

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, August 2, 2021
6:00 PM**

- I. CALL TO ORDER
- II. ROLL CALL
- III. PLEDGE OF ALLEGIANCE
- IV. APPROVAL OF THE AGENDA
- V. PRESENTATIONS
- 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 August 2. 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 August 2 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 - July 19, 2021
- 2. Consider approval of 2022 Mission Hills contract and 2022 Mission Hills budget
- 3. Consider approval of purchase of winter covers for city statuary

VIII. **COMMITTEE REPORTS**

IX. **MAYOR'S REPORT**

X. **STAFF REPORTS**

XI. **OLD BUSINESS**

XII. **NEW BUSINESS**

COU2021-57 Consider approval of a contract with Superior Bowen for the 2021 concrete repair program
Keith Bredehoeft

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

COU2021-58 Consider change to animal enumeration process
Adam Geffert

XIV. **ANNOUNCEMENTS**

XV. **ADJOURNMENT**

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



**CITY COUNCIL
CITY OF PRAIRIE VILLAGE
JULY 19, 2021**

The City Council of Prairie Village, Kansas, met in regular session on Monday, July 19, 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, and Ian Graves. Staff present via Zoom: Byron Roberson, Chief of Police; Melissa Prenger, Public Works; City Attorney David Waters, attorney with Lathrop & Gage; Wes Jordan, City Administrator; Jamie Robichaud, Deputy City Administrator; Tim Schwartzkopf, Assistant City Administrator; Meghan Buum, Assistant City Administrator; Nickie Lee, Finance Director; Adam Geffert, City Clerk.

PLEDGE OF ALLEGIANCE

APPROVAL OF AGENDA

Ms. Limbird made a motion to approve the agenda for July 19, 2021. Mrs. Myers seconded the motion, which passed 11-0.

PRESENTATIONS

Julie Brewer, Executive Director of United Community Services, gave a presentation on a recently completed community housing study in Johnson County, and discussed strategies for making housing more affordable and attainable.

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 - July 6, 2021



2. Approval of expense ordinance #3004
3. Consider an Ordinance approving the Prairie Village Jazz Festival as a special event and authorizing the sale, consumption and possession of alcoholic liquor and cereal malt beverages within the boundaries of a barricaded public area of the event

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. The motion passed 11-0.

COMMITTEE REPORTS

- Ms. Selders provided an update on the forthcoming JazzFest event, stating that the artist lineup had been finalized and food trucks had been selected. She added that the Diversity Committee had partnered with the American Jazz Museum in Kansas City, and would have a tent at JazzFest where attendees could learn more about the history of jazz and the 18th and Vine district.

MAYOR’S REPORT

- The Mayor provided an update on the COVID-19 pandemic, noting that vaccination rates had increased very slightly since his last report. Currently, 50.1% of Johnson County residents ages 12 and up were fully vaccinated; in Prairie Village, the total was slightly higher, at 53%. He added that positivity rates and new case numbers were both increasing.
- The Mayor stated that the City had received its first American Rescue Plan Act (ARPA) payment, totaling approximately \$1.6 million. This amount was roughly 50% of the total allocation, with the remaining 50% set to be received in 2022.
- The Mayor noted that the City’s second quarter financial report had been made available, and that revenues exceeded expectations, and expenses were lower than anticipated. Additionally, the police pension fund showed significant growth in the second quarter.
- The Mayor visited the site of the new skate park, which is scheduled to be completed before JazzFest in September. Additionally, the new Public Works building is expected to open in late August, and an open house would be held later in the year.
- The MARC First Suburbs Coalition met the prior week and discussed the regional climate action plan. Climate Action KC will give a report to the City Council in August.
- The Mayor attended a ribbon-cutting event at the Nektar Juice Bar in the new Corinth Quarter shopping center.
- A webinar for elected officials hosted by the U.S. Green Building Council, MARC and Climate Action KC is scheduled for July 27.
- The Mayor reported that the Johnson County Charter Commission would begin reviewing charter amendment proposals at its next meeting.



STAFF REPORTS

- Consolidated Fire District #2 Chief Steve Chick spoke about decisions made at the district's recent board meeting. He reported that the financial health of the district was good, and that three new firefighters would be hired in 2022. Further, the 2022 mill levy would be slightly lower than 2021.
- Chief Roberson said that six high school students took part in the first Youth Academy graduation. Additionally, the naming contest for the Department's new K-9 was underway, with over 200 different names submitted.
- Mrs. Myers asked for the total cost of the City Attorney's recent research into marijuana laws. Mr. Waters said that the total fee was approximately \$29,000, for 123 hours of research. He added that he had reduced the amount of time charged to the project because of its high cost.

OLD BUSINESS

There was no old business to come before the Council.

NEW BUSINESS

COU2021-54 Request permission to publish the 2022 proposed budget

Ms. Lee stated that the 2022 proposed budget maintained the same level of services as the 2021 budget while retaining a mill rate of 19.321. She noted that state statutes required the City to hold a public hearing on the proposed budget at least ten days prior to the date the budget was certified by the County Clerk (August 25 if not exceeding the revenue neutral rate or October 1 if exceeding the revenue neutral rate). The City must also publish the budget at least ten days prior to the date of the public hearing. To comply with these statutory requirements, the public hearing would be scheduled for the City Council's regular meeting on Tuesday, September 7, 2021.

Ms. Lee added that, per Senate Bill 13, the proposed budget would also require a revenue neutral rate hearing to exceed the revenue neutral rate provided by the County Clerk. That hearing date was also scheduled for September 7, 2021, and would immediately precede the budget adoption public hearing.

Mr. Herring made a motion to authorize staff to publish notice of the budget hearing for the 2022 proposed budget as required by state statute. The motion was seconded by Mr. Poling.

Mr. Runion moved to amend the motion to authorize publication subject to the reallocation of \$400,000 of expenditures from the budget (approximately \$100,000 from personnel services and \$300,000 from contract services) to fund the police pension plan. The motion was seconded by Mrs. Myers. A roll call vote was taken with the following votes cast: "aye":



Myers, Runion; “nay”: Herring, J. Nelson, Selders, R. Nelson, Poling, Limbird, Reimer, McFadden, Graves. The motion failed 9-2.

After further discussion, A roll call vote was taken on the original motion with the following votes cast: “aye”: Herring, J. Nelson, Selders, R. Nelson, Poling, Limbird, Myers, Reimer, McFadden, Graves; “nay”: Runion. The motion passed 10-1.

COU2021-55 Consider new and revised employee handbook policies to include paid parental leave, military leave, and designation of Juneteenth and Christmas Eve as City holidays

Ms. Robichaud said that its July 6, 2021 meeting, the Council Committee of the Whole voted to approve new and revised policies for paid parental leave, military leave, and city holidays, and move the items forward to the City Council for final consideration. Additional amendments to the paid parental leave policy were also approved, which increased the leave allotment to 8 weeks and changed the timeframe from when the leave must be used from 12 weeks to 12 months.

In addition to these policy recommendations, a thorough compensation and benefits study will be conducted in 2022 and recommendations will be brought forward to ensure the total compensation package remains competitive and is neither lacking nor overly generous when compared with the compensation package offered by similar jurisdictions.

Mr. Nelson made a motion to approve the changes to the employee handbook as presented. Ms. Reimer seconded the motion, which passed 11-0.

Ms. Limbird 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. Nelson and passed 11-0.

COUNCIL COMMITTEE OF THE WHOLE

COU2021-56 Consider approval of the purchase of winter covers for city statuary

Ms. Buum noted that the City Council allocated \$50,000 towards statuary maintenance and preservation in the 2019 budget. Thus far, the funds had been spent on regular annual cleanings, general maintenance, and the replacement of several broken urns. Approximately \$41,500 remained in the fund.

The Statuary Committee explored options for further preservation of the City’s more valuable pieces and recommended the purchase of winter covers for 11 pieces from KC Tent and Awning. The pieces selected for covers were those insured by the City due to their value. The total value of the insured statuary was appraised at a combined \$458,500.



A previously completed appraisal recommended protection from extreme weather, as freezing, wet conditions could be damaging to statues and stonework.

Mrs. Myers moved to approve the purchase of winter statuary covers for an amount not to exceed \$25,000. The motion was seconded by Ms. Limbird and passed 11-0.

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

ANNOUNCEMENTS

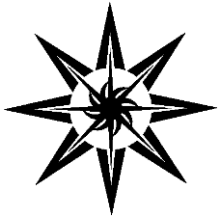
Announcements were included in the Council meeting packet.

ADJOURNMENT

Ms. Limbird made a motion to adjourn the meeting. Ms. Reimer seconded the motion, which passed 11-0.

Mayor Mikkelson declared the meeting adjourned at 7:46 p.m.

Adam Geffert
City Clerk



CONSENT AGENDA

Council Meeting Date: August 2, 2021

Consider Approval of the 2022 Mission Hills Contract and the 2022 Mission Hills Budget

RECOMMENDATION

The Prairie Village Police Department recommends the City Council formalize its law enforcement relationship with the City of Mission Hills for the 2022 calendar year by approving the attached 2022 Mission Hills Contract and the 2022 Mission Hills Budget.

COUNCIL ACTION REQUESTED ON: August 2, 2021

BACKGROUND

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

The 2022 Mission Hills Budget is calculated to be \$1,539,311, which is a 0.98% percent increase (\$14,923) compared to 2021. A breakdown of program costs is specified in the attached 2022 Mission Hills Budget spreadsheet.

The Mission Hills Contract does reflect a 3.5 percent increase, from \$46.59 to \$48.10 per hour, in Animal Control Services to account for merit and benefit costs.

The Mission Hills City Administrator has agreed with the contents of the attached 2022 Mission Hills Contract, as well as the 2022 Mission Hills Budget.

ATTACHMENTS: 2022 Mission Hills Contract
 2022 Mission Hills Budget Comparison
 2022 Mission Hills Shared Costs

Prepared By:

Byron Roberson
Chief of Police

Date: July 15, 2021

MISSION HILLS AGREEMENT – 2022

THIS AGREEMENT, made this ____ day of _____, 2021, between the City of Prairie Village, Kansas, a municipal corporation, hereinafter referred to as “Prairie Village,” and the City of Mission Hills, Kansas, a municipal corporation, hereinafter referred to as “Mission Hills.”

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

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

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

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

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

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

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

046	2020	Ford	Explorer Hybrid
047	2020	Ford	Explorer Hybrid
148	2021	Ford	Explorer Hybrid
149	2021	Ford	Explorer Hybrid

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

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

Mission Hills shall pay all expenses relating to the maintenance of said vehicles, including, but not limited to, gasoline, oil, lubrication, tires, repairs and equipment changeover. Maintenance of said vehicles shall be under the direction and supervision of the Chief of Police. Routine maintenance will be provided by a vendor agreed upon by the Mission Hills City Administrator and the Chief of Police. Gasoline shall be provided through the Prairie Village gasoline pump. A monthly itemized bill shall be prepared and forwarded to Mission Hills for payment, which shall be above the costs of the contract agreement listed in Paragraph B. Major repair items such as engine or transmission overhaul shall be approved by the Mission Hills City Administrator prior to work being performed and will be billed directly to Mission Hills. If a Mission Hills police unit is inoperable for a period of time - as determined by a Police Department Shift Supervisor or Command Staff member, due to the vehicle being unable to be operated safely, or where further use may cause damage to the vehicle - Prairie Village shall provide a replacement vehicle and may bill Mission Hills at the rate equal to the 2022 IRS standard mileage rate per mile for a car used for business purposes for its use, above the costs of this contract.

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

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

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

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

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

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

Mission Hills will designate an individual who shall serve as its representative to consult with the Chief of Police. All Prairie Village Police officers shall be deputized to act as police officers in Mission Hills and all Prairie Village personnel, in carrying out the police functions for Mission Hills as contemplated by this Agreement, shall be deemed to be acting for, and as the police arm of, Mission Hills.

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

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

4. Humane Officer. For purposes of animal control, Prairie Village shall provide to Mission Hills the services of a humane officer, when such services are needed. Said humane officer shall be under the supervision of the Chief of Police. It is agreed that when on duty, the humane officer shall respond to calls for service within Mission Hills that are the normal function of this service. In addition, the Mayor or City Administrator of Mission Hills can request scheduled hours in Mission Hills on a regular basis, which shall be provided if personnel are available. The cost of this service is not included in the contract amount as provided in Paragraph B, and shall be documented and billed at the rate of **\$48.10** per hour.

It is further agreed that Prairie Village has entered into a contract agreement with Great Plains SPCA for the professional care, impounding and boarding of animals taken into custody by the Police Department. This service is not included in the

contract amount as provided in Paragraph B, and shall be billed to Mission Hills by Prairie Village as required by the service provided by AMC.

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

B. Reimbursement Costs. Mission Hills shall reimburse Prairie Village for the cost of services and equipment provided to the City of Mission Hills as heretofore provided, the total amount of One Million, five hundred thirty nine thousand, three hundred eleven and 00/100 Dollars (**\$1,539,311.00**), said amount to be paid by Mission Hills at the rate of One Hundred twenty eight thousand, two hundred seventy five and 92/100 Dollars (**\$128,275.92**), per month during the term of this Agreement, said payment to be made not later than the 15th day of each month.

Said amount is based on the standard employee work schedule of the City of Prairie Village and includes the cost of supervision and insurance, radio dispatching, officer supplies, uniform replacement, salary of personnel, overhead and other costs which will be incurred by Prairie Village in fulfilling the obligations of this Agreement. The estimated costs of services and equipment to be provided under this Agreement have been compiled in a proposed budget for the year 2022, previously furnished to Mission Hills by Prairie Village. This budget was used in determining the costs to be reimbursed by Mission Hills; however, the parties recognize that the actual costs for the items furnished may differ from those estimated.

In the event of a difference which results from a change in the wage structure of Prairie Village personnel from that contemplated in the proposed budget, or pursuant to Paragraph A-2, any additional officer is unavailable for any reason other than an excused

absence and Prairie Village elects not to assign a replacement officer, an appropriate increase or decrease will be made in the amount due Prairie Village by Mission Hills hereunder. However, the parties agree that no other difference, if any, in the actual costs of the services and equipment provided from that contemplated in the proposed budget will be cause for increasing or decreasing the amount due Prairie Village from Mission Hills hereunder.

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

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

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

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

Village, if Prairie Village were not providing services to Mission Hills under this Agreement; and Prairie Village should bear all or most of the costs related to such claims (including defense costs and payments for settlement or judgment) in those situations in which the action or omission which gives rise to the claim relates primarily to the operation or policies of the Prairie Village Police Department and services provided to Mission Hills under this Agreement are only incidental to the situation.

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

E. **Effective Date.** This Agreement shall be in effect from January 1, 2022, through December 31, 2022, and shall not be assigned. It is agreed that during the term of this Agreement neither party may terminate or modify the Agreement without the consent of the other, except as otherwise provided by this Agreement.

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

THE CITY OF PRAIRIE VILLAGE, KANSAS

By: _____
Eric Mikkelson – Mayor

ATTEST:

Adam Geffert – City Clerk

APPROVED AS TO FORM:

David Waters – City Attorney

THE CITY OF MISSION HILLS, KANSAS

By: _____
David W. Dickey – Mayor

ATTEST:

Meghan E. Woolbright - City Clerk

APPROVED AS TO FORM:

Anna M. Krstulic – City Attorney

MISSION HILLS, KANSAS

2022

PUBLIC SAFETY BUDGET

SHARED COSTS vs. MISSION HILLS COSTS

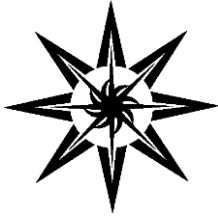
PROGRAM	2022 SHARED COSTS	MISSION HILLS COST
Administration	\$654,500	\$89,470
Staff Services	\$1,021,668	\$171,915
Community Services	\$0	\$0
Crime Prevention	\$90,658	\$12,118
Patrol	\$3,320,725	\$1,039,061
Investigations	\$781,067	\$104,429
Special Investigations	\$0	\$0
D.A.R.E.	\$122,858	\$12,286
Professional Standards	\$242,771	\$33,179
Traffic	\$0	\$0
Court	\$438,092	\$76,853
School Crossing Guards	\$0	\$0
Accounting	\$0	\$0

TOTAL**\$6,672,339****\$1,539,311**

MISSION HILLS BUDGET COMPARISON FOR 2022

PROGRAM	2019	2020	2021	2022	2021-2022 COMPARISON	%
Administration	\$76,385	\$83,410	\$87,256	\$89,470	\$2,214	2.54%
Staff Services	\$151,465	\$163,632	\$166,164	\$171,915	\$5,751	3.46%
Community Services	\$0	\$0	\$0	\$0	\$0	0.00%
Crime Prevention	\$11,528	\$16,739	\$11,483	\$12,118	\$635	5.53%
Patrol	\$969,028	\$1,005,359	\$1,043,143	\$1,039,061	-\$4,082	-0.39%
Investigations	\$98,469	\$97,961	\$93,922	\$104,429	\$10,507	11.19%
Special Investigations	\$0	\$0	\$0	\$0	\$0	0.00%
D.A.R.E.	\$11,311	\$11,830	\$12,090	\$12,286	\$196	1.62%
Professional Standards	\$26,194	\$27,958	\$28,345	\$33,179	\$4,834	17.05%
Traffic	\$0	\$0	\$0	\$0	\$0	0.00%
Court	\$82,665	\$85,139	\$81,985	\$76,853	-\$5,132	-6.26%
School Crossing Guards	\$0	\$0	\$0	\$0	\$0	0.00%
Accounting	\$0	\$0	\$0	\$0	\$0	0.00%
TOTAL	\$1,427,045	\$1,492,028	\$1,524,388	\$1,539,311	\$14,923	0.98%

PERCENTAGE OF INCREASE **0.98%**



STATUARY COMMITTEE

Committee of the Whole Meeting Date: July 19, 2021
City Council Meeting Date: August 2, 2021

COU2021-56 Consider approval of the purchase of winter covers for city statuary

SUGGESTED MOTION

Move to approve the purchase of winter statuary covers for an amount not to exceed \$25,000.

BACKGROUND

In the 2019 budget, the City Council allocated \$50,000 towards statuary maintenance and preservation. Thus far, the funds have been spent on regular annual cleanings conducted by conservator Paul Benson, general maintenance, and replacement of several broken urns, with approximately \$41,500 remaining in the fund.

The Statuary Committee has explored options for further preservation of the City's more valuable pieces and recommends the purchase of winter covers for 11 pieces from KC Tent and Awning. The pieces selected for covers are those that are insured by the city due to their value. The total value of the insured statuary was appraised at a combined \$458,500. A previously completed appraisal recommended protecting them from extreme weather as freezing, wet conditions can be damaging to statues and stonework.

ATTACHMENTS

Statuary List

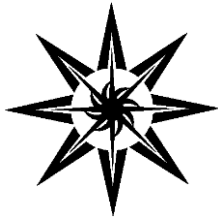
PREPARED BY

Meghan Buum
Assistant City Administrator

July 14, 2021

Name and Location	Estimated Cover Cost
Carved Carrara marble panel with putti mounted in laid sandstone wall	
69th and Tomahawk	\$ 2,450.00
Standing allegorical female figure of "Spring" with flowers in hair	
Cherokee and W. 75th Street	\$ 3,440.00
Standing allegorical female figure of "Winter" with cloak	
Cherokee and W. 75th Street	\$ 3,440.00
Carrara marble bench with winged griffin supports	
Cherokee and W. 75th Street	\$ 900.00
Slumped sleeping child	
75th Terrace cul-de-sac	\$ 1,200.00
Pair of opposing marble winged griffin wall sculptures	
68th Street and Mission	\$ 3,090.00
Pair of marble winged Griffin table Legs/supports	
Cherokee and Windsor Street	\$ 1,650.00
75th and Juniper	\$ 1,650.00
Circular carved marble planter on column	
Brenzier Park	\$ 1,040.00
Pair of opposing winged griffin wall sculptures	
65th Street and 66th Street	\$ 1,925.00
Fountain with three cherubs	
71st Street and Cherokee	\$ 2,000.00 *
	\$ 22,785.00

*Placeholder - price pending



PUBLIC WORKS DEPARTMENT

Council Meeting Date: August 2, 2021

COU2021-57

CONSIDER APPROVAL OF A CONTRACT WITH SUPERIOR BOWEN FOR THE 2021 CONCRETE REPAIR PROGRAM

RECOMMENDATION

Move to authorize the Mayor to sign the Construction Contract with Superior Bowen for Project CONC2021 2021 Concrete Repair Program for \$595,000.

BACKGROUND

On July 16, 2021, the City Clerk opened bids for Project CONC2021, 2021 Concrete Repair Program.

Two bids were received:

Superior Bowen	\$518,856.30
Kansas Heavy Construction	\$544,509.00
Engineers Estimate	\$599,030.00

Locations of repairs will be adjusted (increased) to utilize the \$595,000 budget. The remaining \$5,000 will be used for testing. This program consists of repairs to deteriorated concrete sidewalk, curb and ADA ramps.

City staff has reviewed the bids for accuracy, found no errors and recommends award to the lowest responsible bidder, Superior Bowen.

FUNDING SOURCE

There is funding in the CIP project CONC2021.

ATTACHMENTS

1. Agreement with Superior Bowen

PREPARED BY

Melissa Prenger, Senior Project Manager

July 28, 2021

CONSTRUCTION AGREEMENT



**CONC2021
2021 CONCRETE REPAIR PROGRAM**

BETWEEN

CITY OF PRAIRIE VILLAGE, KS

AND

**SUPERIOR BOWEN ASPHALT
COMPANY, LLC**

CONSTRUCTION CONTRACT
FOR
CONC2021 | 2021 CONCRETE REPAIR PROGRAM

BETWEEN
THE CITY OF PRAIRIE VILLAGE, KANSAS
AND
SUPERIOR BOWEN ASPHALT COMPANY, LLC.

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 Superior Bowen Asphalt Company, LLC, hereinafter termed in this agreement, “**Contractor**”, for the construction and completion of Project 2021 CONCRETE REPAIR 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, NINETY FIVE THOUSAND AND 00/100 DOLLARS (\$595,000.00) for all Work covered by and included in the Contract; payment thereof to be made in cash or its equivalent and in a manner provided in the Contract Documents.

5. WORK SUPERINTENDENT

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

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

6. PROJECT MANAGER

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

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

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

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

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

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

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

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

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

7. **WORK SCHEDULE:**

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

- 7.3 Monthly Work Schedule reports shall accompany the Contractor's pay request for Work completed. Where the Contractor is shown to be behind schedule, it shall provide an accompanying written summary, cause, and explanation of planned remedial action. Payments or portions of payments may be withheld by the City upon failure to maintain scheduled progress of the Work as shown on the approved Work Schedule.
- 7.4 At a minimum the Contractor shall update and submit the Work Schedule for review weekly, unless otherwise agreed upon by the City.
- 7.5 The Contractor, within ten (10) calendar days after being instructed to do so in a written notice from the City, shall commence the Work to be done under this Contract.
- 7.6 If at any time, in the opinion of the Project Manager or City, proper progress is not being maintained; changes shall be proposed in the Work Schedule and resubmitted for consideration and approval.
- 7.7 If the Contractor has not completed Project Segments and is within a non-performance penalty period, it shall not be allowed to undertake a new Project Segment until the Project Segment in dispute is completed, unless expressly permitted by the City.
- 7.8 The operation of any tool, equipment, vehicle, instrument, or other noise-producing device is prohibited to start before or continue after the hours of 7 AM and 10 PM, Monday through Friday (except Fridays which shall be until Midnight) and 8 AM and midnight on Weekends (except Sunday which shall be 10 PM). Violation of this requirement is Prima 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 AS "ADDITIONAL INSURED"

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

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

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

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

Limits -

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

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

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

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

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

- 15.8 Subcontractor's Insurance. If a part of the Agreement is to be sublet, the Contractor shall either:
- A. Cover all subcontractor's in its insurance policies, or
 - B. Require each subcontractor not so covered to secure insurance which will protect subcontractor against all applicable hazards or risks of loss as and in the minimum amounts designated.
- Whichever option is chosen, Contractor shall indemnify and hold harmless the City as to any and all damages, claims or losses, including attorney's fees, arising out of the acts or omissions of its Subcontractors.
- 15.9 Prior to commencing any work, Contractor shall provide City with certificates evidencing that (1) all Contractor's insurance obligations required by the contract documents are in full force and in effect and will remain in effect until Contractor has completed all of the work and has received final payment from City and (2) no insurance coverage will be canceled, renewal refused, or materially changed unless at least thirty (30) days prior written notice is given to City. Contractor's property insurance shall not lapse or be canceled if City occupies a portion of the work. Contractor shall provide City with the necessary endorsements from the insurance company prior to occupying a portion of the work.
- 15.10 Waiver of Subrogation. All insurance coverage required herein shall contain a waiver of subrogation in favor of the City. Contractor's insurance policies shall be endorsed to indicate that Contractor's insurance coverage is primary and any other insurance maintained by City is non-contributing as respects the work of Contractor.
- 15.11 Additional Insurance. Excess Liability coverage or additional insurance covering special hazards may be required on certain projects. Such additional insurance requirements shall be as specified in Special Conditions.
- 15.12 Bonds and Other Performance Security. Contractor shall provide a Performance Bond, Maintenance Bond and a Statutory Bond in the amount of one hundred percent (100%) of the Contract Price to cover the entire scope of Work and any other specific performance security that may be indicated in this Contract. With each bond there shall be filed with the City one copy of "Power of Attorney" certified to include the date of the bonds.

16. INDEMNITY

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

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

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

17. SUCCESSORS AND ASSIGNS

- 17.1 The City and Contractor bind themselves, their successors, assigns and legal representatives to the other party hereto and to successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in this Contract.
- 17.2 The Contractor shall not assign or sublet the work, or any part thereof, without the previous written consent of the City, nor shall it assign, by power of attorney or otherwise, any of the money payable under this Contract unless by and with the like written consent of the City. In case the Contractor assigns all, or any part of any moneys due or to become due under this Contract, the instrument of assignment shall contain a clause substantially to the affect that it is agreed that the right of the assignee in and to any moneys due or to become due to the Contractor shall be subject to all prior liens of all persons, firms and corporations for services rendered or materials supplied for the performance of the Work called for in this Contract.
- 17.3 Should any Subcontractor fail to perform in a satisfactory manner, the work undertaken, its subcontract shall be immediately terminated by the Contractor upon notice from the City. Performing in an unsatisfactory manner is defined as consistently having more than 10% of work unacceptable. The Contractor shall be as fully responsible to the City for the acts and omissions of the subcontractors, and of persons either directly or indirectly employed by them, as Contractor is for the acts and omissions of persons directly employed. Nothing contained in this Contract shall create any contractual relations between any Subcontractor and the City, nor shall anything contained in the Contract Documents create any obligation on the part of the City to pay or to see to the payment of any sums due any Subcontractor.
- 17.4 The Contractor shall not award subcontracts which total more than twenty-five (25%) of the Contract Price and shall perform within its own organization work amounting to not less than seventy-five percent (75%) of the total Contract Price. Approval by the City of any Subcontractor shall not constitute a waiver of any right of the City to reject Defective Work, material or equipment not in compliance with the requirements of the Contract Documents. The Contractor shall not make any substitution for any Subcontractor accepted by the City unless the City so agrees in writing.

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

18. NON-DISCRIMINATION LAWS

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

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

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

19. FEDERAL LOBBYING ACTIVITIES

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

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

20. RELATIONS WITH OTHER CONTRACTORS:

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

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

21. RIGHT OF CITY TO TERMINATE

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

22. MISCELLANEOUS:

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

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

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

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

CITY OF PRAIRIE VILLAGE

SUPERIOR BOWEN ASPHALT COMPANY, LLC
(typed company name)

By: _____
(signed)

By: _____
(signed)

Eric Mikkelson

(typed name)

Mayor

(typed title)

City of Prairie Village

SUPERIOR BOWEN ASPHALT COMPANY, LLC
(typed company name)

7700 Mission Road

520 PENWAY STREET, STE 200
(typed address)

Prairie Village, Kansas 66208

KANSAS CITY, MO 64108
(typed city, state, zip)

816-708-2917
(typed telephone number)

(date of execution)

(date of execution)

SEAL

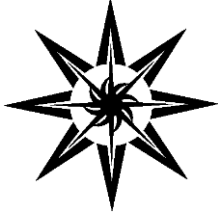
ATTEST:

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.)



COU2021-58: Consider change to animal enumeration process

RECOMMENDATION

Recommend City Council approve changing the yearly animal enumeration process from a door-to-door survey to a postcard-based reminder system.

BACKGROUND

City Clerk staff coordinate a yearly animal enumeration project in an effort to ensure all pets in the City are licensed and current on rabies vaccinations (per Municipal Code Section 2-115, "Enumeration of Animals"). Historically, a certain area of the City is selected for enumeration each year, and temporary employees are hired to walk the neighborhood and knock on doors of homes at which pets are not currently licensed.

In 2020, the City Council voted to have staff send a postcard reminder to residents rather than performing a door-to-door survey, due to the COVID-19 pandemic. In January 2021, 1,900 postcards were mailed out to residents that did not currently have pets registered with the City. As of July 27, 458 new animals have been licensed. While it is not possible to determine the percentage of pets that were licensed as a direct result of the postcard, the total number is still greater than in previous years, and the project was completed at a much lower cost. Additionally, staff time spent on the project was significantly reduced. The chart below provides a comparison of 2021 to previous years:

Year	Number of Homes Visited	Number of New Pets Licensed	Est. Yearly Revenue*	Est. Lifetime Revenue**	Project Cost***
2016	1018	332	\$1,992.00	\$15,936.00	\$1,462.00
2017	987	363	\$2,178.00	\$17,424.00	\$2,783.00
2018	924	273	\$1,638.00	\$13,104.00	\$1,231.00
2019	1519	334	\$2,004.00	\$16,032.00	\$1,692.50
2021	1900 via postcard	458	\$2,748.00	\$21,984.00	\$993.00

* Yearly revenue based on single-year license fee of \$6.00

** Lifetime revenue based on average pet lifetime of eight years

*** Project cost including wages paid to enumerators but NOT City Clerk staff time spent on project

Due to the successful results achieved in 2021, the reduction in staff time, and the ongoing COVID-19 pandemic, staff recommends shifting the animal enumeration project to a postcard-based system going forward, rather than sending temporary employees door-to-door each year.

PREPARED BY

Adam Geffert

City Clerk

Date: July 28, 2021

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, August 2, 2021

Planning Commission	08/03/2021	7:00 p.m.
Tree Board	08/04/2021	6:00 p.m.
Arts Council	08/11/2021	5:30 p.m.
City Council	08/16/2021	6:00 p.m.
Diversity Committee	08/18/2021	5:30 p.m.
Finance Committee	08/19/2021	4:00 p.m.
Environmental Committee	08/25/2021	5:30 p.m.
Tree Board	09/01/2021	6:00 p.m.
Labor Day – City offices closed	09/06/2021	

INFORMATIONAL ITEMS
August 2, 2021

1. JazzFest minutes - July 14, 2021
2. August plan of action

Prairie Village Jazz Fest 2021
Committee Meeting
Wednesday July 14, 2021, 5:30 p.m.
Multipurpose Room, Prairie Village City Hall

Attendees

Jim Barnes	Stage and Technical Chair
Amanda Hassett	VIP Services Chair
Elissa Andre	Marketing Chair
J.D. Kinney	Special Events Coordinator, Committee Chair
Inga Selders	Prairie Village City Council, Council Liaison
Kyle Vanlanduyt	Master of Ceremonies
John Wilinski	Backstage and Artist Hospitality Chair

Committee Chair's Report

The minutes for the Jazz Fest Committee Meeting on June 23 were approved by the Committee.

The official times for purposes of public entry for the 2021 Prairie Village Jazz Festival are Saturday September 11, 2021, 3:00 pm – 10:00 pm. Our tentative performance schedule will have the first act starting about 4:00 pm and final act finishing between 9:15 and 9:30 pm.

JD will be speaking at the Olathe Rotary Club meeting via zoom on Thursday July 22 at 8:10 am. Thanks to Amanda Hassett for providing that opportunity.

Fundraising and Sponsorships

Brooke met with Van Trust and secured a commitment from them for a \$5,000 sponsorship supporting the Inn at Meadowbrook. JD exchanged emails with Cindy Aitken at Van Trust and was given the contact for the hotel to coordinate their marketing benefits. Follow up scheduled for this week.

Brooke also contacted Patrick Day at Dial (Meadowbrook) Senior Living regarding a sponsorship. They committed to a \$1500 sponsorship and submitted their logo. They will decide if they want a marketing tent and will send in an additional \$250 tent add-on fee if they do.

JD spoke with Beckman Dentistry just before the 4th of July weekend. They said they needed more time to review the Sponsorship descriptions and opportunities. Dr. Beckman was also leaving on vacation. Have not heard from them. JD intends to offer the opportunity to sponsor the Inn at Meadowbrook as a benefit of Van Trust's \$5,000 sponsorship promoting the hotel

Meghan contacted Republic Services who received a breakdown of their City Special Events sponsorships. They have been asked to provide a \$5,000 cash donation per their contract and an in kind donation of port-a-potties and handwash stations. Tyler Riordan at Republic received the sponsorship packet on Monday July 12 and is consulting internally.

David Waters at Lathrop & Gage received the sponsorship packet on Monday July 12.

Payment of \$500 was received from Humana

Payment of \$500 was received from Renewal by Andersen.

The Masonic Lodge that volunteered at Village Fest donated \$1,000 to Village Fest but because Village Fest was managed differently than in past years the Lodge was not able to put up their sign. JD offered to put their sign up along sponsors row at Jazz Fest in acknowledgement of their support.

Talent

Fully executed contracts are secured for SME Blue Knights, Back Alley Brass Band, Eddie Moore and the Outer Circle and The Adam Larson Band featuring special guests Fabian Almazan and Jaleel Shaw. Tentative performance times are:

SME Blue Knights		4:10-4:40
Back Alley Brass Band		5:10-6:10
Eddie Moore and the Outer Circle		6:30-7:20
The Adam Larson Band featuring special guests Fabian Almazan and Jaleel Shaw		7:45-9:15

Sound check times for each are TBD

F&B

BRGR declined to provide the liquor license. JD texted with Sue Hamilton, the liquor license consultant who has helped us in years past to tell her and asked if The Inn at Meadowbrook, which was her first suggestion, was not an option for some reason. JD will approach the Inn when they meet.

Dave Hassett confirmed Burg and Barrel, Taco Republic, Nikki G's, Taste of Brazil, CoffeeCake KC and ButterFluff Popcorn as our choices for food truck lineup for 2021. Contracts pending.

The cost of ice, delivery and the truck to store it in has gone from \$464.00 to \$707.00. This has been added to the budget. Additional research for other ice options were discussed and may be pursued.

VIP Services

Amanda Hassett and JD met on July 13 to discuss pricing and sourcing the items for the VIP and Sponsor level food bags. JD will take over sourcing of the VIP treats for the time being.

Stage, Lighting and Technical Services

Jim Barnes, JD and Shawn from SECT met to discuss the changes to the Jazz Fest stage and backstage areas due to the reconstruction of the skate park. The meeting was held at the construction site on July 12. Changes regarding move-in, move-out and assembly of the stage and stage canopy, and securing of the canopy were discussed with the construction manager and with Chris Hutton, project inspector for PV Public Works. The stage size was confirmed as 20 x 24' with a mechanical canopy. Move in and out times and approaches will be confirmed after additional construction is completed. Location and access to a power source was confirmed by Chris Hutton and was forwarded to SECT. The canopy will need to be secured with two water-filled plastic "Jersey" barriers. JD will contact Public Works to arrange access to a water source or to the PW water truck.

Artist contracts specifying technical and instrument requirements have been forwarded to Shawn at SECT.

Jim will contact Jones Piano.

Rented Infrastructure

Marquee Event Rentals has been confirmed as the tent vendor. A signed bid and deposit of \$3,146.00 were completed Thursday July 8.

Marketing

Elissa Andre reported that our ad was placed for the KCUR Fall Guide and that The Adam Larson Band as headliner was included.

The full lineup of acts and times should be given to SM Post who traditionally breaks the lineup first.

Deadline for the PV Village Voice Jazz Fest insert was determined as the week of August 12.

Yard signs will be scheduled to arrive by August 24 so they can be distributed by the weekend of August 27-29.

James Carney at PV Public Works brought the park signs out of storage and Elissa reviewed them. Revisions are required to change the date to September 11 and the ending time as 10:00 pm on the Porter Park, Founders Park, Franklin Park and Municipal Campus signs. These signs to be in place by the week of August 23.

Lightpole signs should be up by the week of August 23 as well.

A sign highlighting Prairie Village committees that members of the public may volunteer for will be created and placed on Sponsors row.

An updated sign for the main entrance recognizing 2021 Jazz Fest sponsors will be created.

Backstage/Artist Hospitality

The Inn at Meadowbrook will be our official hotel for hosting Jaleel Shaw and Fabian Almazan, special guest artists from NYC playing with headliner The Adam Larson Band.

Changes to the layout and location of the backstage tented area were confirmed during the skatepark site meeting. Rather than a single large tented area, the backstage will be a L shape configuration of 10' x 20' tents for storage of equipment cases, cables, etc, and for pre and post-performance hosting of the artists and their guests.

John Wilinski will budget and organize the backstage and sound crew, Kyle and those supporting him in has MC duties, the artists and their guests, and members of the PVPD and Public Works working the event. Breakfast, lunch and dinner should be budgeted and scheduled for Jazz Fest/PV staff. Snacks/meals/beverages for artists and their guests will be at John's discretion. Budget and schedule for these are due by the first Jazz Fest meeting in August.

Diversity Committee

Inga, JD, Meghan, and James McGee from American Jazz Museum met via zoom on July 8 to discuss the American Jazz Museum's participation as a content/exhibit provider for the PV Diversity Committee's 20' tent. James will be joining Inga and JD for a site visit July 22, at 10 am.

The Diversity Committee will submit a layout and list of specifications by the first Jazz Fest Committee meeting in August so that required items can be ordered from Marquee.

Arts Council

No update

The next Jazz Fest Committee meeting was scheduled for Wednesday July 28, 2021, at 5:30 pm.


The meeting concluded at 6:40 p.m.

Respectfully submitted: JD Kinney



THE CITY OF PRAIRIE VILLAGE

STAR OF KANSAS

DATE: July 30, 2021
TO: Mayor Mikkelson
City Council
FROM: Wes Jordan 
SUBJECT: AUGUST PLAN OF ACTION

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

- Sept/Oct Village Voice - Ashley (08/21)
- MARC Public Career Expo - Jamie/Cindy (08/21)
- Notification & Media Process for Budget Hearings - Nickie/Ashley (08/21)
- Health-related Insurance Benefits Renewal/RFP - Jamie/Cindy (08/21)
- STO/UPOC Update - Deana (08/21)
- Back to School with a Firefighter - Meghan/PV Foundation (08/21)
- Park & Rec Fall Programming - Meghan (08/21)
- Meadowbrook Shopping Center Preliminary Development Plan - Jamie (08/21)
- Animal Enumeration Presentation - Adam (08/21)
- Council of Mayors Meeting - Meghan (08/21)

In Progress

- 2022 MH Budget & Contract - Chief (07/21)
- PW New Building Open House/Social Media - Keith/Melissa/Ashley (07/21)
- Building Permit Software Research & Evaluation - Jamie (07/21)
- Planning Codes Dept. Move to Public Works - Jamie/Mitch (07/21)
- Policy/KOMA Training for Committee Members - Meghan (07/21)
- Roberts Rules of Order Training/MARC - Adam/Meghan (07/21)
- Climate Action KC Presentation - Jamie (07/21)
- UCS Racial Equities in Communities Program - Tim (06/21)
- Review/Revise Site Planning Criteria in Zoning Regulations - Jamie (06/21)
- Organize/Combine Property Maintenance Ordinances - Jamie/David (06/21)
- Bird Scooters/Draft Pilot Program - Keith (06/21)
- Plan for In Person Council/Committee Meetings - Tim (05/21)
- Investment Policy for Voya 457/401a Plans - Cindy/Jamie (05/21)
- 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)
- 2022 Budget Process - Staff (04/21)
- City Hall Conceptual Review - Staff (03/21)
- 2021 International Energy Conservation Code - Jamie/Mitch (03/21)
- Implementation of Smoking Ban in Parks - Meghan (03/21)
- JazzFest Feasibility and Planning - Meghan (03/21)
- 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)
- Memorial Plaques in Parks Criteria Review - Staff (08/19)
- Research Viability of Interior Rental Inspections - Jamie (06/19)
- Personnel Policy Updates - Cindy/Jamie (07/18)

Completed

- 2021 Annual CID Report - Nickie (07/21)
- 2nd Quarter Financial Report - Nickie (07/21)
- Health-related Benefits Review w/Insurance Committee - Jamie/Cindy (07/21)
- Receptionist Hiring Process - Meghan/Adam (06/21)
- VillageFest Feasibility and Planning - Meghan (03/21)
- Schedule UCS Housing Task Force Presentation - Jamie (06/21)
- Statuary Maintenance Plan - Meghan (05/19)
- PW New Facility Planning - Keith (09/19)
- 2022-2023 SRO Contract - Chief (07/21)
- 2022 Budget
 - Resolution Regarding Exceeding Revenue Neutral Rate/Public Hearing - Nickie (07/21)
 - Permission to Publish Budget (07/21)
- 2022-2023 Crossing Guard Contract - Chief (07/21)
- Geothermal Software Upgrade - PW (10/20)
- KU Kickoff Event Permit - Adam (07/21)

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]



THE CITY OF PRAIRIE VILLAGE
STAR OF KANSAS

DATE: July 28, 2021
TO: Mayor Mikkelson
City Council
FROM: Wes Jordan
SUBJECT: PLAN OF ACTION PROJECT UPDATE



Health-related Insurance Benefits Renewal/RFP - Jamie/Cindy (08/21)

We have recommended that the Insurance Committee's Role be expanded to assist Staff with the annual renewal specific to health-related insurance benefits. The City's Broker, CBIZ, provided a renewal update to the committee and also recommended to consider a competitive renewal process since it had been a few years since we have tested the market. This would also be a good time for a bid process based on a low claim history this year.

Meadowbrook Shopping Center Preliminary Development Plan - Jamie (08/21)

A developer has submitted Preliminary Development Plans for the Meadowbrook Shopping Center at 95th and Nall Avenue. Staff will be working with our City Planner to review the proposed changes and complete a Staff Report for Planning Commission Consideration.

STO/UPOC - Deana (08/21)

Court will be reviewing legislative updates to the Standard Traffic Ordinance and Uniform Public Offense Code. Amendments will be brought to Council once completed.

MARC Public Career Expo - Jamie/Cindy (08/21)

We will be partnering with MARC to help sponsor the Public Sector Career Expo. Every other year, cities and counties from the Kansas City region collaborate to execute this event for middle and high school students. The goal is to raise awareness of the variety of exciting and meaningful career opportunities available within the public sector and to spark interest among students to consider public service.

Council of Mayors Meeting - Meghan (08/21)

Mayor Mikkelson will be serving as the Chair for the Council of Mayors for a one-year period. And, each Mayor that rotates through the position is also responsible for administrative tasks and meeting coordination which Meghan will be helping with.

Plan for In Person Council/Committee Meetings - Tim (05/21)

Update - A power surge damaged equipment that had just been installed in the Council Chambers to allow for in-person and hybrid alternatives. The latest projection to replace equipment is mid-August and is largely based on equipment availability.

Investment Policy for 401/457 Plans - Cindy/Jamie (05/21)

The Pension Board of Trustees has requested a more detailed Investment Policy specific to the City's 401/457 plans. Staff is in the process of working with Voya on a draft policy.

Internal Accounting Policy/Vendor Process Changes - Nickie (04/21)

The Auditors recently recommended that we institute this type of policy and Nickie will be handling that as time allows.

Regional Benchmarking Initiative - Meghan (04/21)

This is a project being coordinated by MARC in a regional effort to collect data in a variety of areas ranging from Human Resources to Public Work statistics. Once the data is collected, PV will benefit from having access to all contributed & shared information.

American Rescue Plan Act Fund Uses & Expiration - Staff (04/21)

Update- The City received its \$1.6m American Rescue Plan dollars in July, and will receive the additional \$1.6m next year. The Department of Treasury is finalizing its Final Rule which will include details on how the funds can be spent. Once finalized, the County plans to have further discussion with cities about possible funding opportunities in addition to conversations with Council.

Pool Mural Project - Meghan (04/21)

Update - Meghan recently learned that the City has received grant funding in the amount of \$3,500 for the proposed pool mural. She plans to work with representatives from Park & Rec, the Arts Council, and Diversity Committee for the mural selection. We will primarily be shaping the process this fall, hiring an artist in the winter for spring installation, and debuting the mural when the pool opens in May 2022.

City Hall Conceptual Review - Staff (03/01)

- Melissa provided Council with an update to the City Hall Conceptual Study on March 15, 2021 as well as other key factors affecting this study. The process may be modified due to new possibilities of future expansion alternatives. This item will be brought back to Council before any formal action is taken.*

Implementation of Smoking Ban in Parks - Meghan (03/21)

Park and Rec approved a new park rule that would prohibit smoking at all Parks in Prairie Village. Meghan and Ashley are working on a public relations campaign to make the community aware of the new park rule while coordinating applicable signage with PW. The new rule will go into effect Summer 2021.

Orientation Process for New Volunteer Committee Members - Staff (12/20)

Update - Training is currently underway. Each Committee will be reviewing KOMA requirements through a video partnership with the Kansas League as well as a Mayor's video of the new Code of Ethics. Staff is also working with MARC to have a Roberts Rules of Order presentation in the near future at Council that will also be made available by video to applicable Committees.

E/V Charging Station Installation - PW (10/20)

The tentative plan is for the Electric Vehicle charging station to be placed in the vicinity of the Skate Park while under construction. PW will bring the item forward to Council for approval and/or further discussion.

Dynamhex Implementation - Ashley (10/20)

Dynamhex is nearing completion of a beta test that will circulate to the E/C for testing. Once testing is completed a presentation will be brought to Council before launching city wide.

Historic Trail Signage - Keith (09/20)

Update - The Council has approved the placement of additional Historic Trail Signage thanks to the concerted work of Mark Morgan. Mark has also completed the first draft of the narrative for the QR code that will be available to link interested persons to other platforms in order to learn a narrative of additional information.