deficiencies to be remedied.
- 29 Observe whether all items on the final list have been completed or corrected and make recommendations concerning acceptance and issuance of the Notice of Acceptability of the Work.

The Construction Manager shall not:

- 1 Exceed limitations of CONSULTANT authority as set forth in the Agreement or the Project Manual.
- 2 Undertake any of the responsibilities of Contractor, subcontractors, suppliers, or Contractor's superintendent.
- 3 Advise on, issue directions relative to, or assume control over any aspect of the means, methods, techniques, sequences or procedures of Contractor's work unless such advice or directions are specifically required by the Project Manual.

- 4 Advise on, issue directions regarding, or assume control over safety practices, precautions, and programs in connection with the activities or operations of CITY or Contractor.
- 5 Participate in specialized field or laboratory tests or inspections conducted off-site by others except as specifically authorized.
- 6 Accept Shop Drawing or Sample submittals from anyone other than Contractor.
- 7 Authorize CITY to occupy the Project in whole or in part.

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

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

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

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

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

A checklist of items contained in the Daily Report is as follows:

Typical entries for general information -

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

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

Typical entries for subgrade work -

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

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

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

Typical entries for paving work -

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

Typical entries for storm drains -

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

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

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

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

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

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

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

ARTICLE III - COMPENSATION

The CITY agrees to pay the CONSULTANT, at Hourly Rates, to a Maximum Fee of \$169,673.40 for the scope of services as specified herein unless modified by Change Order. CONSULTANT current Hourly Rate Schedule is attached as Exhibit A.

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

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

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

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

ARTICLE IV - GENERAL PROVISIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CITY:

CITY OF PRAIRIE VILLAGE, KS

CONSULTANT:

TREKK Design Group, LLC

By: _____

Eric Mikkelson

Mayor

By: _____

Kimberly Robinett

Managing Member

Address for giving notices:

CITY of Prairie Village
7700 Mission Road
Prairie Village, Kansas, 66208
913-381-6464

Address for giving notices:

TREKK Design Group, LLC
1411 E. 104th Street
Kansas City, MO 64131
816-874-4655

ATTEST:

Adam Geffert, City Clerk

APPROVED:

David Waters, City Attorney

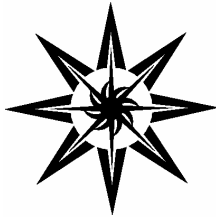


2020 Fee Estimate Worksheet

Project Name & Number Prairie Village - 2020 Inspection Projects

	Project Manager	Construction Inspector	Administration	Mileage	Labor Sub-Total	Direct Exp	Sub-Total	TOTAL
Fee Billing Rate	\$175.80	\$113.50	\$84.50	\$ 0.575				
WORK TASK DESCRIPTION								
Task 1 - Public Works Sanitary Sewer Project					\$ 12,453.50	\$ 198.95	\$ 12,652.45	
Project Administration	6		3					
Construction Inspection								
May (quarter-time; 20 days +10% contingency)	2	44		166				
June (quarter-time; 22 days +10% contingency)	2	48		180				
Task 2 - Paving Program					\$ 36,070.10	\$ 604.90	\$ 36,675.00	
Project Administration	10		5					
Construction Inspection								
May (quarter-time; 20 days +10% contingency)	2	44		166				
June (quarter-time; 22 days +10% contingency)	2	48		180				
July								
August								
September (half-time; 21 days +10% contingency)	4	92		346				
October (half-time; 22 days +10% contingency)	4	96		360				
Task 3 - Reinhardt Project					\$ 70,656.10	\$ 1,208.65	\$ 71,864.75	
Project Administration	14		7					
Construction Inspection								
May (half-time; 20 days +10% contingency)	3	88		330				
June (half-time; 22 days +10% contingency)	4	96		360				
July (half-time; 22 days +10% contingency)	4	96		360				
August (half-time; 21 days +10% contingency)	4	92		346				
September (half-time; 21 days +10% contingency)	4	92		346				
October (half-time; 22 days +10% contingency)	4	96		360				
Task 4 - Storm 19 Project					\$ 47,669.30	\$ 811.90	\$ 48,481.20	
Project Administration	10		5					
Construction Inspection								
July (half-time; 22 days +10% contingency)	4	96		360				
August (half-time; 21 days +10% contingency)	4	92		346				
September (half-time; 21 days +10% contingency)	4	92		346				
October (half-time; 22 days +10% contingency)	4	96		360				
TOTAL MAN-HOURS / QUANTITY	95	1308	20	4912				
UNIT RATE	\$175.80	\$113.50	\$84.50	\$ 0.575				
TREKK DESIGN GROUP FEE TOTAL	\$ 16,701.00	\$ 148,458.00	\$ 1,690.00	\$ 2,824.40	\$ 166,849.00	\$ 2,824.40	\$ 169,673.40	

SUMMARY OF ANTICIPATED UTILIZATION						
	May	June	July	Aug.	Sept.	Oct.
Task 1 - Public Works Sanitary Sewer Project	1/4	1/4				
Task 2 - Paving Program	1/4	1/4			1/2	1/2
Task 3 - Reinhardt Project	1/2	1/2	1/2	1/2	1/2	1/4
Task 4 - Storm 19 Project			1/2	1/2	1/2	1/2
	full-time	full-time	full-time	full-time	full-time	full-time
				(1-1/2)	(1-1/4)	



PUBLIC WORKS DEPARTMENT

Council Meeting Date: May 18, 2020

COU2020-20

CONSIDER AMENDMENT NO. 3 WITH McCOWNGORDON FOR SANITARY SEWER CONSTRUCTION AT THE PUBLIC WORKS FACILITY (BG700002)

RECOMMENDATION

Move to approve Amendment No. 3 with McCownGordon for the sanitary sewer construction at the Public Works Facility in the amount of \$221,341.

BACKGROUND

At the October 21, 2019 Council Meeting the Governing Body approved the Construction Manager at Risk (CMR) contract with McCownGordon. The first phase of Preconstruction Services was set at \$24,000 and has allowed McCownGordon to serve as a consultant during the design phase of the project. They have been assisting our architect, Clark Enersen Partners and the City staff in the development of the design and cost estimating of the new building.

Amendment No. 1, approved on April 6th, consisted of the demolition of A Building, B Building and the Dirt Barn for \$95,760. Amendment No. 2 consists of the pre-engineered metal building structure and erection of the structure for \$1,002,079. Amendment No. 3 consists of the sanitary sewer construction on the site.

While the design team is working toward final plans and details, the sanitary sewer plans have been finalized and approved by Johnson County Wastewater (JCW). This construction is necessary prior to any building construction as the existing sanitary main facility is located in the middle of the new building. This main will be relocated and upsized to meet JCW needs. The relocation is a cost for the project as JCW has dedicated easement on the property. The cost to upsize the facility will be supplemented by JCW.

By approving Amendment No. 3, the sanitary sewer contractor can begin work a month prior to the anticipated start of construction. The sanitary sewer construction is one of the few pieces of construction we have "in the ground" and completing it prior to the building starting is another jump start in the process.

As prime contractor, McCownGordon received 4 bids from contractors for this work and accepted the lowest and most responsive bid.

Staff believes Amendment No. 3 for the sanitary sewer at \$221,341 is an acceptable price and recommends approval. There is an option to abandon in place some of the existing pipe which may reduce this amendment by \$10,860. Staff will accept this reduction after confirming with JCW the process for abandonment and executing the required agreement.

LEED PLATINUM GOAL - The sanitary sewer does not have any impact on our LEED goal.

FUNDING SOURCE

Funding is available in the CIP project BG70 0002.

ATTACHMENTS

1. Amendment No.3

PREPARED BY

Melissa Prenger, Senior Project Manager

May 13, 2020

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

This AMENDMENT, effective **18th day of May 2020**, modifies and amends the Standard Form of Agreement Between Owner and Construction Manager, dated **21st day of October 2019** (“Agreement”),

BETWEEN the Owner:

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

and the Construction Manager:

**McCownGordon Construction, LLC
850 Main Street
Kansas City, MO 64105**

The Project:

**New Public Works Facility
3535 Somerset Dr.
Prairie Village, KS 66208**

The Architect:

**The Clark Enersen Partners
2020 Baltimore Ave., Suite 300
Kansas City, MO 64108**

The Owner and Construction Manager agree as set forth below:

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

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

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

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

2. **NOTICE TO PROCEED.** The date for the Notice to Proceed and the commencement of construction is the date of this Amendment and receipt of a Demolition Permit.

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

This date will be included in future Amendment No. 3 with full detailed construction schedule indicating Substantial Completion date.

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

If not previously agreed upon, the Construction Manager's Fee for the Work of this Amendment shall be **Two hundred twenty one thousand three hundred and forty one (221,341) dollars**

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

Exhibit A: GMP Description

5. OTHER PROVISIONS:

- a. **Permits.** Construction Manager shall obtain the following permits:

Full Building Permit

OWNER:

CONSTRUCTION MANAGER:

BY: _____

BY: _____

TITLE: _____

TITLE: _____

DATE: _____

DATE: _____

EXHIBIT A – GMP DESCRIPTION

PRAIRIE VILLAGE | PUBLIC WORKS | PRAIRIE VILLAGE, KS
CONTRACT AMENDMENT NO. 03 | 05/13/2020

EXECUTIVE SUMMARY

This Guaranteed Maximum Price (GMP) Contract Amendment 03 Proposal, Sanitary Relocation, is the third of four amendments for the construction of a one story, 21,700 square foot public works facility divided between a 9,900-sf office, 10,700-sf high bay high bay garage and a 1,000-sf wash bay. Contract Amendment No. 3 is based on documents in Bid Package #3: Sanitary Sewer Main Relocation as developed by the Clark Enersen Partners and its respective consultants and as identified within the Documentation section of this narrative with modifications set forth in the clarifications and exclusions below.

GMP COST SUMMARY

Our Contract Amendment No. 03 is based on the below items:

1. The GMP Proposal for this Contract Amendment per scope and Contract Documents is **\$ 221,341**

DOCUMENTATION

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

DESCRIPTION	AUTHOR	DATED
Sanitary Sewer Main Improvement Plans	Bartlett & West	April 9, 2020
Geotech Report	Kaw Valley Engineering	January 15, 2020

SCHEDULE

The Sanitary Sewer Main Improvement as included within this GMP 03 will begin around the first week in June and take approximately 3 to 4 weeks to complete.

BREAKOUTS

- | | |
|---------------------------------|-----------|
| 1. 12" Pipe in Lieu of 15" Pipe | -\$3,318 |
| 2. 18" Pipe in Lieu of 30" Pipe | -\$11,613 |

COST OPTION

- | | |
|--|-----------|
| 1. Fly ash slurry fill existing sanitary line in lieu of removal | -\$10,806 |
|--|-----------|

CLARIFICATIONS

This GMP includes the demolition of the existing sanitary sewer and the addition of the relocated and upgraded sanitary sewer main.

Inclusions

1. \$14,300 of General conditions consisting of 3.5 weeks of field supervision and jobsite trailer
2. Maintenance Bond to JCW
3. Construction Staking w/as Built Survey
4. Removal and haul-off of existing sewer lines & manholes

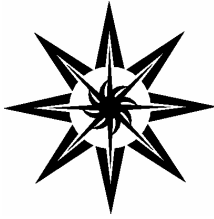
EXHIBIT A – GMP DESCRIPTION

CONTRACT AMENDMENT NO. 01 | 03/27/2020

5. Haul-off of spoils
6. 140 CY of Rock Excavation
7. Bypass Pumping
8. Haul-off and disposal of debris
9. Dump fees
10. Dust control as necessary
11. Erosion control consists of inlet protection of existing storm drains.
12. Construction Contingency (3%) and Contractor Fee (3.5%) are included.
13. McCownGordon Construction Performance and Payment bonds are included

Exclusions

1. Bracing of Existing Structures
2. Import of Material for Backfill
3. Hazardous Waste Excavation
4. Sand Oil Interceptor
5. Testing of Soils
6. Saw-Cutting
7. Special inspections and construction testing expenses
8. Building permit and plan review fees
9. City excise tax, park & recreation fee or traffic impact fee assessments



ADMINISTRATION

City Council Date: May 18, 2020

COU2020-21

Consider Ordinance No. 2418 regulating public offenses within the City of Prairie Village, Kansas, amending Chapter 11 (Public Offenses & Traffic), Article 2 (Local Regulations) of the Code of the City of Prairie Village to require the wearing of face coverings or masks during the COVID-19 public health emergency and recovery.

At its May 4, 2020, meeting, the City Council directed the city attorney to create an ordinance requiring masks or other face coverings in businesses where the public is invited, to the maximum extent legally permissible. Since that time, all staff has worked diligently to draft an ordinance that would be legally sufficient (apart from questions as to practical enforceability) and would work within the parameters set forth by the City Council.

The City's professional staff reviewed ordinances and orders established as to other cities throughout the country (including examples provided by Councilmember Jori Nelson), considered specific limitations and considerations applicable to Kansas and to Johnson County, reviewed possible enforcement issues, and deliberated over issues related to constituent and business relationships. Examples of these considerations include the following:

- Specific limitations on local authority as set forth in Kansas law, including but not limited to executive orders of the Governor of the State of Kansas;
- Responsibilities of individuals and businesses, and appropriate requirements as to each;
- Fourth Amendment concerns (probable cause for police stops);
- Appropriate age parameters;
- Exclusions related to health or Americans with Disabilities Act-type matters;
- First Amendment "free exercise of religion" issues;
- The possibility of future conflicting or superseding rules, regulations, or orders;
- Impact on other units of government and elected officials;
- Appropriate penalty provisions; and
- Termination or expiration of the ordinance requirements.

The ordinance presented for consideration attempts to provide an appropriate balance as to these interests. Staff recognizes that an ordinance may not be able to encapsulate every hypothetical situation that may arise. As with most if not all laws governing infractions, discretion will most certainly be required as to any given situation—police officer discretion; prosecutorial discretion; and judicial discretion.

Highlights of the draft ordinance include the following:

- The term "Face Covering" or "Mask" is broadly defined, and does not require medical-grade masks.
- The term "Place of Business" is also broadly defined as establishments generally open to the public for business. The term may include homes, to the extent such home serves as a business, and to the extent contractors may conduct business inside of homes.

The term may also include vehicles (e.g., delivery vehicles and the handling of packages).

- Individuals would be required to wear a Face Covering or Mask prior to entering any Place of Business and to wear it continuously during the time the person is in the Place of Business. Examples provided from other municipalities had age ranges from 2, to 5, to 9. Staff determined that 5-years of age was the most reasonable standard.
- Businesses would be required to provide signage giving notice of the requirement, and they would also be responsible as to their own employees and representatives. The draft ordinance does not contain a mandatory "deny entry" requirement or a requirement that businesses remove non-compliant customers by force, nor does the ordinance require that businesses provide masks. Businesses would be required to "take reasonable steps to ensure that customers, clients, and/or visitors observe the requirement for Face Coverings or Masks while at the Place of Business." Subject to those parameters, and officer discretion, both individuals and businesses may be cited under this ordinance.
- Churches, synagogues, mosques, and other places of worship are excluded. Although there are courts across the United States that have considered and declined to strike-down COVID-related regulations which treat churches the same as secular businesses, there has been recent Kansas federal court action enjoining one of Governor Kelly's orders related to churches (albeit, that order has since expired, rendering the injunction moot). However, staff was of the opinion that it should not be entering places of worship to undertake enforcement actions related to Face Coverings or Masks. As the City Council's motion passed by the City Council expressly stated "businesses", Staff did not feel that places of religious worship were contemplated for inclusion by the City Council.
- Staff was not inclined to include locations owned or operated by other branches of government, including Johnson County or the Shawnee Mission School District. Staff is of the opinion that those decisions should be left to the orders or requirements of their own elected officials. As the City Council's motion passed by the City Council expressly stated "businesses", Staff did not feel that other political subdivisions were contemplated for inclusion by the City Council. The City would, however, have the provisions of this ordinance apply to its own buildings and facilities.
- The Kansas Governor's Executive Order No. 20-29 does indeed allow for more restrictive regulations, but such regulations "may affect or regulate essential functions only so long as they do not significantly disrupt performance of the essential function" under the Kansas Essential Functions Framework. Accordingly, a "savings" exception for such essential functions has been included. In order to further avoid future conflict with superseding State or County orders, an additional exception has been included where enforcement of the ordinance would essentially prohibit a business from providing (or a customer from receiving) services from a Place of Business that has been specifically allowed to open by superior orders or rules.
- There is an exception for health and ADA-type accommodations. This is an area that may present enforcement challenges for police officers and the City Prosecutor.
- Staff did not sense that the City Council wanted to be overly-punitive, but focus instead on safety and public health. Accordingly, staff looked at other City Code provisions

related to safety, such as the failure to maintain a smoke detector (an unclassified violation, with a \$25 fine), and smoking (higher penalties, but classified as an "infraction", not a type of misdemeanor, under City Code). As an "unclassified" violation (that is, not a class of misdemeanor), there would not be a risk jail time as to violation of this ordinance itself (failure to appear, failure to pay, contempt of court, etc., could result in higher penalties, and possibly jail time, however).

- This ordinance would expire by its own terms on the later of June 15, 2020, or the date that Governor Kelly implements the "Phase Out" of the State's "Ad Astra" reopening plan (which would be no earlier than June 15, but could very likely be later). The Phase Out is the last portion of the Governor's plan. Staff felt that this was an appropriate progress marker (one outside of City action itself) on which residents and businesses could rely.

It is important to remember that, at any time, new or conflicting orders could be issued by the Governor or by Johnson County, Kansas. There could also be challenges to such orders. Indeed, last week on May 13, the State Finance Council (which has certain statutory review authority over emergency orders of the Governor) extended the Governor's emergency authority for until only May 26, with the possibility that the full Legislature could further restrict the Governor's authority when it reconvenes May 21. The draft ordinance attempts to provide flexibility for accommodating such changes such that, if and when they occur, updates to this ordinance will not have to continually be brought to the City Council.

Finally, this draft ordinance has been shared with the City Prosecutor. Although the City Prosecutor did not have any recommended language changes to the ordinance, she did raise the following enforcement and practical concerns:

- The terms "Face Coverings" and "Masks" could include such things as Halloween masks and KKK hoods (indeed, there are states and cities that have in place "anti-mask" laws adopted in response to the KKK, and they are navigating how to allow or require face masks for COVID-19 in light of such laws).
- She is of the opinion that it would be difficult to prosecute business owners and managers if their customers are not wearing masks, and believes it is up to individuals to follow laws.
- As mentioned above, the "health" exception to wearing a mask could present difficulties in enforcement and prosecution.
- She believes that, rather than adopting a specific face mask ordinance, the City should allow businesses to establish their own requirements, and this would allow the City to issue a trespassing citation if a customer refuses to wear a mask or leave when requested by the business.

Ms. Jamie Robichaud also spoke with the City's municipal judges, who expressed concerns with violations of this ordinance coming to municipal court, given the exceptions contained in the ordinance (which are required).

ATTACHMENTS:

Draft Ordinance No. 2418
Memo from Chief Schwartzkopf

PREPARED BY:

David E. Waters
City Attorney

ORDINANCE NO. 2418

AN ORDINANCE REGULATING PUBLIC OFFENSES WITHIN THE CITY OF PRAIRIE VILLAGE, KANSAS; AMENDING CHAPTER 11 (PUBLIC OFFENSES & TRAFFIC), ARTICLE 2 (LOCAL REGULATIONS) OF THE CODE OF THE CITY OF PRAIRIE VILLAGE TO REQUIRE THE WEARING OF FACE COVERINGS OR MASKS DURING THE COVID-19 PUBLIC HEALTH EMERGENCY AND RECOVERY.

WHEREAS, COVID-19 is a disease caused by a novel coronavirus, previously unknown in humans, and is presently understood to cause, among other things, upper-respiratory tract illnesses that can range from mild to severe, spread quickly, and may cause death, particularly in older adults and persons with chronic medical conditions;

WHEREAS, the World Health Organization has declared COVID-19 to be a global pandemic;

WHEREAS, the Prairie Village City Council recognizes the emergency declarations and proclamations related to COVID-19 of the President of the United States, the Governor of the State of Kansas, and the Mayor of Prairie Village, Kansas; and

WHEREAS, the Centers for Disease Control has recommended wearing cloth or other face coverings or masks in public settings where other social distancing measures are difficult to maintain, and the Prairie Village City Council recognizes that such use of face coverings or masks can further aid in slowing the spread of the novel coronavirus and reducing the chances of asymptomatic persons transmitting the virus to others.

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

Section 1. A new Section 11-222 is hereby established in Chapter 11 (Public Offenses & Traffic), Article 2 (Local Regulations) in the Code of the City of Prairie Village, Kansas, as follows:

11-222 WEARING MASKS IN PUBLIC PLACES OF BUSINESS DURING THE COVID-19 PUBLIC HEALTH EMERGENCY AND RECOVERY.

A. Definitions.

(1) "Face Covering" or "Mask" means a device to cover the nose and mouth of a person to impede the spread of saliva or other fluids during speaking, coughing, sneezing, or other intentional or involuntary action. The term does not mean or require medical-grade masks, but face coverings or masks may be fashioned from scarves, bandanas, or other suitable fabrics. A face covering or mask must cover the mouth and nose of the wearer.

(2) "Place of Business" means:

(a) any business open to the public, including without limitation grocery stores, supermarkets, farmers markets,

pharmacies, retail establishments, laundromats, dry cleaners, hardware stores, banks, restaurants and cafes (or similar establishments where prepared foods, meals, or beverages may be purchased), commercial office buildings, gas stations or service stations, department stores, veterinary clinics, dental clinics, health clinics, theatres, venues, bowling alleys, arcades, gymnasiums and fitness centers, nail salons, barber shops, tanning salons, tattoo parlors, and other personal services businesses, and other establishments generally open to the public for business.

(b) The term of Place of Business shall also include areas established for entry into the Place of Business (including areas established for lines) and carry-out/pick-up areas which are open and accessible to the general public. The term Place of Business shall not otherwise include parking lots, garages, drive-thru lanes, or outdoor common areas serving a Place of Business.

(c) The term Place of Business shall not include a person's vehicle, home, or dwelling; provided, that a home or dwelling shall be considered a Place of Business to the extent (i) such home or dwelling is open to the public for a permitted business, such as a Day Care Center pursuant to Chapter 19.34 of the Prairie Village Municipal Code, or (ii) any contractors, repairpersons, delivery persons, or other persons provide business services within or to such home or dwelling, in which such home or dwelling shall be considered the Place of Business for such persons providing business services; and further provided, that a vehicle shall be considered a Place of Business to the extent such vehicle is used for the provision of business services, including but not limited to delivery vehicles, taxis, and ride-share or ride-hailing vehicles.

(d) The term Place of Business shall not include churches, synagogues, mosques, or other places of religious worship, or public buildings or facilities owned or operated by any unit of government or political subdivision other than the city itself, including but not limited to those buildings or facilities owned or operated by the county, the school district, the state, or the federal government, or any agency or division thereof. The term Place of Business shall not otherwise include public parks, public streets, or public sidewalks.

B. Face Coverings or Masks Required to be Worn. Except as otherwise set forth in this section 11-222, each person over the age of five (5) years old shall wear a Face Covering or Mask at all times when at a Place of Business. Any person, including employees of businesses, over the age of five (5) years old shall wear a Face Covering or Mask prior to entering any Place of Business and shall

wear the Face Covering or Mask continuously during the time the person is in the Place of Business. Parents and guardians shall be responsible for ensuring proper masking of children when in a Place of Business.

C. Places of Business—Requirements as to Employees and Customers.

(1) All Places of Business shall post signage at entrances to such Places of Business informing the public that Face Coverings or Masks must be worn at all times within or about the premises of the Place of Business. Owners, managers, and supervisors shall ensure that employees, contractors, and representatives of the Place of Business observe the requirement for Face Coverings or Masks while at the Place of Business.

(2) Owners, managers, and supervisors shall take reasonable steps to ensure that customers, clients, and/or visitors observe the requirement for Face Coverings or Masks while at the Place of Business; provided, that this subsection shall not be construed or interpreted as requiring that a Place of Business provide Face Coverings or Masks to such customers, clients, and/or visitors.

D. Exceptions. The requirement of wearing a Face Covering or Mask shall not apply in the following circumstances:

(1) To the extent such requirement would significantly disrupt the performance of "essential functions" identified in the Kansas Essential Functions Framework, as described in Kansas Governor Executive Order No. 20-29, or to the extent such requirement would otherwise directly conflict with any current or subsequent orders issued by the State of Kansas, the Governor of the State of Kansas, Johnson County, Kansas, the Local Health Officer of Johnson County, Kansas, or other applicable authorities (collectively, the "State/County Orders").

(2) Patients in examination rooms of medical or dental offices or clinics or hospitals where there is a necessity to examine or treat the mouth or nasal area, subject to the direction of the medical or dental professionals in charge of the office, clinic, or hospital.

(3) When wearing a Face Covering or Mask poses a greater mental or physical health, safety, or security risk such as anyone who has trouble breathing, or is unconscious, incapacitated, or otherwise unable to remove the cover without assistance; or where a person is not able to medically tolerate a Face Covering or Mask; or where security of a Place of Business would be unreasonably compromised by the inability to identify customers or invitees as they enter or are otherwise inside the Place of Business; or where not wearing a mask would

constitute a necessary or reasonable accommodation for the providing of a service (for example, service to hearing-impaired individuals that read lips). No person shall be required to provide documentation as to any physical or mental condition that would be exacerbated by compliance with the requirements of this section.

(4) To the extent a Place of Business is allowed to be open pursuant to any State/County Orders, a Face Covering or Mask need not be worn to the extent the Face Covering or Mask requirement would actually and significantly disrupt the customers', clients', and/or visitors' ability to utilize the services of such Place of Business, and only for the duration of such time as the actual significant disruption would occur. This would include, but not be limited to, actually eating or drinking at a food service establishment, receiving a haircut or styling at a salon, or exercising at a gymnasium or fitness center. Provided, that, in all of the foregoing cases, the requirements of any applicable State/County Orders are otherwise complied with, including but not limited to those as to distancing or mass gatherings.

(5) A Face Covering or Mask shall not be required where a person is in a personal office (a single room) where others outside of that person's household are not present as long as the public does not regularly visit the office or room, but that person must wear a Face Covering or Mask when coworkers, contractors, repairperson, delivery persons, or other persons providing business services are working within six (6) feet, when being visited by a client/customer, and anywhere were coworkers or members of the public are or may be regularly present.

E. Penalty. The knowing and willful failure or refusal to comply with the requirements of this section 11-222 (whether by a person or by a Place of Business) shall be an unclassified violation by such person or Place of Business, as the case may be. Any fine imposed for a violation of this section shall not exceed \$25.00.

F. Expiration or Repeal.

(1) Reference is hereby made to that certain plan of the Governor of the State of Kansas known as "Ad Astra: A Plan to Reopen KANSAS", Phase One of which has been implemented pursuant to Executive Order No. 20-29 dated April 30, 2020, as such plan or phases thereof may be further implemented, modified, or supplemented (collectively, the "Ad Astra Plan").

(2) Unless earlier terminated or repealed by the governing body of the city, the provisions of this section 11-222 shall automatically expire and be deemed of no further force or effect upon the later of (a) 11:59 p.m. on June 14, 2020, and (b) the effective time

and date of an executive order or orders by the Kansas Governor implementing the "Phase Out" of the Ad Astra Plan.

G. Severability. Severability is intended throughout and within the provisions of this section. If any subsection, sentence, clause, phrase, or portion of this section is held to be invalid, illegal, or unconstitutional by any court of competent jurisdiction, then that decision shall not affect the validity of the remaining portions of this section.

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

PASSED by the City Council of the City of Prairie Village, Kansas on _____, 2020.

APPROVED:

Eric Mikkelson, Mayor

ATTEST:

Adam Geffert, City Clerk

APPROVED AS TO LEGAL FORM:

David E. Waters, City Attorney



PRAIRIE VILLAGE POLICE DEPARTMENT

"A Tradition of Service"

Tim M. Schwartzkopf

Chief of Police



DATE: May 11, 2020
TO: Mayor Eric Mikkelson
FROM: Chief Tim M. Schwartzkopf *TMS*
SUBJECT: ORDINANCE MANDATING MASKS

As a follow up to my statements at the Council meeting last week, I wanted to provide you a written response of why I am not supportive of this ordinance.

Based on the amount of calls for service we have received involving large gatherings or social distancing, this mandate would add another violation related to the pandemic for our officers to handle. This increase in complaints could create an impact to police resources in the City.

This ordinance would be difficult to enforce consistently as I believe the expectation of the public would be we would respond on each of them and that would not be possible. This ordinance is also not consistent with the State, County, or other Cities in Johnson County, which could cause additional confusion or frustration for residents or visitors to the City.

Since the pandemic started, we implemented countermeasures to mitigate our officers' contact with the public to minimize our exposure for our benefit and theirs. The enforcement of this ordinance would be counterproductive to what I believe has been one of the best practices in mitigating the spread of the virus – social distancing. As I make decisions for the Department, my main concern is keeping our officers and staff healthy. I want them to be able to stay healthy for themselves and their families. This also ensures we are able to continue to provide a high level of service to our Community.

Lastly, the Prairie Village Police Department has built a reputation of professionalism, excellent community policing, and positive relationships with our Community. This "Tradition of Service" has been possible because of the work of those that came before us, as well as our current personnel. In spite of all of this, officers by the very nature of the uniform can create anxiety or apprehension in people. While our primary mission is to provide safety, using the police to enforce this type of health order, i.e. mandating the wearing of a mask, would be inappropriate in many citizen's eyes. If citizens perceive this ordinance as overreaching or heavy handed, I believe that it could tarnish our reputation because we will be the ones tasked with enforcement.



2020 BUDGET

Public Works CIP



Agenda

- 2020 Projects
- Infrastructure Condition
- Recommended 2021 CIP
- Discussion



Agenda

- 2020 Projects
- Infrastructure Condition
- Recommended 2021 CIP
- Discussion



2020 Current and Planned Work

□ Street Projects

- Belinder, 73rd Street to 75th Street
- Tomahawk, 71st Street to Roe
- Village Dr, 71st Street to 75th Street
- El Monte Circle cul de sac, south of 75th Street
- Fontana, 67th Street to 69th Street
- 71st Street, State Line to Belinder
- 83rd Terrace, Roe to Briar
- 74th Terrace, Mission Road to Village Drive
- 69th Street, Fonticello to Nall

□ CARS Project: Roe Avenue | 83rd Street to 91st Street

□ Drainage Projects

- Reinhardt Storm Improvements

□ Other Projects

- 2020 Concrete Repair, 2020 Asphalt Repairs, 2020 Crack Seal and Micro Surface, Taliaferro Park Shelter



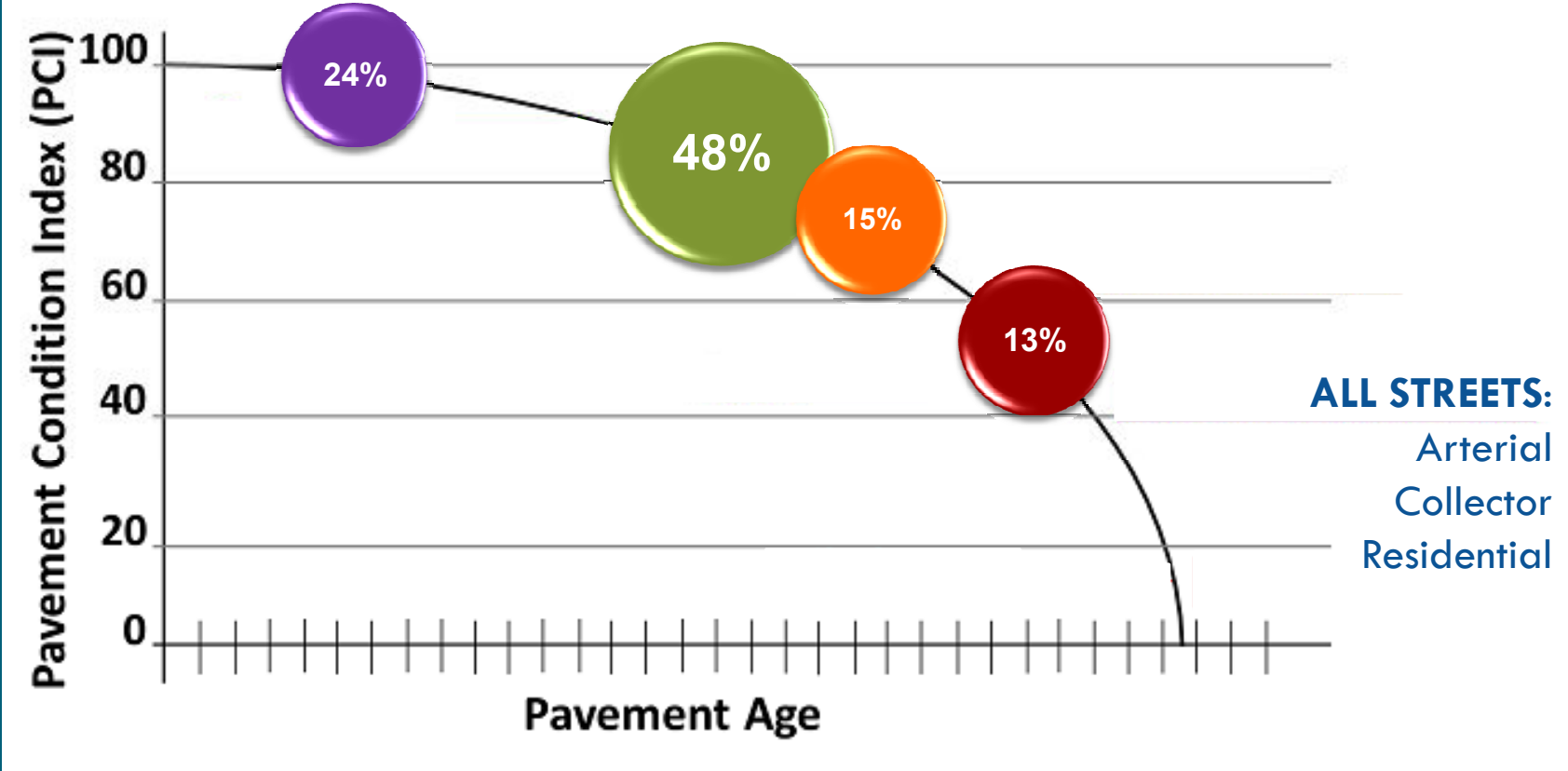
Agenda

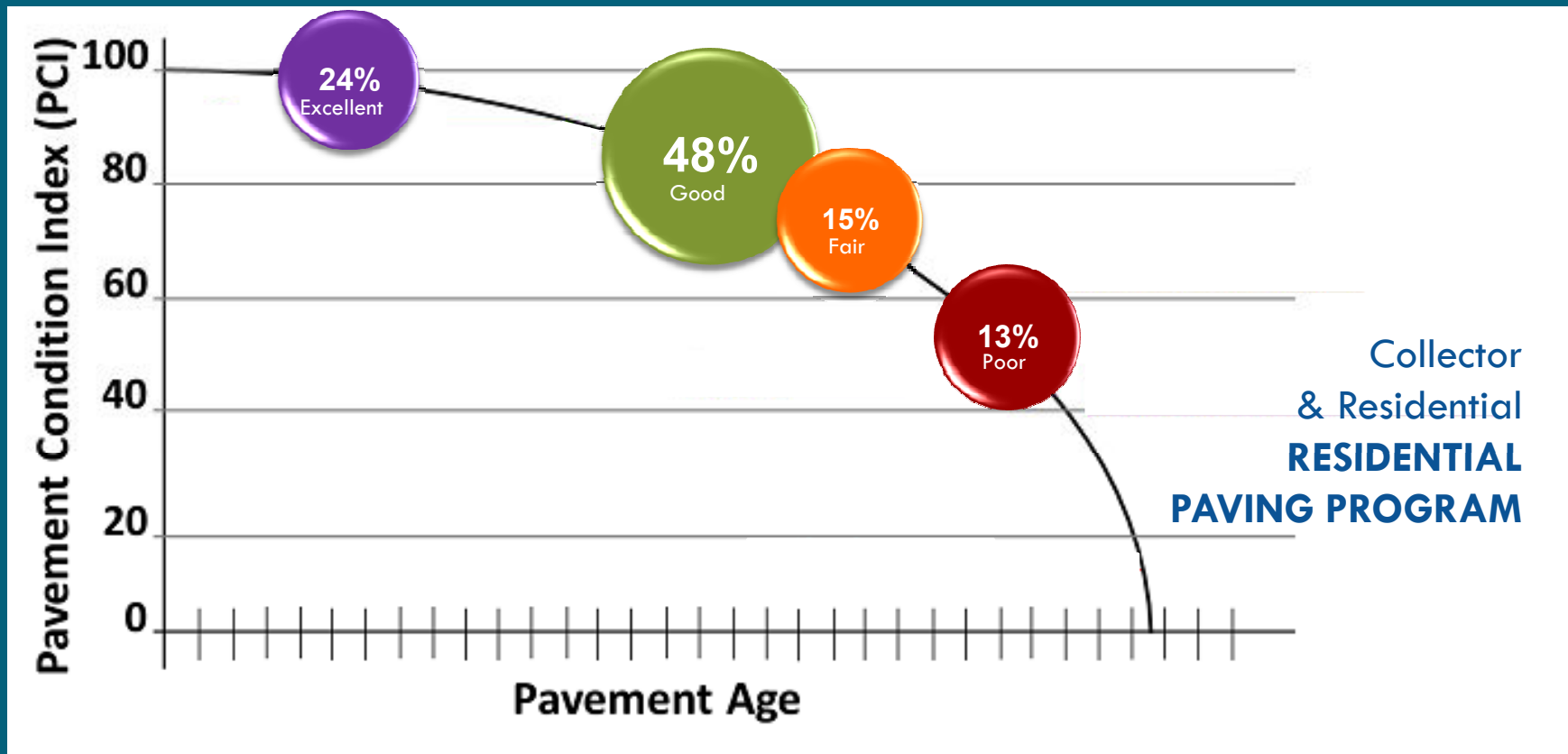
- 2020 Projects
- **Infrastructure Condition**
- Recommended 2021 CIP
- Discussion



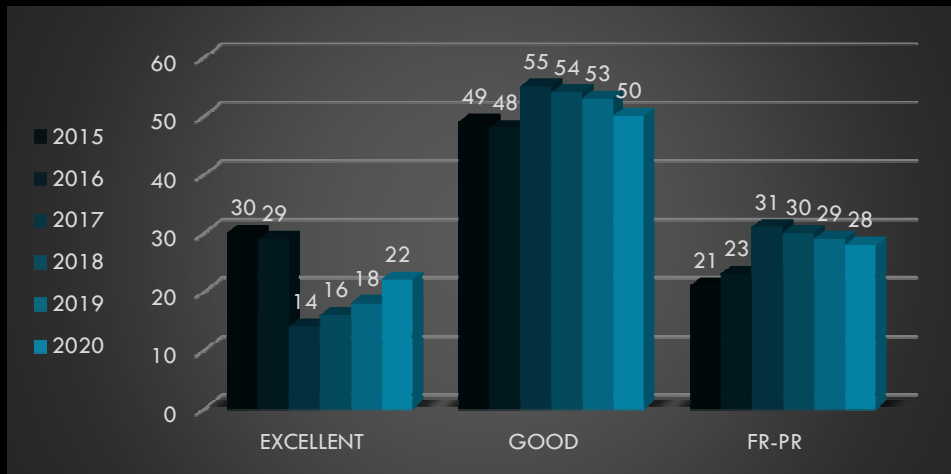
2020 Condition Summary

Infrastructure Type	Poor	Fair	Good	Excellent
Drainage - Pipes	1%	3%	40%	56%
Drainage - Channels	4%	9%	26%	61%
Drainage - Structures	1%	3%	30%	66%
Streets - Arterial & Collector	14%(2019= 7%)	13%(2019 = 17%)	42%(2019= 51%)	31%(2019 =25%)
Streets - Residential	12%(2019=13%)	16%(2019= 16%)	52%(2019= 55%)	20%(2019= 16%)
Curbs	1%	2%	56%	41%
Ramps	1%	13%	44%	42%



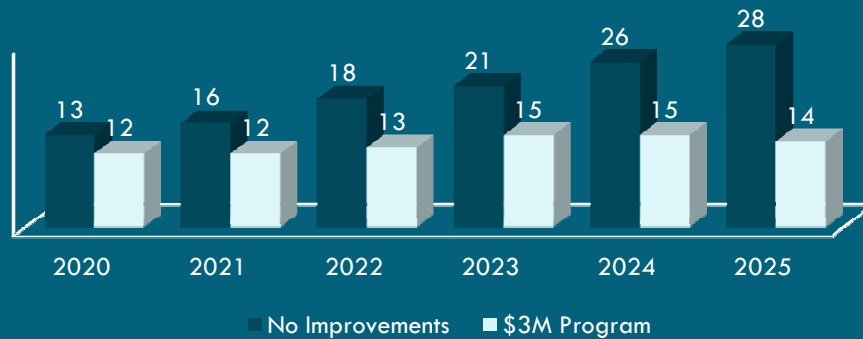


History of Residential & Collector Streets



Excellent streets are trending up.
Fair Poor streets are trending down.

Good category 50-54%



Management of POOR Streets With \$3 Million Residential Street Program



Agenda

- 2020 Projects
- Infrastructure Condition
- **Recommended 2021 CIP**
- Discussion



2021 CIP Budget - PARK

PROJECT #	PROJECT DESCRIPTION	2020 EXPENDITURES	2021 EXPENDITURES	2022 EXPENDITURES	2023 EXPENDITURES	2024 EXPENDITURES	PROJECT TOTAL
PARK							
POOLRESV	Park Infrastructure Reserve	\$ 20,000.00	\$ -	\$ 120,000.00	\$ 120,000.00	\$ 132,000.00	\$ 392,000.00
BG390001	Harmon Skate Park	\$ 100,000.00					\$ 100,000.00
BG860001	Pool Bathhouse Repairs						\$ -
BG300003	Harmon Park Play Set						\$ -
BG850002	Replaster - Slide, Leisure and Wading						\$ -
BG900003	Windsor Trail Expansion	\$ 25,000.00					\$ 25,000.00
BG930001	Windsor Tennis Court Resurface	\$ 65,000.00					\$ 65,000.00
BG460001	Taliaferro Park Shelter Reno	\$ 180,000.00					\$ 180,000.00
BG850003	Pool Slide Major Repairs	\$ 100,000.00					\$ 100,000.00
BG460002	Taliaferro Park Restrooms		\$ 450,000.00				\$ 450,000.00
BG850004	Pool Painting - Dive, Lap, and Adult		\$ 50,000.00				\$ 50,000.00
BG900004	Windsor Park Restrooms			\$ 225,000.00	\$ 225,000.00		\$ 450,000.00
PARK TOTAL PER YEAR		\$ 490,000.00	\$ 500,000.00	\$ 345,000.00	\$ 345,000.00	\$ 132,000.00	\$ 1,712,000.00



2021 CIP Budget - DRAIN

PROJECT #	PROJECT DESCRIPTION	2020 EXPENDITURES	2021 EXPENDITURES	2022 EXPENDITURES	2023 EXPENDITURES	2024 EXPENDITURES	PROJECT TOTAL
DRAINAGE							
WDPRRESV	Water Discharge Program Reserve	\$ 20,000.00					\$ 20,000.00
DRAIN20x	Drainage Repair Program	\$ 800,000.00	\$ 275,000.00	\$ 900,000.00	\$ 900,000.00	\$ 900,000.00	\$ 3,775,000.00
MIRD0007	Brush Creek: 68th & Mission Rd	\$ 325,000.00	\$ 2,500,000.00				\$ 2,825,000.00
DRAINAGE TOTAL PER YEAR		\$ 1,145,000.00	\$ 2,775,000.00	\$ 900,000.00	\$ 900,000.00	\$ 900,000.00	\$ 6,620,000.00



2021 CIP Budget - STREETS

PROJECT #	PROJECT DESCRIPTION	2020 EXPENDITURES	2021 EXPENDITURES	2022 EXPENDITURES	2023 EXPENDITURES	2024 EXPENDITURES	PROJECT TOTAL
STREETS							
TRAFRESV	Traffic Calming Program Reserve	\$ 20,000.00		\$ 20,000.00		\$ 20,000.00	\$ 60,000.00
PAVP2020	Residential Street Rehabilitation Program	\$ 3,175,691.00	\$ 3,000,000.00	\$ 3,000,000.00	\$ 3,000,000.00	\$ 3,000,000.00	\$ 15,175,691.00
UBAS2019	UBAS Overlay Program		\$ 400,000.00	\$ 400,000.00	\$ 400,000.00	\$ 400,000.00	\$ 1,600,000.00
ROAV0005	Roe Ave - 63rd St to 67th St (CARS)						\$ -
NAAV0003	Nall Ave - 83rd St to 95th St (OP & CARS)	\$ 420,000.00					\$ 420,000.00
ROAV0006	Roe Ave - 83rd St to 91st St (CARS)	\$ 652,000.00					\$ 652,000.00
NAAV0004	Nall Ave - 79th St to 83rd St (CARS)	\$ 100,000.00		\$ 1,300,000.00			\$ 1,400,000.00
79ST0001	79th St - Roe Ave to Lamar St UBAS (CARS)		\$ 388,000.00				\$ 388,000.00
NAAV0005	Nall Ave - 67th St to 75th St (CARS & OP)	\$ 50,000.00	\$ -	\$ 200,000.00	\$ 2,393,000.00		\$ 2,643,000.00
MIRD0008	Mission Rd - 85th St to 95th St (CARS & Leawood)		\$ 702,300.00				\$ 702,300.00
STST0001	Stateline Rd - 71st St to 75th St (KCMO)			\$ 320,000.00			
SODR0005	Somerset Dr - State Line to Reinhardt UBAS (CARS)					\$ 12,000.00	\$ 12,000.00
NAAV0006	Nall Ave - 63rd St to 67th St UBAS (CARS)					\$ 12,000.00	\$ 12,000.00
75ST0002	75th St - State Line to Mission Rd (CARS)					\$ 12,000.00	\$ 12,000.00
NAAV0007	Nall Ave - 75th St to 79th St (CARS)				\$ 75,000.00	\$ 750,000.00	\$ 825,000.00
MIRD0009	Mission Rd - 63rd St to 67th Ter (CARS)				\$ 50,000.00	\$ 730,000.00	\$ 780,000.00
ROAV0007	Roe Ave - N City Limit to 63rd St				\$ 5,000.00	\$ 16,500.00	\$ 21,500.00
STREET TOTAL PER YEAR		\$ 4,417,691.00	\$ 4,490,300.00	\$ 5,240,000.00	\$ 5,923,000.00	\$ 4,952,500.00	\$ 24,703,491.00



2021 CIP Budget - BUILDING/OTHER

PROJECT #	PROJECT DESCRIPTION	2020 EXPENDITURES	2021 EXPENDITURES	2022 EXPENDITURES	2023 EXPENDITURES	2024 EXPENDITURES	PROJECT TOTAL
BUILDING							
BLDGResv	Building Reserve	\$ 50,000.00	\$ 50,000.00	\$ 50,000.00	\$ 50,000.00	\$ 50,000.00	\$ 250,000.00
BG720001	Public Works Salt Barn Roofing						\$ -
BG510002	City Hall Updates (Windows,Doors,Hall Carpet,)	\$ 145,000.00					\$ 145,000.00
BG700002	Public Works Renovations	\$ 50,000.00					\$ 50,000.00
BG040001	Brick repair (Community Center, CH, PD)		\$ 200,000.00				\$ 200,000.00
BG530002	PD Fence and Covered Parking		\$ 300,000.00				\$ 300,000.00
BG510003	City Hall Conceptual Study		\$ 30,000.00				\$ 30,000.00
BUILDING TOTAL PER YEAR		\$ 245,000.00	\$ 580,000.00	\$ 50,000.00	\$ 50,000.00	\$ 50,000.00	\$ 975,000.00
OTHER							
ADARESVx	ADA Compliance Program Reserve	\$ 25,000.00	\$ 25,000.00	\$ 25,000.00	\$ 25,000.00	\$ 25,000.00	\$ 125,000.00
CONC2021	Concrete Repair Program	\$ 700,000.00	\$ 600,000.00	\$ 600,000.00	\$ 600,000.00	\$ 600,000.00	\$ 3,100,000.00
ARTS0001	Landscape Node & Public Art						\$ -
BIKE2017	Bike Plan Implementation	\$ 140,000.00					\$ 140,000.00
ELEC2020	Electric Vehicle Charging Station	\$ 20,000.00					\$ 20,000.00
SIDEWALK & CURB TOTAL PER YEAR		\$ 885,000.00	\$ 625,000.00	\$ 625,000.00	\$ 625,000.00	\$ 625,000.00	\$ 3,385,000.00
CIP TOTAL		\$ 7,182,691.00	\$ 8,970,300.00	\$ 7,160,000.00	\$ 7,843,000.00	\$ 6,659,500.00	\$ 37,395,491.00

Due to restricted access to City Hall, most meetings will be held virtually. Please continue to check <http://pvkansas.com> for access details.

MAYOR'S ANNOUNCEMENTS

Monday, May 18, 2020

Finance Committee	05/19/2020	4:00 p.m.
Memorial Day – City Offices Closed	05/25/2020	
Environmental Committee	05/27/2020	5:30 p.m.
VillageFest Committee	05/28/2020	5:30 p.m.
City Council	06/01/2020	6:00 p.m.
Planning Commission	06/02/2020	7:00 p.m.

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INFORMATIONAL ITEMS
May 18, 2020

1. Parks and Recreation Committee meeting minutes - 01/15/2020
2. VillageFest Committee meeting minutes - 01/23/20
3. Board of Zoning Appeals meeting minutes - 02/04/2020
4. Planning Commission meeting minutes - 02/04/2020
5. Arts Council meeting minutes - 03/11/2020

PARKS AND RECREATION COMMITTEE
6:30 p.m., January 15, 2020
City Hall

MINUTES

The Parks & Recreation Committee met at 6:30 p.m. in the Council Chambers at City Hall. In attendance: Chair Courtney McFadden, Vice Chair Inga Selders, Dianne Pallanich, Diane Mares, Matthew Geary, Carey Bickford, Spencer Pellant, Jerry Lonergan, Cherylynn Brownback. Staff: Meghan Boom, James Carney.

Public Participation

None

Wassmer Park Demonstration Garden – Dennis Patton

Dennis Patton provided information regarding the Wassmer Park Demonstration Garden, one of nine gardens maintained in the County by Johnson County Extension Master Gardeners. The goals of the garden is to stimulate senses in a relaxing and reflective setting, be an example for home gardens by labeling each plant, and promote the Extension mission in North East Johnson County.

The garden consists of approximately 230 perennials, 30 shrubs, and many annuals that will be replaced seasonally. More than 75 volunteers have signed up to work in the garden. The Extension will be present for work days every Monday in the garden and volunteers will be available to interact with the public.

Consent Agenda

1. Minutes from November 13, 2019 – Dianne Pallanich moved to approve the minutes; Spencer Pellant seconded the motion and it passed unanimously.

Reports

1. Public Works Report – James Carney reported that new signage had been placed in the Harmon Park Frisbee Golf Course.

The third and final skate park meeting will be held at 6:30 p.m. on January 22 at Meadowbrook.

Wassmer Park dog waste stations and permanent trash cans have arrived and will be installed in the coming weeks.

Holiday tree lights are being removed from the parks.

A plaque noting the history of the tree that was removed from Bennett Park has been ordered, to be placed by the stump.

Slide repair continues at the pool. A ventilation upgrade has been completed in the pool showers, and a replaster of the pool will take place in May.

Dianne Pallanich suggested painting the Prairie Village logo on the bottom of the pool, and recommended painting lines on the bottom of the adult pool to denote the edges for when overflow lap swimming takes place in that pool.

2. Recreation Report – Meghan Boom reported that Suzanne McCullough officially returned as the pool manager at the beginning of January. Lifeguard, operations attendants, and the swim coach positions are currently posted to the website.

3. Chairperson's Report – Courtney McFadden reported that a conversation related the Harmon Park play equipment will be taking place soon.

The Civic Center discussion will begin soon, with a presentation to the Governing Body no later than February. Ms. McFadden hopes to have more information to share with the committee soon.

Old Business

None

New Business

1. Challenger Sports Contract for British Soccer and Tiny Tykes – Meghan Buom reported no significant changes to these agreements. Carey Bickford moved to approve the agreement; Diane Mares seconded the motion and it passed unanimously.
2. JCPRD Agreements – Meghan Buom reported no significant changes to the Day Camp and Learn to Swim agreements with the County. She noted that the dates for the Learn to Swim agreement will be included when the agreement goes before City Council; they were still under consideration. Cherylynn Brownback moved to approve the agreements; Dianne Pallanich seconded the motion and it passed unanimously.
3. Other – Inga Selders asked for clarification on the field policy for commercial use. Meghan Buom will send her the information.

Dianne Pallanich thanked the City for the all season restrooms at the parks – they are first class and very well maintained.

Ms. Pallanich asked about the bike symbols that she has started to see on area streets. Ms. McFadden stated that they are “sharrows” intended to remind drivers that to share the roads with bicyclists. They were painted on the roads as part of an exhaustive bike/pedestrian plan adopted by the City Council.

Ms. McFadden noted the bottle fill stations on the new water fountains in the City parks and thanked Public Works for making that addition.

Ms. McFadden noted that she hopes that this committee will be a feeding ground for ideas to take to the City Council – she encouraged members to please share their ideas with her, Inga, and staff for considerations.

Carey Bickford asked staff when the Taliaferro playground equipment would be considered. Ms. Buom stated that she believed it would be part of the 2021 budget process.

Information Items

The committee agreed to meet at 5:30 p.m. moving forward.

Meeting Schedule

- March 11, 2020
- May 13, 2020
- September 9, 2020

Adjournment

7:30 p.m.

Please note: These minutes, approved at the April 23 committee meeting, relate to the event prior to the change in scope related to the coronavirus pandemic.

VillageFest Committee

January 23, 2020

Multi-Purpose Room

1. Welcome & Introductions

In attendance: Courtney McFadden, Amber Fletcher, Alex Fletcher, Corbin Trimble, Joel Crown, Lissa Haag, Toby Fritz, Steve Meyer, Mike Morse, Susan Forrest, Teresa Stewart.

City Staff: Meghan Boom, James Carney, Travis Gray

2. Administrative update

a. New Chair – Amber Fletcher

b. Construction conflicts – Skate Park and Public Works relocation to Community Center may impact the event layout. The committee considered alternative locations for event components.

3. Review “tried & true” components of VillageFest

a. Rides and bounce houses – Verbal commitments have been secured from vendors.

b. Pancake Breakfast – Teresa that Dale Warman, along with her and her husband, would spearhead the breakfast again. Steve committed volunteer support from the Old Mission Lodge. Meghan will reach out to Starbucks for a coffee donation. The committee discussed adding iced coffee or upgraded beverages. It was noted that we need clips to hold the plastic tablecloths down.

c. Patriotic Ceremony – Corbin will reach out to Kristy to sing the National Anthem again. Dale will contact the Boy Scouts to present the colors.

d. Spirit Award – Toby committed to spearheading the Spirit Awards. He asked the committee to help secure nominations. He will write the script for the Mayor.

e. Children’s Crafts – Since the Community Center out of commission this year, the committee discussed moving the children’s craft center to the multi-purpose room in City Hall. More crafts will need to be ordered so they don’t run out so early.

f. Balloon Twister – Meghan will reach out.

g. Children’s Parade – PVPD will lead and tail the parade. The committee discussed the possibility of changing the route to be through the event grounds so parents can better observe.

h. Slip & Slide – The length and location of the slip and slide may be impacted by Skate Park reconstruction, Serve Church has committed to provide volunteers again.

i. Live Entertainment – Corbin reported that the “tried and true” lineup is ready to go for the year.

- j. Craft Fair Vendors – The location may be impacted by Skate Park reconstruction due to a possible need for the rides to relocate to that spot. The craft vendors could move into the location closer to the Police Department, where the yard games were set up in the previous year.
- k. Food Vendors – Meghan will check with Josh to see if he is interested in coordinating again. The committee discussed adding the Fairway Creamery, Coffee Cake KC, and Mad Man’s BBQ to the line up. There is room for 1-2 more trucks.
- l. Pie Baking Contest – Susan discussed adding a second team of judges and changing the rules to state that bakers can only bake one pie per category. She wondered if there was a better way to define “non-fruit” pies. She would like the Mayor to announce the winners in the room as a lot of people were waiting to hear the results.
- m. The Little Village – Scott has committee the YMCA’s support of the three and under area.
- n. Historic Display – Ted unable to attend but is working to develop a concept.
- o. Information Booth – Courtney requested candy or a giveaway to have at the booth.
- p. Day of Volunteers – Morgan is unable to work on the committee this year, so a new volunteer coordinator is needed. He has committed volunteers to help at the slip and slide.
- q. Marketing – Steve volunteered to post a sign at Old Mission Lodge since it is prominently located on 75th Street. The committee discussed getting new yard signs made and refreshing the banners in the parks.
- r. Police Department/Fire Department Displays – Travis reported that the PD would have the same set up as usual. Mike reported that the FD would plan to have an open house and fire hose games, similar to last year.
- s. Water Sales – The committee discussed asking the girl scouts back to sell water bottles at the pancake breakfast.
- t. Yard Games – May need to relocate to accommodate the craft fair.
- u. Other? WOW Event? Car Show? – The committee decided that due to space constraints related to the skate park construction, it would be best to pause the addition of a car show at this time.

Lissa reported that she secured additional decorations at the Dollar Tree after the holiday last year. She’d like to install the bunting at the pavilion the day before the event.

Courtney reported that she was contacted by Steve Noll with the idea of creating a designated space for public office campaigning.

4. Committee reminders

- a. Find someone to donate to “Friends of VillageFest”
- b. Recruit a friend to volunteer for 2-4 hours on event day
- c. Buddy up with someone so there is a backup for each work group
- d. Next Meeting – February 27, 2020

**BOARD OF ZONING APPEALS
CITY OF PRAIRIE VILLAGE, KANSAS
MINUTES
TUESDAY, FEBRUARY 4, 2020**

ROLL CALL

The meeting of the Board of Zoning Appeals of the City of Prairie Village, Kansas was held on Tuesday, February 4, 2020 in the Council Chambers of the Municipal Building at 7700 Mission Road. Chair Greg Wolf called the meeting to order at 6:45 p.m. with the following members present: Jonathan Birkel, James Breneman, Patrick Lenahan, Melissa Brown and Jeffrey Valentino.

Also present in their advisory capacity to the Board of Zoning Appeals were: Chris Brewster, Gould Evans; Jamie Robichaud, Deputy City Administrator; Keith Bredehoeft, Director of Public Works; Mitch Dringman, City Building Official, Ian Graves, Council Liaison, and Adam Geffert, City Clerk/Board Secretary.

APPROVAL OF MINUTES

Mr. Lenahan moved for the approval of the minutes of the July 2, 2019 Board of Zoning Appeals meeting as presented. Mr. Breneman seconded the motion, which passed 4-0, with Ms. Brown and Mr. Wolf in abstention.

PUBLIC HEARINGS

None

OTHER BUSINESS

Election of Officers

Mr. Wolf nominated Mr. Lenahan as Board of Zoning Appeals Chair, and Mr. Birkel as Vice-Chair. Mr. Breneman seconded the motion, which passed unanimously.

ADJOURNMENT

Chair Patrick Lenahan adjourned the meeting of the Board of Zoning Appeals at 6:48 p.m.

Patrick Lenahan
Chair

**PLANNING COMMISSION MINUTES
FEBRUARY 4, 2020**

ROLL CALL

The Planning Commission of the City of Prairie Village met in regular session on Tuesday, February 4, 2020 in the Council Chambers at 7700 Mission Road. Chair Greg Wolf called the meeting to order at 7:00 p.m. with the following members present: Jonathan Birkel, James Breneman, Patrick Lenahan, Melissa Brown and Jeffrey Valentino.

The following individuals were present in their advisory capacity to the Planning Commission: Chris Brewster, Gould Evans; Jamie Robichaud, Deputy City Administrator; Keith Bredehoeft, Public Works Director; Mitch Dringman, City Building Official; Ian Graves, Council Liaison; and Adam Geffert, City Clerk/Planning Commission Secretary.

APPROVAL OF MINUTES

Mr. Breneman moved for the approval of the minutes of the January 7, 2020 regular Planning Commission meeting as presented. Mr. Birkel seconded the motion, which passed 6-0.

PUBLIC HEARINGS

**PC2020-101 Rezoning and Commercial Site Plan Review for proposed office;
Survey Plat for lot combination
Current Zoning: R-1A
Requested Zoning: C-0
4820 W. 75th Street
Applicant: Gastinger and Walker Architects, Inc.**

Mr. Brewster stated that the application regarding a section of property currently owned by Prairie Baptist Church had been continued from the January 2020 meeting. The applicant is requesting to rezone two lots from R-1A to C-O. The application also includes a site plan to build an approximately 10,000 square foot office building and a survey plat to combine the two lots into one lot. The property is immediately west of Prairie Baptist Church, and fronts on the north side of 75th Street west of the Roe Avenue intersection. One lot is vacant and the other lot has a detached single-family home proposed for removal. Two other lots with detached single family houses front on 75th Street immediately to the west. The vicinity is primarily single-family residential, with the exception of the church.

Mr. Brewster stated the applicant submitted a revised plan based on concerns shared by the owner of the residential property directly to the west of the proposed office building. The extent of the west side of the building has been reduced in size by approximately 20 feet, and materials, massing and grading have also been altered to help the design fit in better with the neighborhood. A second story has been added to the east side of the

building to compensate the square footage lost due to the reduction in size of the west side of the building.

Mr. Brewster said that staff recommended approval with the following conditions, noting that changes in parking access required by item #2 were included in the revised plans, as were the landscape plans listed in item #6:

1. The conceptual drainage plan be carried out and finalized in a manner that either has no impact on the existing drainage issue on the property to the north, or is coordinated with the required fix of that situation. The final drainage plan is subject to final approval by Public Works.
2. Any change in the proposed parking access be coordinated with grading, drainage, and traffic circulation and approved by Public Works. Plans shall include an extension and enhancement of the site landscape plan (with additional plants) into any areas that are not connected parking.
3. The easement for the parking area be verified by the City Attorney and properly noted on (or connected with) the survey plat prior to recording. An exception is noted to the following standards - side parking setback; rear parking setback; rear building setback - which is conditioned on this site plan, and the maintenance of all required landscape areas on the property granting the easement, so that the standards are otherwise met.
4. A pedestrian connection from the public sidewalk to the entry feature (courtyard area) of the building be added.
5. Prior to a permit for the monument sign, the applicant specify to staff the location of the sign in relation to the street and property lines, verify the location meets all site distance requirements, and provide landscape plans for the base of the sign.
6. The following changes are recommended for the landscape plan:
 - a. Add 4 ornamental trees along the frontage, 2 specifically to frame a pedestrian connection to the sidewalk.
 - b. Add perimeter parking buffers on the east and north edges of the parking and address the maintenance as a condition of the easement for parking and buffers on adjacent property. Specifically, this should include seven shade trees (accounting for replacement of the removed trees) and 45 shrubs.
 - c. Change the buffer on the west property boundary from four Norway Spruce to 14 Green Giant Arborvitae (6'), and extend the planting buffer to the north edge of the parking area.

7. The Planning Commission recommends approval of the rezoning conditioned on the site plan. Approval of the site plan and survey plat by the Planning Commission is subject to the City Council approval of the rezoning recommendation, or amended approval of the recommendation that does not significantly impact these plans.

Mr. Brewster reminded the Planning Commission that a rezoning requires the Planning Commission to evaluate facts, weight evidence, and make a recommendation to the City Council based on balancing the “Golden Factors” outlined in the zoning ordinance.

Laura Pastine and Kevin Harden representing Gastinger Walker Architects gave a presentation showing changes made to the project since the previous meeting. Along with revisions to the west side of the building, the proposed structure would be shorter and set approximately 25’ farther back from 75th Street. These changes allow more sunlight to reach the residence to the west.

Mr. Wolf opened the public hearing at 7:26 p.m.

- Paloma Dover, 4830 W. 75th Street, shared concern that the value of her home, adjacent to the proposed building, would decline if it were constructed.
- Robin Marx, 6015 Howe Drive, stated that he was a real estate appraiser with Bliss Associates, LLC. He shared research indicating that there was no evidence of residential properties losing value when an adjacent property is rezoned to commercial.

With no one else present to speak, Mr. Wolf closed the public hearing at 7:39 p.m.

The Planning Commission discussed the rezoning application and considered the eight factors for consideration outlined in the City’s zoning regulations.

Based on the the Planning Commissions consideration of the Golden factors, Mr. Birkel made a motion to recommend rezoning to Council for approval, subject to the conditions recommended by staff. Ms. Brown seconded the motion, which passed unanimously.

Mr. Birkel made a motion to approve both the site plan and the survey plat, subject to the conditions recommended by staff. Ms. Brown seconded the motion, which passed unanimously.

**PC2020-103 Rezoning, Final Development Plan and Preliminary Play of Public Works Facility
3535 Somerset Rd.
Current Zoning: R-1A, R-3 and RP-4
Requested Zoning: RP-1
Applicant: Prairie Village Public Works**

Mr. Brewster stated the application was in regard to the forthcoming reconstruction at the City's Public Works facility. The site is currently composed of three lots with three different zoning districts. In an effort to clean up and simplify property records, it was determined that the property should be rezoned and platted in conjunction with the site plan for the new facility. Mr. Brewster added that staff recommended the rezoning, site plan and replat be approved subject to the following conditions:

1. The appropriate pre- and post-construction drainage strategies be implemented by Public Works in recognition that this site may currently and/or through this plan exceed the default building coverage and impervious surface coverage standards in the zoning ordinance.
2. The Planning Commission recommend approval of the rezoning conditioned on the site plan. Approval of the site plan and the re-plat by the Planning Commission is subject to City Council approval of the rezoning recommendation, or amended approval of the recommendation that does not significantly impact these plans.

Mr. Brewster reminded the Planning Commission that a rezoning requires the Planning Commission to evaluate facts, weigh evidence, and make a recommendation to the City Council based on balancing the "Golden Factors" outlined in the zoning ordinance.

Rick Wise, representing Clark Enersen Partners, gave a presentation on the project, sharing details about building elevations, selected exterior materials, and traffic flow through the site.

Mr. Breneman asked what type of material would be used on the back of the commodity bins and covered parking areas. Mr. Wise stated that the commodity bins would be constructed of large concrete blocks, approximately 2' x 4' x 2' in size, and would sit lower than the privacy fence along the property line. He added that the covered parking structures would be metal-framed, with metal panel screening and an asphalt-shingled roof. The selected materials could be changed based on feedback from neighbors.

Mr. Birkel asked whether the City owned the pump station located on the southeast corner of the property. Mr. Bredehoeft stated that it belonged to Johnson County Wastewater, but is accessed through the Public Works site.

Mr. Wolf opened the public hearing at 8:07 p.m.

- Anne Bowman, 3613 Somerset Drive, stated that she lived just to the west of the facility. She shared concern over potential increases in truck noise and evening lighting.

Mr. Wise stated that truck traffic would continue to drive along the west side of the property, whereas staff would approach on the east side. Mr. Bredehoeft added that the new configuration should make for less noise than what is

currently experienced at the site. Mr. Wise noted that the proposed lighting would be less obtrusive to neighbors.

- Vicky Riffle, 3627 Somerset Drive, shared her concern with the building materials proposed for the parking structures. She stated she would prefer to see the same exterior materials that are currently found on Building G.

With no one else present to speak, Mr. Wolf closed the public hearing at 8:13 p.m.

The Planning Commission discussed the rezoning application and considered the eight factors for consideration outlined in the City's zoning regulations.

Based on the the Planning Commissions consideration of the Golden factors, Mr. Breneman made a motion to recommend rezoning to Council for approval, subject to the conditions recommended by staff. Ms. Brown seconded the motion, which passed unanimously.

Mr. Breneman made a motion to approve both the site plan and the survey plat, subject to the conditions recommended by staff. Ms. Brown seconded the motion, which passed unanimously.

NON-PUBLIC HEARINGS

**PC2020-102 Site Plan Review - Fence with Exception
7052 Cedar St.
Zoning: R-1B
Applicant: Ryan and Megan DeSpain**

Mr. Brewster stated that the applicant was requesting an exception to the fence standards for a recently constructed home at the corner of 71st Street and Cedar Street. The west property boundary is considered the rear lot line of the subject lot and the side lot line of the adjacent house to the west, making the configuration a "reverse corner" for purposes of interpreting the fence standards.

In this circumstance, the zoning ordinance requires the fence to be set back from 71st Street either 15 feet, or one-half the front yard of the adjacent house to the west, whichever is greater. [19.44.025.C.3] The fence was already constructed in violation of this requirement and is 12.5 feet from the 71st Street right-of-way at its closest point near the southeast corner of the house, where 18 feet would be required. At the west end, closer to the side lot line of the adjacent house, the fence is at or slightly deeper than the required 18-foot setback from 71st Street.

Mr. Brewster noted that a Building Inspector went to the property and flagged the location where the fence should have been installed. However, the fence was built with a different alignment, which is five feet closer to the right-of-way than what is allowed in zoning regulations. He added that the Planning Commission could grant an exception, but that

staff recommended the site plan be denied because the fence was built in violation of the permit that was issued.

Ryan DeSpain, owner of the property, stated that the fence was purchased at Lowe's, and installed by Lowe's employees. He noted that the flagged fence line was not aesthetically pleasing when they began installing the fence, so he made a decision to have the installers place the fence in its current location rather than placing it in the location that it was approved to be placed and flagged by the building inspector.

The Planning Commission expressed concern with approving the exception because they felt it would set a dangerous precedent in allowing residents to knowingly ignore the City's regulations and then only come ask for an exception after the fact if they get caught.

Mr. Breneman made a motion to deny the exception to the fence standards. Mr. Lenahan seconded the motion, which passed 5-1, with Mr. Valentino in opposition.

The applicant asked what his next steps were. He was informed by Mr. Wolf that he would need to move his fence to come into compliance with the City's zoning regulations and that staff would work with him on a timeline for getting that accomplished.

Mr. DeSpain asked if there was any way to appeal the Planning Commission's decision. Mrs. Robichaud stated that the applicant had the right to appeal the decision to the City Council, and would follow up with him on his options for doing so.

OTHER BUSINESS

Approval of Amendment to Planning Commission Bylaws

Mrs. Robichaud stated that at the January meeting, the Planning Commission made a motion to amend the Bylaws to nominate the Chair and Vice-Chair in January rather than June.

Commission members noted that several items in the Bylaws needed to be updated and better organized. Mr. Wolf asked the Commission to review the document and provide feedback to Mrs. Robichaud with potential edits.

Mr. Lenahan made a motion to amend the Bylaws to move the election of officers to January. Mr. Breneman seconded the motion, which passed unanimously.

Mr. Wolf shared that a vacant home in the City had been used by a company three times in recent months to hold estate sales. Currently, regulations permit two estate sales per calendar year; in this case, the company held its first sale in December, followed by two in January. He recommended that regulations be changed to only allow two sales in any twelve-month period.

Mrs. Robichaud stated that a change to zoning regulations would require a public hearing and the approval of City Council. Mr. Wolf asked Mrs. Robichaud to prepare an amendment for the Commission to consider at a future meeting.

ADJOURNMENT

With no further business to come before the Commission, Chair Greg Wolf adjourned the meeting at 8:48 p.m.

Greg Wolf
Chair

PRAIRIE VILLAGE ARTS COUNCIL
Prairie Village City Hall – 7700 Mission Road
Multi-Purpose Room
Wednesday, March 11th, 2020
5:30 P.M.

Our chairperson, Bonnie Limbird, called this evening's meeting to order at 5:35. Council members present were Dan Andersen, Betsy Holliday, Sherrod Taylor, and Jessie Cartwright. Members phoning in were Al Guarino and Julie Hassel, Nancy Maxwell, and Paul Tosh. Also present was Elizabeth Mikkelson, a junior at Shawnee Mission East and Teen Council member, attending an Arts Council meeting for the first time, and Kelsey Potts with the Village Merchants Association, here to make a presentation on 2020 summer events at the Shops of Prairie Village.

After **Roll Call and Introductions**, the **Agenda** was approved, with Dan's request that the **Planning Committee as a Whole's** placement in the agenda be discussed under **New Business**. On a motion by Dan and seconded by Betsy, the **Consent Agenda**, including minutes of the February meeting, were unanimously approved.

Kelsey Potts provided a hand-out sheet detailing **2020 summer events at the Shops of Prairie Village** and the Arts Council's participation in these events. A discussion followed regarding the Council's \$2,300 sponsorship of the **June 5 through June 7 Art Fair**. Kelsey directed the group's attention to the Art Show website www.pvartshow.com which contains a video including the Council's activities. Other summer activities including **Summer Concerts 6PM – 8PM** and **Storytime in the Village** are detailed in the hand-out. Also discussed was the Arts Council's possible participation in the every other week Village Merchants Association newsletter and the possibility of an exterior building mural (perhaps between Kelsey's office and the Hen House).

City Council Report – Bonnie advised that because of spring break, there would be no meeting next week. The last meeting included approval of rezoning two areas for a commercial building and a discussion of possible fireworks on the 3rd of July at Meadowbrook Park.

A discussion of the **2020 Budget Update** included the request that January and February receipts should be turned in by April 1st, and March receipts by April 29th. Bonnie stated that **all income, expenses and reimbursement requests from 2020 should be** in by 1/30/2021, so that the year can be closed out and evaluated.

Under the **check transfer protocol**, Dan remarked that we no longer used Eventbrite. Concerning **FlipCause**, checks will be cut each month to move balances to the Arts Council account and mailed to Meghan Buum. Regarding transfers from our website, Al said he would invite David Tai with WanSecurity to come to our next meeting and bring a check or cash.

Ongoing Business

Dan moved and Betsy seconded a motion that discussion of the **final 2020 calendar for Chamber in Chamber** be deferred to the April meeting when Sheila Evans could be present. This motion passed unanimously. Dan also asked that the police department be requested to keep the front door unlocked until 5:00 **on Saturdays when “removal and hanging” is occurring**. Also, that afternoon access to (reservations of) the Multi-Purpose Room be from noon to 3:30.

A lengthy discussion of the **2021 Proposed Budget Draft** ensued, with emphasis on revitalizing our plans to obtain sponsorships. Total Revenue and Expense budgets began at \$34,700.00. With additions of \$560 income added to sponsorships; and with \$60.00 expense added to Special Olympics Art Show and \$500.00 expense added to Jazz Fest Event, the new balancing figure became \$35,260.00. On a motion by Dan and seconded by Sherrod, the final budget, as modified was unanimously accepted.

The full **Marketing Committee** report from the February 25, 2020 meeting is included with the packet distributed with the agenda for this meeting. Summarizing the results of this meeting, Al and Julie stated that **website renewal** discussions with WanSecurity were ongoing. **Second Friday Logo** is still under development. **The wine tasting** event is dead.

James Carney with Public Works says he has 96 entries for **Arbor Day Posters**. Dan says this will probably run concurrently with the **Art of the Special Olympics in May**.

Storage Shed Building Plans have not yet been submitted to Mitch Dringman, building inspector, for codes approval. Dan is hoping to be able to build the shed with Paul Tosh's help this summer.

Since Ron Nelson was not able to attend today's meeting, his report on **Wine and Food protocol** will be postponed until the April meeting.

The meeting agreed that as an experiment, we print only **6 copies of the agenda packet** to be available at the meeting; the logic being that not all members require hard copies, preferring digital.

There being no further items on the business meeting agenda, Bonnie adjourned the business meeting at 7:28 PM.

PLANNING COMMITTEE AS A WHOLE

Dan proposed that in subsequent meetings we move the Planning Committee meeting to come before the business meeting. This would enable the group to discuss matters that did not entail financial proposals first, before the opening of the actual business meeting.

On a motion by Dan, seconded by Al, Dan's proposal was approved. Consequently, the Planning Committee will be called to order first and concluded before the Business Meeting is called to order.

For this meeting, however, **Event Reports** were as follows:

EVENT REPORTS

February Second Friday Event Betsy reported that this first event combining the Art Show and Chamber in Chamber seemed a bit awkward. Telling people as they signed in at the front door for the Art Show that there was a second event starting at 7:00 with an admission fee of \$20.00 a person seemed a bit like a "bait and switch." Dan, reporting for the Chamber in the Chamber portion of the event remarked that a majority of the attendees had paid in cash at the door, proving that they had not been offended by the offer of additional entertainment. Betsy remarked that in spite of there being no sales at the Art Show, all three of the artists had been very pleased with the gallery and the event; one had even written a thank you note to the Council.

March Second Friday Event Reporting for Kathy Clark, March curator, Dan suggested that council members assisting with the reception should arrive around 4:30 to start setting up.

Art of Photography 2020 Reporting for Shelly Trewolla, April curator, Dan reported that Café had received responses from 27 states, with 575 pieces and 126 artists, 85 of whom had been selected. The net income has doubled what we expected: \$4,919.66.

There was a very brief discussion of COVID-19 contingency plans, but nothing definitive came up.

Having concluded the Planning Committee as a Whole, the group disbursed at 7:45 P.M.

END