

Members of the Governing Body will participate by video call-in only due to the COVID-19 pandemic. 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, June 07, 2021
6:00 PM**

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

Pride Month proclamation

Meadowbrook Park phase 2 presentation
Jeff Stewart - Johnson County Parks and Recreation District

- VI. **PUBLIC PARTICIPATION**

If you would like to speak live during the public participation portion of the meeting, please notify City Clerk Adam Geffert at cityclerk@pvkansas.com, and provide your name, address, and email address prior to 3 p.m. on June 7. The City will provide you with a link to join the meeting and will call on those who signed up to speak for up to 3 minutes once public participation begins.

To submit written comment to Council, please email cityclerk@pvkansas.com prior to 3 p.m. on June 7 to be shared with Councilmembers prior to 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 17, 2021

- VIII. **COMMITTEE REPORTS**

- IX. **MAYOR'S REPORT**

X. **STAFF REPORTS**

XI. **OLD BUSINESS**

XII. **NEW BUSINESS**

COU2021-47 Consider approval of Supplemental No. 1 with BBN Architects, Inc. for the design of the park projects at Taliaferro Park
Keith Bredehoeft / Melissa Prenger

COU2021-48 Consider approval of a contract with McAnany Construction for the 2021 UBAS and CARS program (UBAS2021 / 79ST0001)
Keith Bredehoeft / Melissa Prenger

COU2021-49 Consider construction administration agreement with Trekk Design Group for 2021 construction projects
Keith Bredehoeft / Melissa Prenger

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

XIV. **ANNOUNCEMENTS**

XV. **ADJOURNMENT**

If any individual requires special accommodations - for example, qualified interpreter, large print, reader, etc., 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

LGBT Pride Month

WHEREAS, our nation was founded on the principle of equal rights for all people, but the fulfillment of its promise has been long in coming for many Americans. Some of the most inspiring moments in our history have arisen from the various civil rights movements that have brought one group after another from the margins to the mainstream of American society; and

WHEREAS, in the movement toward equal rights for lesbian, gay, bisexual and transgender (LGBT) people, a historic turning point occurred on June 28, 1969 in New York City, with the onset of the Stonewall Riots. During these riots, LGBT citizens rose up and fought against the discriminatory criminal laws that have since been declared unconstitutional; and

WHEREAS, LGBT pride celebrations have taken place around the country every June to commemorate the beginning of the Stonewall Riots; and

WHEREAS, June is celebrated as LGBT Pride Month nationwide; and

WHEREAS, Prairie Village has a diverse LGBT community that includes people of all ethnicities, religions and professions; and

WHEREAS, everyone should be able to live without fear of prejudice, discrimination, violence and hatred based on race, religion, gender identity or sexual orientation.

NOW THEREFORE, I, Eric Mikkelson, Mayor of Prairie Village, Kansas, do hereby proclaim **June 2021** as

PRIDE MONTH

In the City of Prairie Village, and urge all residents to respect and honor our diverse community and celebrate and build a culture of inclusiveness and acceptance.

Mayor Eric Mikkelson

City Clerk

Date



Meadowbrook Park Phase 2 Development Update

June 7, 2021

Jeff Stewart, Executive Director



Meadowbrook Park Master Plan

Phase 1 Highlights

- Trails
- Clubhouse
- Grand Pavilion
- 3 picnic shelters
- Adventure playground
- Sensory playground
- Grove restroom
- Great lawn
- Outdoor fitness area
- Pickleball courts
- Mount Meadowbrook



Enlarged Master Plan Area: Northeast

Proposed Master Plan Amenities

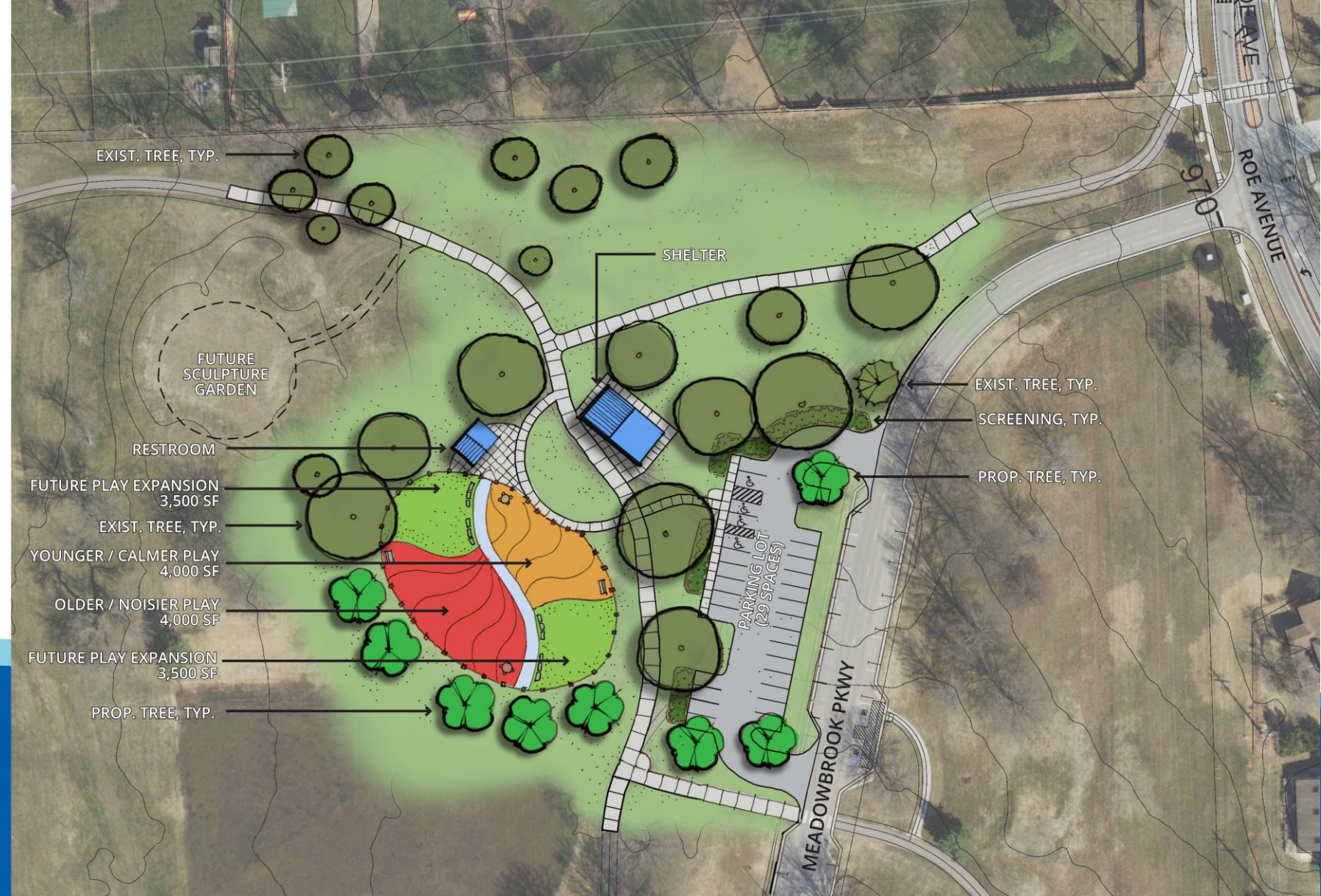
- Sculpture garden / overlook
- Off street parking
- Picnic shelter
- Restroom
- Playground
- Open space



Phase 2 Concept Plan

Proposed Amenities

- Picnic shelter
- Restroom
- All-inclusive playground
- Off street parking



Architectural Design

- Restroom building utilizes similar architectural details as Grove restroom, with 2 single user restrooms, all inclusive design
- Picnic shelter to match shelters 1-3
- Parking area to include layout and lighting similar to shelter 2 parking lot
- Playground to include active and passive zones, perimeter fencing, pattern and texture design, shade and misting components.



Design Process

- JCPRD contracted with key members of design team from phase 1 to assure consistency with the existing park development
- Design committee formed from JCPRD staff, Prairie Village staff, and stakeholders providing services to special needs community.
- Consultant team interacted with and solicited input from JCPRD Board, neighbors adjacent to this development, and MB-18 (Vantrust) representatives to complete the concept design.



Budget / Schedule

Funding

- \$1.6 Million in fund balance of IRB proceeds
- JCPRD Authorized use of fund balance for Phase 2 Development in April 2021
- Project includes cost estimation update during design development phase

Schedule

- Design started February 2021
- Design meetings March-April 2021
- Concept designs presented May-June 2021
- Planning Commission submittal July 2021
- Permit submittal and issue for bid August 2021
- Award contract September 2021
- Start Construction November 2021
- Project Completion November 2022



Questions?

Jeff Stewart, Executive Director





**CITY COUNCIL
CITY OF PRAIRIE VILLAGE
MAY 17, 2021**

The City Council of Prairie Village, Kansas, met in regular session on Monday, May 17, 2021, 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 Councilmembers 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: Byron Roberson, Chief of Police; Keith Bredehoeft, Public Works Director; Melissa Prenger, Public Works; City Attorney David Waters, attorney with Lathrop & Gage; Jamie Robichaud, Deputy City Administrator; Tim Schwartzkopf, Assistant City Administrator; Meghan Buom, Assistant City Administrator; Nickie Lee, Finance Director; Adam Geffert, City Clerk.

PLEDGE OF ALLEGIANCE

APPROVAL OF AGENDA

Mr. Nelson made a motion to approve the agenda for May 17, 2021. Ms. Reimer seconded the motion, which passed unanimously.

PRESENTATIONS

- Dr. Andy Bowne, President of Johnson County Community College, provided information about current activities at the college. He noted that approximately 425 Prairie Village residents were enrolled as students.

PUBLIC PARTICIPATION

No requests to address the Council were received.

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 - May 3, 2021
2. Approval of Expenditure Ordinance #3002



Mrs. McFadden 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 unanimously.

COMMITTEE REPORTS

- Ms. Limbird shared a reminder about the first annual Prairie Village Art Walk on June 11, which would include a ribbon cutting ceremony for the “Fifties Freedom in the Village” sculpture at 71st Street and Mission Road.
- Mr. Poling provided an update on the Parks and Recreation Committee, noting that members had recently taken a tour of inclusive playgrounds across the metropolitan area. Additionally, a tour of several Prairie Village parks took place the prior week.
- Ms. Selders stated that planning for the 2021 JazzFest event continued, with committee members researching performers and food and beverage vendors.

MAYOR'S REPORT

- The Mayor congratulated Prairie Village students that graduated in 2021.
- The Mayor stated that the Shawnee Mission East men’s tennis team won the state championship for the second year in a row, and that the men’s golf team was competing in the state finals.
- The Mayor provided an update on the COVID-19 pandemic, noting that mask mandates in Johnson County had been eliminated based on CDC guidance. He added that schools and businesses could continue to set their own rules on mask wearing. In Johnson County, 53% of residents 16 and older had received at least one dose of the vaccine, and vaccines had recently been approved for children ages 12 to 15.
- The Mayor attended a Prairie Village Police Department event recognizing fallen officers at City Hall the prior week.
- The Mayor attended a virtual “KC Rising” event, at which coordinated economic development for the region was emphasized.
- The Mayor was elected Chair of the Johnson County/Wyandotte County Mayors Council for the upcoming year, beginning in September. David Waters was elected Vice-Chair.
- Work on the Johnson County Charter Commission continued. The commission would next meet on May 26.
- The Mayor stated that the U.S. Treasury Department issued guidance on funds from the American Rescue Plan the prior week. Fifty percent of the funds would be paid to states in May, and states would have 30 days to turn them over to cities. Funds could be used to address negative economic impacts caused by the pandemic.
- The Mayor noted that the week of May 16 - 22 was Public Works Week.
- The Mayor said that United Community Services of Johnson County would hold its annual Human Services Summit virtually on June 16.



- The Mayor reported that staff was working with Bird Scooters to bring motorized scooters to the City.

STAFF REPORTS

- Ms. Robichaud said that City staff would help register Councilmembers for the UCS Human Services Summit.
- Mr. Schwartzkopf provided updates on returning to in-person City Council meetings. He stated that 10 Councilmembers had indicated that they were ready to attend meetings in the Council Chambers. A hybrid option for remote participation would also be available.
- Ms. Buum gave an update on the upcoming pool season, noting that 60 lifeguards had been hired. The pool complex was scheduled to open on May 29.

OLD BUSINESS

There was no old business to come before the Council.

NEW BUSINESS

COU2021-43

Consider design agreement with Affinis Corporation for the design of Nall Avenue, 79th Street to 83rd Street (2022 CARS)

Ms. Prenger stated that Public Works had requested proposals to provide engineering services for 2021 through 2023 in November 2020. Affinis Corporation was selected as the City's design consultant from the three firms interviewed.

She noted that the agreement being considered was for the preliminary design of the 2022 CARS project. The segment of Nall Avenue between 79th Street and 83rd Street did not conform to current City policy, as it only had a sidewalk on the west side of the street. The contract would focus on adding a sidewalk to the east side of the segment, and would include topographic surveys, public information meetings and conversations with residents on the east side of Nall Avenue.

Mr. Herring made a motion to approve the design agreement with Affinis Corporation as presented. The motion was seconded by Mr. Nelson.

Mrs. Myers asked what the timeframe would be to meet with neighbors. Ms. Prenger said that information letters would be sent out later in the week, and public meetings would be scheduled once the design plan was created.

With no further discussion, the motion passed unanimously.



COU2021-44 Consider construction contract for the 2021 residential street rehabilitation program

Ms. Prenger said that the proposed project would address several streets throughout the City, and include new curbs, gutters, sidewalks, and an asphalt mill and overlay. The project would be funded by the 2021 Residential Street Rehabilitation Program.

She added that City staff reviewed the bid proposal submitted by Superior Bowen for the program and confirmed that unit pricing was reasonable compared to bids from neighboring communities for similar projects. The contract total of \$2,910,000 included change order authorization up to \$200,000 from the unallocated street account for possible changes required to complete the project. The paving of State Line Road between 71st Street and 75th Street would be completed in partnership with Kansas City, Missouri.

Mr. Herring asked when State Line Road between 75th Street and 79th Street would be repaired. Ms. Prenger said that staff were discussing the project with Kansas City, but no definitive date had been set.

Mr. Herring made a motion to approve the construction contract with Superior Bowen as presented. The motion was seconded by Mr. Graves, and passed unanimously.

COU2021-45 Consider approval of a contract with Amino Brothers Co., Inc. for the 2021 Street Repair Program

Ms. Prenger said that the project would consist of asphalt street repairs at various locations throughout the City where settlement or deterioration had occurred. City staff recommended awarding the project to Amino Brothers Co., Inc., for a total of \$300,000.

Mrs. Myers made a motion to approve the construction contract with Amino Brothers Co., LLC as presented. The motion was seconded by Mr. Nelson, and passed unanimously.

COU2021-46 Consider approval of Public Works furniture package

Ms. Prenger stated that four local vendors submitted proposals for furniture to be installed at the new Public Works facility. After review, staff recommended that Pure Workplace Solutions be awarded the furniture package. The contract totaled \$188,327.66, but also included change order authorization for up to an additional 10%, if needed.

Mr. Poling made a motion to approve the contract with Pure Workplace Solutions as presented. The motion was seconded by Ms. Reimer, and passed unanimously.

Mrs. Myers made a motion that the City Council move to the Council Committee of the Whole portion of the meeting. The motion was seconded by Ms. Limbird and passed unanimously.



COUNCIL COMMITTEE OF THE WHOLE **2022 Budget presentation**

Ms. Lee gave a presentation on the proposed 2022 budget. She noted that the 2022 General Fund had increased by 5% relative to 2021, for a total of \$25,638,229. The amount included \$509,000 in decision package items approved by the Finance Committee, as well as a \$500,000 contingency. The planned employee merit pool increase for 2022 was recommended to be 3.5%, which fell in line with other area cities. A 10% anticipated increase in health insurance costs was also budgeted.

Mayor Mikkelson recommended that \$50,000 be allocated for public engagement and/or a feasibility study regarding a community center and related aquatic/exercise facility improvements. He also proposed lowering the City's mill levy by \$50,000 to reduce property taxes for all residents, noting that both could be paid for by increasing the Public Works staff's recommended budget for street repair by \$66,000 rather than \$166,000 proposed in this preliminary budget.

After further discussion, Mr. Poling made a motion to approve the preliminary budget recommended by the Finance Committee and send it to the City Council for final approval. The motion was seconded by Mr. Nelson.

Ms. Limbird made a motion to amend the motion to reallocate \$50,000 from the street repair decision package for a mill levy reduction. The motion was seconded by Mr. Graves. The motion to amend failed 10-2, with Ms. Limbird and Mr. Graves in support.

Mr. Graves made a motion to amend the motion to reallocate \$50,000 from the street repair decision package to a civic center feasibility study and/or public engagement program related to the civic center. The motion was seconded by Ms. Limbird and failed 9-3, with Ms. Selders, Ms. Limbird and Mr. Graves in support.

A vote on Mr. Poling's original motion passed 11-1, with Mr. Runion in opposition.

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

ANNOUNCEMENTS

Announcements were included in the Council meeting packet.

ADJOURNMENT

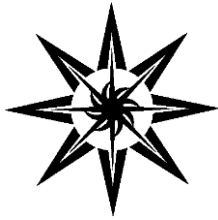
Mr. Nelson made a motion to adjourn the meeting. The motion was seconded by Ms. Nelson, and passed unanimously.



The City Of
Prairie Village, Kansas

Mayor Mikkelson declared the meeting adjourned at 8:30 p.m.

Adam Geffert
City Clerk



PUBLIC WORKS DEPARTMENT

Council Meeting Agenda: June 7, 2021

COU2021-47 CONSIDER APPROVAL OF SUPPLEMENTAL NO. 1 WITH BBN ARCHITECTS, INC. FOR THE DESIGN OF THE PARK PROJECTS AT TALIAFERRO PARK

RECOMMENDATION

Move to approve the supplemental design agreement with BBN Architects, Inc. for the design of the custom built park shelter in the amount of \$16,561.

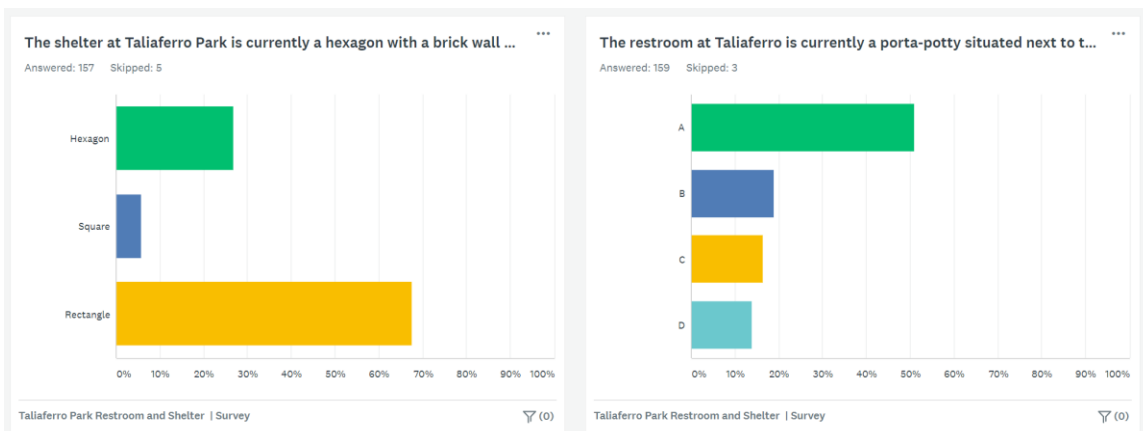
BACKGROUND

In January 2021 the Governing approved the original agreement for BBN to design the shelter and restroom improvements at Taliaferro Park. The shelter renovation project is to replace the shelter and repair the retaining wall surrounding the northern edge of the structure and the restroom project includes the construction of a permanent restroom for the park.

BBN did a preliminary scoping of the locations for restrooms and determined that the best location for park patrons for this restroom is central to the site near the shelter. While this location is central for the shelter, playground, tennis courts, and ballfield it also provides a cost effective connection to the sanitary sewer.



A survey seeking input on shelter style and restroom color combinations was completed by over 160 Prairie Village residents on the Survey Monkey format from April through the end of May. This survey was advertised at the park, on postcards mailed to the surrounding neighborhood. The survey was opened throughout the month of May to include any interested residents that saw the posting in the Village Voice. The results are shown below:



The rectangle shaped shelter and color combination A were popular with the surveyed residents.

PREPARED BY

Melissa Prenger, Senior Project Manager

June 2, 2021

As part of the survey we included a photo of a custom built shelter and informed the residents that while the rectangular shape was shown as custom this option would only be considered if the budget allowed.

At this time, the cost estimates appear to support the inclusion of the custom built shelter and staff would like to move forward with the design. However due to fluctuating construction costs seen already this year, the bid documents will include both the pre-fab structure and the custom built shelter as construction alternates. This will allow the City the flexibility to construct the shelter that fits in our budget at the time of bidding.

The supplemental agreement includes the necessary hours to design the shelter and the special inspections that are performed during construction.

FUNDING SOURCE

There is funding for the design in the CIP projects BG460001.

ATTACHMENTS

1. BBN Professional Services Supplemental #1

PREPARED BY

Melissa Prenger, Senior Project Manager

June 2, 2021



**Supplemental Agreement No. 1
for
Design Services**

TALIFERRO PARK SHELTER RENOVATION - BG460001
TALIAFERRO PARK RESTROOM - BG460002

This Supplemental Agreement No. 1 made this ____ day of _____, 20____, by and between the City of Prairie Village, Kansas, hereinafter called the "City", and BBN Architects, Inc., hereinafter called the "Consulting Engineer/Architect".

WHEREAS, the City and the Consulting Engineer/Architect have previously entered into an Agreement, dated *January 4, 2021* (the "Original Agreement") for design of Taliaferro Park Shelter Renovation and Restroom (the "Project"); and

WHEREAS, Article IV of said Original Agreement provides that the Consulting Engineer/Architect may provide to the City certain additional services outside the scope of the Original Agreement as requested and authorized in writing by the City; and

WHEREAS, the City desires to receive and the Consulting Engineer/Architect desires to provide certain additional services related to the Project, to wit: *Custom Shelter Design* as further outlined in Exhibit A, attached hereto and incorporated by reference herein (the "Additional Services"); and

WHEREAS, this Supplemental Agreement No. 1 between the parties outlines the understanding of the parties regarding the provision of the Additional Services by the Consulting Engineer/Architect to the City; and

WHEREAS, the City is authorized and empowered to contract with the Consulting Engineer/Architect for the necessary Additional Services for the Project, and necessary funds for the payment of said Additional Services are available.

NOW THEREFORE, the parties hereby agree as follows:

PART A - BASIC CONSULTING ENGINEERING/ARCHITECT SERVICES

The Consulting Engineer/Architect will complete the Additional Services to the City's full satisfaction and in accordance with Exhibit A of this Supplemental Agreement No. 1.

PART B - SCHEDULE

The Consulting Engineer/Architect will complete the Additional Services in the time frame set forth below:

All work shown in Exhibit A of this Supplemental Agreement No. 1 shall be completed by in accordance with the same schedule in the Original Agreement.

PART C - PAYMENT TO THE CONSULTING ENGINEER/ARCHITECT FOR SERVICES RENDERED

The Additional Services will be provided at an amount not to exceed Sixteen thousand five hundred sixty-one Dollars (\$16,561.00) including reimbursables, and shall be billed at the rates set forth in and in accordance with Exhibit B, attached hereto and incorporated by reference herein.

This Supplemental Agreement No. 1 raises the maximum fee to Fifty nine thousand nine hundred sixty eight Dollars (\$59,968.00) for the Project. This is the total of the fee from the Original Agreement with this Supplemental Agreement No. 1.

IN ALL OTHER RESPECTS, the terms and conditions of the Original Agreement shall remain in full force and effect, except as specifically modified by this Supplemental Agreement No. 1, including all policies of insurance which shall cover the work authorized by this Supplemental Agreement No. 1.

IN WITNESS WHEREOF, the parties hereto have caused this Supplemental Agreement No. 1 to be executed as of the day and year first above written.

CITY OF PRAIRIE VILLAGE, KANSAS

BBN ARCHITECTS, INC

Eric Mikkelson
Mayor

Scott Bingham
Principal

ATTEST:

Adam Geffert
City Clerk

APPROVED AS TO FORM:

David Waters
City Attorney

Prairie Village – 2020 Park Projects
ATTACHMENT A – SUPPLEMENT FOR PROJECT SCOPE
December 9, 2020- Revised February 11, 2021

This supplemental section further defines the project scope of services and fee proposal for the park improvements at Taliaferro Park. The design team for this work includes architects and landscape architects from BBN Architects, with the following subconsultants: SK Design Group (civil engineering), Leigh & O’Kane (structural engineering) and Antella (M/E/P engineering). It is assumed the steering committee will include City Staff and members of the Prairie Village Parks and Recreation Committee.

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

Assumptions

1. The demolition of the existing shelter and the associated pavement and retaining wall at Taliaferro Park will be included in the scope.
2. The restroom structure at the park will be similar in scope, scale and style as the restroom design and constructed at Wassmer Park. The restroom will be heated and vented, but not air-conditioned.
3. The base bid proposal for the replacement shelter at Taliaferro Park will be a prefabricated structure with an approximate size of 30x34 ~~and, but will have~~ custom features including sealed wood decking, faux stone column bases and security lighting. The custom shelter, shall be similar in style but larger compared to the shelter installed at Wassmer Park, and shall be considered as an alternate bid.
4. The public engagement will consist of a single outdoor meeting at the park and a Survey Monkey administered by the City.
5. The civil engineering scope assumes that the existing storm and sewer infrastructure will remain in place and that the project will not require a sewer main extension.
6. This proposal assumes that the increase in impervious area will be insignificant so stormwater detention, a stormwater study and stormwater quality best management practices are excluded from this proposal.
7. The restrooms will not impact the flood plain nor require grading within the flood plain. Consequently, a flood plain study, elevation certificate, USACE permitting, and/or FEMA permitting will not be required.
8. This proposal excludes replatting, modifications to existing plats, and updates to existing JCW as-builts that may be requested by JCW as part of the project.
9. This proposal assumes that the necessary topographic and utility survey of both sites will be provided by the client for our use. The survey information recently provided to us is on an assumed datum. For the submittal to JCW, SK Design will convert the numerical manhole top elevations and flowline elevations from the assumed datum to the JCW as-built datum by equation. All other conversions are specifically excluded from this proposal.
10. This proposal excludes a Stormwater Pollution Prevention Plan (SWPPP), all Notice of Intent to Disturb Land notifications to the Kansas Department of Health and Environment (KDHE), and any local erosion control permitting. Basic erosion control measures will be identified on the demolition plan.

11. This proposal does include preparation of plans for a new JCW sewer service for the new permanent restroom. It is assumed that the new service will connect into the existing manhole within the anticipated project area. The scope also includes the design of a new water service to serve the restroom building. This scope does not include communications or gas.
12. Foundations for the restrooms will take a conservative approach and follow International Building Code standards rather than conducting a geotechnical study of the site.
13. Construction administration progress meetings will be held bi-weekly during the active construction period. Requested site meetings beyond the stated maximum will be charged on an hourly basis (see Attachment C for the hourly rate schedule). The city will provide site inspections and any required field testing.

Scope of Services

Taliaferro Park

- 1) **Assessment of existing conditions and initial direction:** The design team will utilize the 2015 Taliaferro & Bennett Park Improvements bid drawings provided by the city as a basis for the proposed restroom, shelter and site wall at Taliaferro Park. BBN has already met with City Staff to discuss the initial direction for the concept development, including the structures' locations, the size and shape of the proposed pre-fabricated shelter, and the supporting site improvements necessary.
 - a) Deliverables
 - i) Restroom location alternatives
 - ii) Pre-fabricated and custom shelter alternatives
 - iii) Conceptual site plans comparing hexagon and rectangular shelters
- 2) **Concept Development:** Based on the direction given by City Staff ~~to pursue a rectangular shelter approximately with a 30 x 34 footprint~~, the design team will develop a concept for the proposed structures, including floor plans, elevations and a site plan to relate it to the existing park. BBN will present the concepts for the structures, along with an order of magnitude estimate of construction cost to City Staff.
 - a) Deliverables
 - i) one design concept for each structure/element, (restroom, shelter and retaining wall), with corresponding order of magnitude cost estimate.
- 3) **Public Engagement:** BBN will attend and present aspects of the concepts at an outdoor public meeting at the park. It is assumed City Staff will organize and promote the meeting. BBN will also supply City Staff with the graphics used at the meeting for a Survey Monkey. The purpose of this survey will be to receive feedback on key aspects of the design and educate the public on how and when the improvements will be undertaken. It is assumed that City Staff will administer the survey.
- 4) **Final Concept:** At the conclusion of the survey, BBN will meet with City Staff to discuss the results. The objective of this meeting will be to reach consensus on the direction of the final

Prairie Village – 2020 Park Projects
ATTACHMENT A – SUPPLEMENT FOR PROJECT SCOPE
December 9, 2020- Revised February 11, 2021

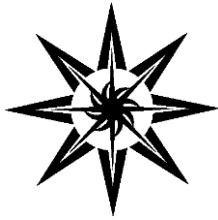
concept for each structure and their siting, (including the proposed retaining wall). BBN will then produce and share a final concept for these elements and their projected costs with City Staff. It is assumed City Staff will present these documents to City Council for comment. Deliverables will include final concept site drawings and supporting images along with projected construction costs.

- 5) **Bid Documents:** Based on the direction given by City Staff, the BBN team will develop construction bid documents for the Taliaferro Park Improvements. This will include drawings and specifications for the proposed work. The bid documents, along with the projected costs, will be reviewed with City Staff at 50% and 95% progress milestones.
- 6) **Bidding:** BBN will provide the bid documents to a commercial online plan room for bidding and will attend a city-led pre-bid meeting. The design team will respond to bidder inquiries and issue addenda if needed. After bidding, BBN will review the bids with City Staff and make a recommendation to award. Deliverables for this task will include bid addenda, bid evaluation (bid tab) and a recommendation to award.
- 7) **Construction Administration:** During the course of construction, the BBN team will attend (6) contractor-led pre-construction meetings at the site and observe the work being done. This will include substantial and final punch list reviews documenting items observed that are not in conformance with the bid documents. The BBN team will respond to contractor requests for information, review submittals and issue any additional documentation as necessary. Deliverables will include construction administration documents and correspondence.

This supplemental section further defines the scope of services and fee proposal for the park improvements at Taliaferro Park. BBN proposes an hourly not to exceed fee for the scope of services described above. A modest allowance for local travel and in-house printing is included in the fee, with the assumption that the distribution of the documents will be done electronically. Please refer to the attached fee summary outlining the hours and fees for each task.

| FEE SUMMARY - TALIAFERRO PARK SHELTER (BG460001) & RESTROOM (BG460002) | | | | | | | | | | | | | | | | |
|---|--------------------|--------------------|------------------|------------------|--------------------|--------------------|------------------|------------------|-----------------|-----------------|--------------|------------------|-----------------|------------------|------------------|---------------------|
| Task | Principal Arch Hrs | Principal Arch Fee | Principal LA Hrs | Principal LA Fee | Cost Estimator Hrs | Cost Estimator Fee | Project Arch Hrs | Project Arch Fee | Arch Intern Hrs | Arch Intern Fee | BBN Hours | BBN Fee | SK Design Fee | Leigh O'Kane Fee | Antella Fee | Team Fee |
| Rate | \$ 245 | | \$ 170 | | \$ 160 | | \$ 100 | | \$ 78 | | | | | | | |
| EXISTING CONDITIONS ASSESSMENT | 0 | \$ - | 2 | \$ 340 | 0 | \$ - | 0 | \$ - | 4 | \$ 312 | 6.0 | \$ 652 | | | | \$ 652.00 |
| CONCEPT DEVELOPMENT | 1 | \$ 245 | 4 | \$ 680 | 4 | \$ 640 | 4 | \$ 12 | 24 | \$ 1,872 | 37.0 | \$ 3,449 | \$ - | \$ 500 | \$ 370.00 | \$ 4,319.00 |
| PUBLIC MEETING | 0 | \$ - | 5 | \$ 850 | 0 | \$ - | 3 | \$ 300 | 3 | \$ 234 | 11.0 | \$ 1,384 | | | | \$ 1,384.00 |
| FINAL CONCEPT | 0 | \$ - | 2 | \$ 340 | 2 | \$ 320 | 2 | \$ 200 | 2 | \$ 156 | 8.0 | \$ 1,016 | | | | \$ 1,016.00 |
| BID DOCUMENTS | 4 | \$ 980 | 12 | \$ 2,040 | 2 | \$ 320 | 52 | \$ 5,200 | 14 | \$ 1,092 | 84.0 | \$ 9,632 | \$ 5,000 | \$ 1,000 | \$ 8,530 | \$ 24,162.00 |
| BIDDING | 0 | \$ - | 3 | \$ 510 | 0 | \$ - | 3 | \$ 300 | 4 | \$ 312 | 10.0 | \$ 1,122 | \$ - | | | \$ 1,122.00 |
| CONSTRUCTION ADMINISTRATION | 2 | \$ 490 | 12 | \$ 2,040 | 0 | \$ - | 24 | \$ 2,400 | 24 | \$ 1,872 | 62.0 | \$ 6,802 | \$ 1,000 | \$ 1,000 | \$ 1,000 | \$ 9,802.00 |
| EXPENSES | | | | | | | | | | | 250 | \$ 500 | | | \$ 200 | \$ 950 |
| Total Project | 7 | \$ 1,715 | 40 | \$ 6,800 | 8 | \$ 1,280 | 88 | \$ 8,412 | 75 | \$ 5,850 | 218.0 | \$ 24,307 | \$ 6,500 | \$ 2,500 | \$ 10,100 | \$ 43,407.00 |

| FEE SUMMARY - TALIAFERRO PARK CUSTOM SHELTER ADD SERVICE | | | | | | | | | | | | | | | | |
|---|--------------------|--------------------|------------------|------------------|--------------------|--------------------|------------------|------------------|-----------------|-----------------|--------------|------------------|---------------|------------------|-------------|---------------------|
| Task | Principal Arch Hrs | Principal Arch Fee | Principal LA Hrs | Principal LA Fee | Cost Estimator Hrs | Cost Estimator Fee | Project Arch Hrs | Project Arch Fee | Arch Intern Hrs | Arch Intern Fee | BBN Hours | BBN Fee | SK Design Fee | Leigh O'Kane Fee | Antella Fee | Team Fee |
| Rate | \$ 245 | | \$ 170 | | \$ 160 | | \$ 100 | | \$ 78 | | | | | | | |
| EXISTING CONDITIONS ASSESSMENT | 0 | \$ - | 0 | \$ - | 0 | \$ - | 0 | \$ - | 0 | \$ - | - | \$ - | | | | \$ - |
| CONCEPT DEVELOPMENT | 0 | \$ - | 2 | \$ 340 | 0 | \$ - | 0 | \$ - | 0 | \$ - | 2.0 | \$ 340 | \$ - | | | \$ 340.00 |
| PUBLIC MEETING | 0 | \$ - | 0 | \$ - | 0 | \$ - | 0 | \$ - | 0 | \$ - | - | \$ - | \$ - | | | \$ - |
| FINAL CONCEPT | 2 | \$ 490 | 0 | \$ - | 4 | \$ 640 | 8 | \$ 800 | 8 | \$ 624 | 22.0 | \$ 2,554 | \$ - | | | \$ 2,554.00 |
| BID DOCUMENTS | 0 | \$ - | 0 | \$ - | 0 | \$ - | 24 | \$ 2,400 | 48 | \$ 3,744 | 72.0 | \$ 6,144 | \$ - | \$ 4,600 | | \$ 10,744.00 |
| BIDDING | 0 | \$ - | 0 | \$ - | 0 | \$ - | 0 | \$ - | 0 | \$ - | - | \$ - | \$ - | | | \$ - |
| CONSTRUCTION ADMINISTRATION | 0 | \$ - | 0 | \$ - | 0 | \$ - | 8 | \$ 800 | 16 | \$ 1,248 | 24.0 | \$ 2,048 | \$ - | \$ 875 | | \$ 2,923.00 |
| EXPENSES | | | | | | | | | | | | | \$ - | | | \$ - |
| Additional Fee | 2 | \$ 490 | 2 | \$ 340 | 4 | \$ 640 | 40 | \$ 4,000 | 72 | \$ 5,616 | 120.0 | \$ 11,086 | \$ - | \$ 5,475 | \$ - | \$ 16,561.00 |



PUBLIC WORKS DEPARTMENT

Council Meeting: June 7, 2021

COU2021-48 CONSIDER APPROVAL OF A CONTRACT WITH McANANY CONSTRUCTION FOR THE 2021 UBAS AND CARS PROGRAM (UBAS2021|79ST0001)

RECOMMENDATION

Move to authorize the Mayor to sign the Construction Contract with McAnany Construction, Inc. for the 2021 UBAS and CARS Program in the amount of \$578,377.

BACKGROUND

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

On May 19, 2021, the office of the City Clerk opened bids for the 2021 UBAS and CARS Programs. These programs were bid together as one contract since the 2021 CARS program has a combination of UBAS and mill/overlay.

Two bids were received:

| | |
|----------------------|---------------|
| McAnany Construction | \$ 515,515.00 |
| Superior Bowen | \$ 517,354.85 |
| Engineer's Estimate | \$ 631,886.00 |

City staff has reviewed the bids for accuracy and recommends awarding to the project to McAnany Construction.

UBAS2021 The project was bid at \$287,138. There is \$350,000 budgeted for the construction of this project and the contract will be awarded for that amount. Locations will be adjusted (increased) to utilize the \$350,000 budget.

79ST0001 The 2021 CARS project will be awarded for the bid amount of \$228,377 with a 50/50 split with Johnson County. The interlocal agreement for this project was executed by the Governing Body at the December 7, 2020 council meeting.

FUNDING SOURCE

| | |
|----------|------------------|
| UBAS2021 | \$350,000 |
| 79ST0001 | <u>\$228,377</u> |
| Total | \$578,377 |

ATTACHMENTS

1. Construction Agreement with McAnany Construction.
2. UBAS2021 Map

PREPARED BY

Melissa Prenger, Senior Project Manager

June 3, 2021

CONSTRUCTION AGREEMENT



**79ST0001 & UBAS2021 |
2021 CARS & UBAS PROGRAM**

BETWEEN

CITY OF PRAIRIE VILLAGE, KS

AND

McANANY CONSTRUCTION, INC.

CONSTRUCTION CONTRACT
FOR
79ST0001 & UBAS2021 | 2021 CARS & UBAS PROGRAM

BETWEEN
THE CITY OF PRAIRIE VILLAGE, KANSAS
AND
McANANY CONSTRUCTION, INC.

THIS AGREEMENT, is made and entered into this ____ day of _____, 2021, by and between the City of Prairie Village, Kansas, hereinafter termed the “**City**”, and McAnany Construction, Inc., hereinafter termed in this agreement, “**Contractor**”, for the construction and completion of Project 2021 CARS & UBAS PROGRAM , (the “**Project**”) designated, described and required by the Project Manual and Bid Proposal, to wit:

WITNESSETH:

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

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

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

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

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

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

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

1.1 Following words are given these definitions:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2. ENTIRE AGREEMENT:

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

3. INTENT AND INTERPRETATION

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

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

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

4. CONTRACT COST

The City shall pay the Contractor for the performance of the Work embraced in this Contract, and the Contractor will accept in full compensation therefore the sum (subject to adjustment as provided by the Contract) of *Five hundred seventy eight thousand three hundred seventy seven and 00/100 DOLLARS (\$ 578,377.00)* for all Work covered by and included in the Contract; payment thereof to be made in cash or its equivalent and in a manner provided in the Contract Documents.

5. WORK SUPERINTENDENT

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

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

6. PROJECT MANAGER

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

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

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

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

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

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

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

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

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

7. WORK SCHEDULE:

- 7.1 The Work is comprised of one large project (sometimes referred to as "**Total Project Work**") and, in some cases, is partitioned into smaller subprojects referred to in this Agreement as "**Project Segments.**" A Contract Time shall be stated in the Contract Documents for both the Total Project Work and, when applicable, the Project Segments.
- 7.2 At the time of execution of this Contract, the Contractor shall furnish the Project Manager with a schedule ("**Work Schedule**") setting forth in detail (in the critical path method) the sequences proposed to be followed, and giving the dates on which it is expected that Project Segments will be started and completed within the Contract Time. The Work Schedule is subject to approval by the City.

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

8. DELAYS AND EXTENSIONS OF TIME

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

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

9. ADVERSE WEATHER:

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

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

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

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

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

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

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

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

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

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

10. LIQUIDATED DAMAGES

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

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

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

11. PAYMENT PROCEDURE

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

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

12. COMPLETION AND FINAL PAYMENT

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

13. CLAIMS BY THE CONTRACTOR

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

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

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

14. CHANGES IN THE WORK

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

- 14.3 Any change in the Contract Price resulting from a Change Order shall be by mutual agreement between the City and the Contractor as evidenced by the change in the Contract Price being set forth in the Change Order, and, together with any conditions or requirements related thereto, being initialed by both parties.
- 14.4 If no mutual agreement occurs between the City and the Contractor relative to a change in the Work, the Contractor shall proceed with the Work that is the subject of the Change Order, and the change in the Contract Price, if any, shall then be determined by the Project Manager on the basis of the reasonable expenditures or savings of those performing, deleting or revising the Work attributable to the change, including, in the case of an increase or decrease in the Contract Price, a reasonable allowance for direct job site overhead and profit. In such case, the Contractor shall present, in such form and with such content to the City, as the Project Manager requires, an itemized accounting of such expenditures or savings, plus appropriate supporting data for inclusion in a Change Order. Reasonable expenditures or savings shall be limited to the following: reasonable costs of materials, supplies or equipment, including delivery costs, reasonable costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and worker's compensation insurance, reasonable rental costs of machinery and equipment exclusive of hand tools, whether rented from the Contractor or others, permit fees, and sales, use or other taxes related to the Work, and reasonable cost of direct supervision and job site field office overhead directly attributable to the change. In no event shall any standby time or any expenditure or savings associated with the Contractor's home office or other non-job site overhead expense be included in any change in the Contract Price. Further, in no event shall the Contractor's overhead expense exceed ten (10%) percent of the reasonable expenditures. Pending final determination of reasonable expenditures or savings to the City, payments on account shall be made to the Contractor on the Project Manager's Certificate for Payment.
- 14.5 If unit prices are provided in the Contract, and if the quantities contemplated are so changed in a proposed Change Order that the application of such unit prices to the quantities of Work proposed would cause substantial inequity to the City or to the Contractor, the applicable unit prices shall be equitably adjusted.
- 14.6 The execution of a Change Order by the Contractor shall constitute conclusive evidence of the Contractor's agreement to the ordered changes in the Work, this Contract as thus amended, the Contract Price and the Contract Time. The Contractor, by executing the Change Order, waives and forever releases any claim including impact against the City for additional time or compensation for matters relating to or arising out of or resulting from the Work included within or affected by the executed Change Order.
- 15. INSURANCE AND BONDS.**
- 15.1 The Contractor shall secure and maintain, throughout the duration of the agreement, insurance (on an occurrence basis unless otherwise agreed to) of such types and in at least such amounts as required herein. Contractor shall provide certificates of insurance and renewals thereof on forms acceptable to the City. The City shall be notified by receipt of written notice from the insurer or the Contractor at least thirty (30) days prior to material modification or cancellation of any policy listed on the Certificate.
- 15.2 The Contractor, upon receipt of notice of any claim in connection with this Agreement, shall promptly notify the City, providing full details thereof, including an estimate of the amount of loss or liability. The Contractor shall monitor and promptly notify the City of any reduction in

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

15.3 Minimum Requirements Commercial General Liability Policy Limits -

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

Policy MUST include the following conditions:

- A. Pollution Liability (Applicable only to contracts involving pollutants such as asbestos & lead abatement, sludge or other waste abatement, etc.)
- B. NAME CITY OF PRAIRIE VILLAGE and THE BOARD OF COMMISSIONERS OF JOHNSON COUNTY, KANSAS 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 and THE BOARD OF COMMISSIONERS OF JOHNSON COUNTY, KANSAS 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 and the Board of Commissioners of Johnson County, Kansas 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

McAnany Construction, Inc.

(typed company name)

By: _____
(signed)

By: _____
(signed)

Eric Mikkelson

(typed name)

Mayor

(typed title)

City of Prairie Village

McAnany Construction, Inc.

(typed company name)

7700 Mission Road

15320 Midland Drive

(typed address)

Prairie Village, Kansas 66208

Shawnee, Kansas 66217

(typed city, state, zip)

913-631-5440

(typed telephone number)

(date of execution)

(date of execution)

SEAL

ATTEST:

APPROVED BY:

City Clerk, Adam Geffert

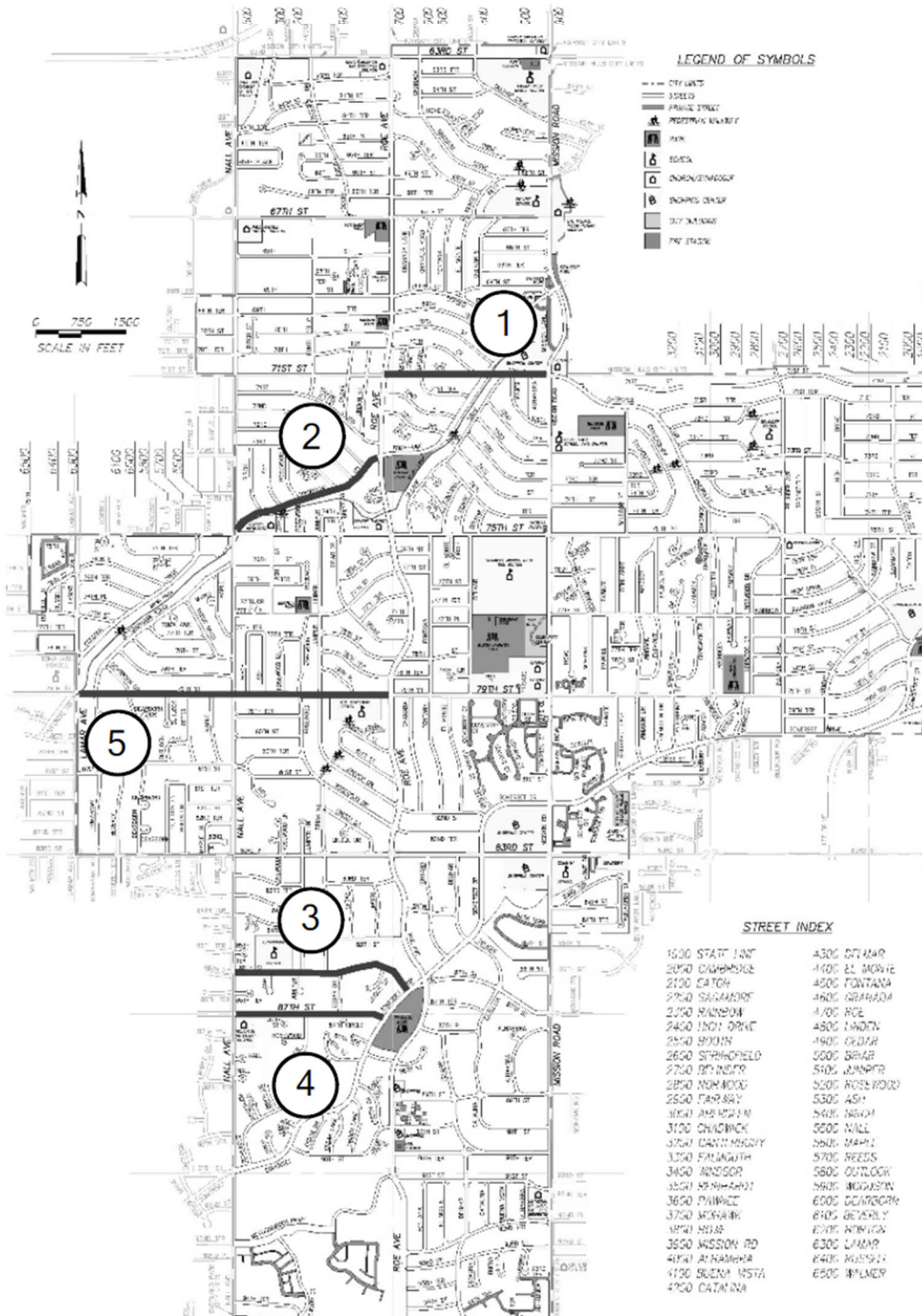
City Attorney, David Waters

(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.)



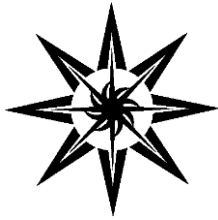
PRAIRIE VILLAGE KANSAS

2021 UBAS & CARS



PROJECT LOCATIONS

- (1) 71ST STREET (MISSION RD TO ROE)
- (2) TOMAHAWK (ROE AVE TO NALL AVE)
- (3) 86TH STREET (SOMERSET DR TO NALL AVE)
- (4) 87TH STREET (SOMERSET DR TO NALL AVE)
- (5) 79TH STREET (ROE TO LAMAR) CARS PARTICIPATION



PUBLIC WORKS DEPARTMENT

Council Meeting Date: June 7, 2021

COU2021-49 CONSIDER CONSTRUCTION ADMINISTRATION AGREEMENT WITH TREKK DESIGN GROUP FOR THE 2021 CONSTRUCTION PROJECTS

RECOMMENDATION

Move to approve the construction administration agreement with TREKK Design Group for 2021 construction projects for \$87,964.40.

BACKGROUND

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

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

This contract will include construction administration services for the 2021 construction projects, which include the 2021 Paving Program and 2021 Drainage Program.

The total construction cost for the projects will be about \$3,100,000. The fee was negotiated with TREKK to be \$87,964.40 or 2.8% of construction costs. This is a reasonable percent of construction as we are supplementing our staff with assistance during the height of construction season.

Inspection costs are budgeted as part of the 2021 CIP projects.

FUNDING SOURCE

Funding is available in the CIP projects 2021 Paving and 2021 Drainage Programs.

ATTACHMENTS

1. Agreement with TREKK Design Group

PREPARED BY

Melissa Prenger, Senior Project Manager

June 1, 2021

AGREEMENT FOR PROFESSIONAL CONSULTANT SERVICES

For

CONSTRUCTION ADMINISTRATION

For

2021 PAVING PROGRAM AND DRAINAGE IMPROVEMENTS

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

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

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

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

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

ARTICLE I - RESPONSIBILITIES OF THE CITY

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

The CITY shall do the following in a timely manner:

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

ARTICLE II - RESPONSIBILITIES OF THE CONSULTANT

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

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

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

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

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

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

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

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

integrity of the design concept of the completed project as a functioning whole as indicated in the Project Manual.

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

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

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

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

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

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

The Construction Manager shall:

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

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

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

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

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

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

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

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

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

The duties and responsibilities Construction Manager are as follows:

- 1 Attend meetings with Contractor, such as preconstruction conferences, progress meetings, job conferences and other project-related meetings, and prepare and circulate copies of minutes thereof.
- 2 Serve liaison with Contractor, working principally through Contractor's superintendent, assist in providing information regarding the intent of the Project Manual.
- 3 Obtaining from CITY additional details or information, when required for proper execution of the Work.

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

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

The Construction Manager shall not:

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

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

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

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

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

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

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

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

Typical entries for general information -

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

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

Typical entries for subgrade work -

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

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

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

Typical entries for paving work -

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

Typical entries for storm drains -

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

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

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

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

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

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

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

ARTICLE III - COMPENSATION

The CITY agrees to pay the CONSULTANT, at Hourly Rates, to a Maximum Fee of \$87,964.40 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.

Non Discrimination: The Consultant agrees that it shall abide by the Prairie Village Non Discrimination Code (Section 5-801 et seq) and shall not discriminate against any person in the performance of Work under the present contract because of race, religion, color, sex, sexual orientation, gender identity, disability, age, national origin, or ancestry. If the City determines that the Consultant has violated any applicable provision of any local, state or federal law, or has discriminated against any person because of race, religion, color, sex, sexual orientation, gender identity, disability, age, national origin, or ancestry, such violation and/or discrimination shall constitute a breach of contract and the City may cancel, terminate or suspend this agreement in whole or in part.

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

CITY:

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 BY:

David Waters, City Attorney



2021 Fee Estimate Worksheet

Project Name & Number Prairie Village - 2021 Inspection Projects

| | Project Manager / Const. Insp. Mgr. | Construction Inspector | Administration | Mileage | Labor Sub-Total | Direct Exp | Sub-Total | TOTAL |
|--|--|---------------------------|------------------|--------------------|---------------------|--------------------|---------------------|-------|
| Fee Billing Rate | \$178.00 | \$115.00 | \$85.00 | \$ 0.560 | | | | |
| WORK TASK DESCRIPTION | | | | | | | | |
| Task 1 - Paving Program | | | | | \$ 60,593.00 | \$ 974.40 | \$ 61,567.40 | |
| Anticipated time frame: June 1 - August 15 | | | | | | | | |
| Project Management and Administration | 16 | | 7 | | | | | |
| Construction Inspection | | | | | | | | |
| June (22 days @ 8 hr/day + 10% contingency) | 8 | 194 | | 720 | | | | |
| July (21 days @ 8 hr/day + 10% contingency) | 8 | 184 | | 690 | | | | |
| August (10 days @ 8 hr/day + 10% contingency) | 4 | 88 | | 330 | | | | |
| Task 2 - Storm 21 Project | | | | | \$ 25,977.00 | \$ 420.00 | \$ 26,397.00 | |
| Anticipated time frame: August 16 - September 15 | | | | | | | | |
| Project Management and Administration | 6 | | 3 | | | | | |
| Construction Inspection | | | | | | | | |
| August (12 days @ 8 hr/day + 10% contingency) | 4 | 106 | | 390 | | | | |
| September (11 days @ 8 hr/day + 10% contingency) | 4 | 96 | | 360 | | | | |
| TOTAL MAN-HOURS / QUANTITY | 50 | 668 | 10 | 2490 | | | | |
| UNIT RATE | \$178.00 | \$115.00 | \$85.00 | \$ 0.560 | | | | |
| TREKK DESIGN GROUP FEE TOTAL | \$ 8,900.00 | \$ 76,820.00 | \$ 850.00 | \$ 1,394.40 | \$ 86,570.00 | \$ 1,394.40 | \$ 87,964.40 | |

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

MAYOR'S ANNOUNCEMENTS
Monday, June 7, 2021

| | | |
|---|------------|------------|
| Arts Council | 06/09/2021 | 5:30 p.m. |
| Art Walk | 06/11/2021 | 5:30 p.m. |
| Diversity Committee | 06/16/2021 | 5:30 p.m. |
| City Council | 06/21/2021 | 6:00 p.m. |
| Environmental Committee | 06/23/2021 | 5:30 p.m. |
| VillageFest Committee | 06/24/2021 | 5:30 p.m. |
| VillageFest | 07/04/2021 | 10:00-noon |
| Independence Day (observed) – City offices closed | 07/05/2021 | |
| City Council | 07/06/2021 | 6:00 p.m. |

INFORMATIONAL ITEMS
June 7, 2021

1. Environmental Committee minutes - March 24, 2021
2. Planning Commission minutes - May 4, 2021
3. June plan of action

Members in Attendance:

Chair - Ian Graves

Co-chair - Piper Reimer

City staff liaison Ashley Freburg

Committee Members – Stephanie Alger, Travis Carson, Richard Dalton, Beth Held, Laura Lyons, Penny Mahon, Margaret Thomas

Agenda

Margaret made a motion to approve the agenda. Penny seconded the motion. The motion was approved.

Minutes

Rich made a motion to approve the minutes from January 2021. Piper seconded the motion. The motion was approved.

New Business

Mayor's Monarch Pledge

Ian discussed the Mayor's Monarch Pledge, coordinated through the National Wildlife Foundation and asked the committee if this was something they were interested in supporting. The committee responded favorably and had several ideas including: dedicating a small pocket of land in each park for a butterfly garden, getting the residents involved with taking photos of their butterfly gardens, purchasing milkweed to hand out to the residents, and providing information in the Village Voice.

Rich made a motion to recommend the committee support the Mayor's Monarch Pledge. Penny seconded. Motion carried.

Brush Creek Cleanup

Ian let the committee know that he received an email regarding litter along Brush Creek. A discussion followed on whether the committee should organize a trash pickup along drainage areas.

Piper asked whether Public Works is involved in the trash trap maintenance and location. Given the proposed road work coming up near the Village Presbyterian that may be an opportunity to include the trash traps.

Ian asked whether there were any active school stream teams like Blue River Watershed. Piper offered to contact BRWA to verify if they have active teams.

Old Business

Native Plant Sale

The native plant sale is scheduled for April 10, and has been advertised in the Village Voice.

Tree Ordinance

Ian advised the committee that the City Council approved the Tree Ordinance, which is effective June 1.

KORA/KOMA

Ian discussed upcoming training on the Kansas Open Meetings Act and the Kansas Open Records Act. City staff is coordinating training through the League of Kansas Municipalities that will be required for all committee volunteers.

Community Garden

Ian will be reaching out to the community garden volunteers to inquire whether there is interest in expanding the gardens.

Environmental Committee Meeting Schedule

Piper opened discussion regarding the Environmental Committee's meeting schedule. During discussion, committee members present agreed they would like to meet more frequently to be able to better plan community events, to coordinate articles for publication in the Village Voice, and to have more frequent, routine coordination with City Council. The Environmental Committee will not meet in July. The November and December meetings will be combined and held during the first week in December.

Ian made a motion to request City Council approval of the new schedule. Piper seconded the motion. Motion carried.

Announcements

New Building Codes

Ian stated that new building codes had been adopted by the City Council. The codes address energy efficiency standards.

Carbon Emissions Tracking

Ashley reported that Dynamhex, Inc. is nearing completion of its carbon emissions tracking software for Prairie Village. The software tracks the City's residents' and business owners' carbon footprints in real time. A link to the software will be available on the City's website.

Evergy

Piper stated that Evergy provided a presentation to the City Council regarding the wind farm and power purchase agreement.

Fleet Conversion

Rich asked for an update on fleet conversion to electric vehicles.

Adjournment

Margaret made a motion to adjourn the meeting. Rich seconded. Motion carried.

**PLANNING COMMISSION MINUTES
MAY 4, 2021**

ROLL CALL

The Planning Commission of the City of Prairie Village met in regular session on Tuesday, May 4, 2021 at 7:00 p.m. Due to the COVID-19 pandemic, Commission members attended a virtual meeting via the Zoom software platform. 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 Nancy Wallerstein.

The following individuals were present via Zoom in their advisory capacity to the Planning Commission: Chris Brewster, Gould Evans; Jamie Robichaud, Deputy City Administrator; Mitch Dringman, City Building Official; Ron Nelson, Council Liaison; Adam Geffert, City Clerk/Planning Commission Secretary.

APPROVAL OF MINUTES

Mrs. Wallerstein moved for the approval of the minutes of the April 6, 2021 regular Planning Commission meeting. Mr. Breneman seconded the motion, which passed 6-0.

PUBLIC HEARINGS

None

NON-PUBLIC HEARINGS

PC2021-109 Site Plan Approval for Exterior Building Modifications
 GRI Prairie Village, LLC
 6940 Mission Road
 Zoning: C-2
 Applicant: Matthew Kist, Kimley-Horn and Associates

Mr. Brewster stated that the applicant was requesting site plan approval for a remodel of the exterior façade of the building. The property is zoned C-2, and the existing building and site meet all zoning requirements. The remodeling would primarily be an interior tenant finish to convert the building to multi-tenant space, which is anticipated to include the existing bank with reduced office and walk-in space, as well as a restaurant and a medical service use. He added that tenant finishes or changes of use typically only require building permits and business licenses, but that expansions of buildings and exterior renovations with substantial material changes require the Planning Commission to review and approve a site plan.

Mr. Brewster stated that staff recommended approval of the site plan, subject to the following conditions:

1. Signs for future tenants shall require sign permits approved by staff, subject to the sign standards applicable to this building according to the Prairie Village Shops sign standards.
2. Any future changes to the use or operation of the drive-through service area may require further review and approvals according to the zoning ordinance requirements.

Mr. Birkel asked if street parking would be added along Mission Road in the future. Mr. Brewster said that significant development changes would need to be made to Mission Road at the site to allow for street parking, and that was not a consideration as part of this site plan application.

Applicant Gregg Zike of GRI Prairie Village LLC, 7200 Wisconsin Ave., Suite 600, Bethesda, MD, engineer Matt Kist of Kimley-Horn, 1828 Walnut St., Kansas City, MO, and architect Tom Hippman of CallisonRTKL, 1717 Pacific Ave., Dallas, TX, were present to discuss the project.

Mrs. Wallerstein asked whether there would be a drive-through added for the proposed restaurant tenant. Mr. Zike stated that there were no plans for a food and beverage drive-through at the property. Mrs. Wallerstein also asked if visibility could be improved for the existing bank drive-through, as the site lines from the current exit to Mission Road were poor. Mr. Zike said that the architectural team would look for potential solutions.

Mr. Breneman suggested adding a “view through” window in the tenant space to allow for better visibility when exiting the drive-through. Mr. Zike said he would look at options and get back with staff. Mr. Breneman also asked where signs would be placed on the west side of the building. Mr. Hippman said that signs for retail tenants would sit just above the central canopy, and signage for office tenants would be located by the roof line.

Mrs. Wallerstein asked if there would be adequate parking for both employees and customers with the addition of new tenants to the building. Mr. Zike said that parking would be less intensive due to the different times the lot would be used for the various tenants. He added that there were designated employee parking areas in the Village Shops.

Ms. Brown suggested that the proposed architectural design retain some of the building’s existing mid-century modern elements.

Mr. Breneman made a motion to approve the site plan for exterior renovations subject to the conditions recommended by staff. Mrs. Wallerstein seconded the motion, which passed 6-0.

PC2021-110

Site Plan Approval for Wall Massing Exception
Eric and Ashley Seifert
4508 W. 64th Street
Zoning: R-1A
Applicant: Adam Pfeifer, NCARB

Mr. Brewster said that the applicant was requesting an exception to the Neighborhood Design Standards, related to a remodel of an existing home. The lot, zoned R-1A and constructed in 1953, has an L-shaped footprint addressing the corner. The plan does not expand the footprint of the house, and proposes a larger second story over the east wing. The Neighborhood Design Standards were adopted in 2018, and are applicable to all R-1A lots. Specifically, the applicant is asking for an exception to Section 19.06.025.D.2 regarding building massing and wall planes.

Mr. Brewster noted that staff recommended approval of the exception without conditions.

Architect Adam Pfeifer, 12214 W. 79th Terrace was present to discuss the application. He stated that the homeowners were interested in using the existing footprint of the house rather than tearing it down and rebuilding. He noted that the architectural style of the expansion would limit the impact on neighbors.

Mr. Birkel made a motion to approve the exception to the neighborhood design standards as presented. Mr. Lenahan seconded the motion, which passed 6-0.

OTHER BUSINESS

None

ADJOURNMENT


With no further business to come before the Commission, Chair Greg Wolf adjourned the meeting at 8:06 p.m.

Adam Geffert
City Clerk/Planning Commission Secretary



THE CITY OF PRAIRIE VILLAGE

STAR OF KANSAS

DATE: June 3, 2021
TO: Mayor Mikkelson
City Council
FROM: Wes Jordan 
SUBJECT: JUNE PLAN OF ACTION

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

- Meadowbrook Phase II Park Plan Presentation - Jamie (06/21)
- Update Beverage Ordinance(s) - David/Adam (06/21)
- Bird Scooters - Keith (06/21)
- Legal Review of Marijuana Enforcement - David (06/21)
- Pool Repairs/Logistics - Keith/Meghan (06/21)
- Review of Court Diversion Costs - Tim (06/21)
- UCS Racial Equities in Communities Program - Tim (06/21)
- Animal Boarding Agreement - Chief (06/21)
- 2020 Audit Presentation/CAFR - Nickie (06/21)
- Receptionist Hiring Process - Meghan/Adam (06/21)
- Review/Revise Site Planning Criteria in Zoning Regulations - Jamie (06/21)
- Organize/Combine Property Maintenance Ordinances - Jamie/David (06/21)
- Schedule UCS Housing Task Force Presentation - Jamie (06/21)

In Progress

- Plan for In Person Council/Committee Meetings - Tim (05/01)
- Investment Policy for Voya 457/401a Plans - Cindy/Jamie (05/01)
- Internal Accounting Policy/Vendor Process Changes - Nickie (04/21)
- Regional Benchmarking Initiative - Meghan (04/21)
- American Rescue Plan Act Fund Uses & Expiration - Staff (04/21)
- Pool Mural Project - Meghan (04/21)
- Meadowbrook Phase II Park Planning - Jamie/Meghan (04/21)
- 2022 Budget Process - Staff (04/21)
- City Hall Conceptual Review - Staff (03/01)
- 2021 International Energy Conservation Code - Jamie/Mitch (03/21)
- Implementation of Smoking Ban in Parks - Meghan (03/21)

- VillageFest Feasibility and Planning - Meghan (03/21)
- JazzFest Feasibility and Planning - Meghan (03/21)
- Orientation Process for New Volunteer Committee Members - Staff (12/20)
- Geothermal Software Upgrade - PW (10/20)
- E/V Charging Station Installation - PW (10/20)
- Dynamhex Implementation - Ashley (10/20)
- Historic Trail Signage - Keith (09/20)
- Bias Training - Tim/Byron (07/20)
- PW New Facility Planning - Keith (09/19)
- Memorial Plaques in Parks Criteria Review - Staff (08/19)
- JOCO Municipalities Housing Study Task Force - Jamie (07/19)
- Research Viability of Interior Rental Inspections - Jamie (06/19)
- Statuary Maintenance Plan - Meghan (05/19)
- Personnel Policy Updates - Cindy/Jamie (07/18)
- Sculpture Unveiling - Meghan/Bonnie/Keith (11/19)

Completed

- Special Event Coordinator Hiring Process - Meghan (01/21)
- Summer Tennis Programs & Registration - Meghan (04/21)
- Review Alternative Changes to the Marijuana Ordinance - Tim (02/21)
- Legislative End of Session Update - Jamie (05/01)
- Codes Support Specialist Process - Jamie (05/01)
- Special Use Permit/Brighton Gardens - Jamie/Chris/Adam (04/21)
- Special Use Permit/Destination Pet - Jamie/Chris/Adam (04/21)
- Pool Opening Plan - Meghan (01/21)
- 2021 Pool Staffing/Hiring - Meghan/Suzanne (01/21)
- 2022 Budget Process
 - 2nd Finance Committee Budget Review - Staff (05/01)
 - CIP Discussion and Road Assessment - PW (05/01)
 - SB 13 Implementation - Nickie (05/01)
 - Establish Solid Waste Fees - Jamie/Nickie/Adam (05/01)
 - Budget Presentation to Council - Staff (05/01)

Tabled Initiatives

- 20/20 Fitness Business Introduction to Council - Wes (04/20) [delayed]
- Civic Center Action Plan - Staff (03/20) [on hold]
 - Bond Capacity Discussion w/Council - Jeff White [completed]
 - Framework of Partnership Agreements with YMCA & Library
 - MOU - Public Engagement & Site Design
- Review & update the City Code/Ordinances
- Review & Update City Policies
- Review of Smoking Ordinance/e-cigs
- Single Use Plastic Bag Discussion - Staff (02/20) [pending Council direction]