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<https://www.facebook.com/CityofPrairieVillage>.

**COUNCIL MEETING AGENDA
CITY OF PRAIRIE VILLAGE
Monday, September 19, 2022
6:00 PM**

I. CALL TO ORDER

II. ROLL CALL

III. PLEDGE OF ALLEGIANCE

IV. APPROVAL OF THE AGENDA

V. INTRODUCTION OF STUDENTS AND SCOUTS

VI. PRESENTATIONS

Constitution Week proclamation

Recognition of Officers Sarah Magin and Marandah Scott

VII. PUBLIC PARTICIPATION

Participants may speak for up to three minutes. To submit written comment to the Council, please email cityclerk@pvkansas.com prior to 3 p.m. on September 19. Comments will be shared with Councilmembers prior to the meeting.

VIII. CONSENT AGENDA

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

By Staff

1. Approval of regular City Council meeting minutes - September 6, 2022
2. Approval of expenditure ordinances #3017 and #3018
3. Consider approval of Resolution 2022-15 declaring it to be the intent of the Governing Body to vacate the right-of-way adjacent to 4401 Somerset Drive
4. Consider bid award for 2022 tree trimming program

IX. COMMITTEE REPORTS

X. MAYOR'S REPORT

XI. STAFF REPORTS

XII. **OLD BUSINESS**

XIII. **NEW BUSINESS**

COU2022-66 Consider Google Fiber franchise ordinance and related agreements
David Waters

COU2022-67 Consider approval of contract with McConnell and Associates for Windsor
Park tennis court resurfacing
Keith Bredehoeft

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

COU2022-68 Consider updates to City Council Policy: CP028 - remote participation for
public meetings
David Waters

XV. **ANNOUNCEMENTS**

XVI. **ADJOURNMENT**

CITY OF PRAIRIE VILLAGE

Proclamation

Constitution Week - September 17 – 23, 2022

WHEREAS, September 17, 2022 marks the two hundred and thirty-fifth anniversary of the drafting of the Constitution of the United States of America by the Constitutional Convention; and

WHEREAS, it is fitting and proper to officially recognize this magnificent document and the anniversary of its creation; and

WHEREAS, it is fitting and proper to officially recognize the patriotic celebrations which will commemorate the occasion; and

WHEREAS, Public Law 915 guarantees the issuing of a proclamation each year by the President of the United States of America designating September 17 through 23 as constitution week;

NOW THEREFORE, I, Eric Mikkelson, Mayor of the City of Prairie Village, formally designate the week of September 17 through 23 as **Constitution Week** in the City of Prairie Village, Kansas, and ask our citizens to reaffirm the ideals the Framers of the constitution had in 1787 by vigilantly protecting the freedoms guaranteed to us through this guardian of our liberties, remembering that lost rights may never be regained.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Great Seal of the City of Prairie Village, Kansas, to be affixed at my office in the City of Prairie Village, Kansas, the 19th day of September, 2022.

Mayor Eric Mikkelson

Adam Geffert, City Clerk



**CITY COUNCIL
CITY OF PRAIRIE VILLAGE
SEPTEMBER 6, 2022**

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

ROLL CALL

Roll was called by the Assistant City Administrator with the following Councilmembers in attendance: Chad Herring, Cole Robinson, Inga Selders, Ron Nelson, Lauren Wolf, Bonnie Limbird, Dave Robinson, Piper Reimer, Greg Shelton, Courtney McFadden, Ian Graves, and Terrence Gallagher. Staff present: Byron Roberson, Chief of Police; Keith Bredehoeft, Director of Public Works; Cliff Speegle, Public Works; City Attorney David Waters, attorney with Spencer Fane LLP; Wes Jordan, City Administrator; Nickie Lee, Deputy City Administrator; Meghan Buum, Assistant City Administrator; Tim Schwartzkopf, Assistant City Administrator; Jason Hannaman, Finance Director.

PLEDGE OF ALLEGIANCE

APPROVAL OF AGENDA

Mr. Nelson made a motion to approve the agenda for September 6, 2022. Ms. Reimer seconded the motion, which passed unanimously.

INTRODUCTION OF STUDENTS AND SCOUTS

There were no students or scouts present at the meeting.

PRESENTATIONS

The Mayor read proclamations recognizing September 9, 2022 as Fetal Alcohol Spectrum Disorders Awareness Day, and September 8, 2022 as Lilian McCune Day, in honor of the longtime Prairie Village resident's 100th birthday.

Chief Roberson recognized Dispatcher Taylor Mendenhall, Officers John Unruh, Alex DeGuire, Jeremy Schull, and Sarah Magin, Sergeants Josh Bernal and Eric Mieske and Captain Eric McCullough for their efforts on a call received May 31, 2022. The officers were able to deescalate a situation involving a suicidal party possessing multiple weapons and rescue a potential victim. The suspect was apprehended without issue.



PUBLIC PARTICIPATION

The following residents voiced concerns regarding certain proposals recommended by the Ad Hoc Housing Committee.

- Chet Hanson, 4620 W. 72nd Street
- Mike Shields, 3629 Somerset Drive
- Todd Bleakley, 8621 Delmar Street
- Mark Johnson, 4905 Somerset Drive
- Dan Schoepf, 8941 Linden Lane
- Bari Freiden, 4901 W. 85th Street
- Patricia Uhlmann, 8221 Nall Avenue
- Sheila Myers, 4505 W. 82nd Street
- Alex Brown, 8807 Linden Drive
- Lori Sharp, 3604 W. 71st Street
- Whitney Kerr, Jr., 4020 W. 86th Street
- Trent Schairer, 3927 W. 72nd Terrace
- Nick Schulze, 8740 Rosewood Drive
- Michelle Alcanter, 6022 W. 75th Terrace
- Michelle Vianello, 5209 W. 83rd Terrace
- Scott Goodger, 7404 Fontana Street
- Jeanne Taylor, 7403 Birch Street
- Gary Showalter, 3518 W. 73rd Terrace
- Nick Garcia, 7427 Village Drive
- Jessica Priestland, 8008 Fontana Street
- Marcia Lipsky, 8224 Rosewood Lane
- Marc Vianello, 5209 W. 83rd Terrace
- Janice Hamill, 47 Compton Court
- Caroline Pruett, 12 Le Mans Court
- Tom Clough, 8510 Delmar Lane
- Randy Hartman, 3601 W. 73rd Street
- Kathy Hartman, 3601 W. 73rd Street
- Kathy Waller, 3703 Somerset Drive
- Mary-Michael Sterchi, 8401 Linden Lane
- Jori Nelson, 4802 W. 69th Terrace
- Bill Webster, no address given
- Barbara Cantrell, 8236 Nall Avenue
- Steve Snitz, 4310 W. 70th Terrace
- Anna Gepson, 5313 W. 70th Terrace

The following individuals spoke in support of the Ad Hoc Housing Committee's recommendations:



PRAIRIE VILLAGE
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- Daniel Terreros, 7463 Village Drive
- Lauren Martin, 8411 Somerset Drive
- Lora Garrison, 4303 Homestead Drive
- Devin Scrogum, 4301 W. 74th Terrace

Resident John Anderson, 4402 W. 63rd Terrace, spoke in opposition to some of the goals and objectives of the Diversity Committee.

Resident Dawn Olney, 8936 Cedar Lane, shared her concern with a reported issue with a former City police officer.

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 - August 1, 2022
2. Consider approval of debris management agreement with AshBritt
3. Consider change order #1 for inclusion of WaterOne improvements in the 2022 residential street program
4. Consider approval of 2023 Mission Hills contact and 2023 Mission Hills budget

Mr. Nelson made a motion to approve the consent agenda as presented. A roll call vote was taken with the following votes cast: “aye”: Herring, C. Robinson, Selders, Nelson, Wolf, Limbird, D. Robinson, Reimer, Shelton, McFadden, Graves, Gallagher. The motion passed unanimously.

COMMITTEE REPORTS

- Ms. Limbird noted that the Arts Council’s “State of the Arts 2022” artist reception event would be held on Friday, September 9 at City Hall.
- Mr. Dave Robinson stated that JazzFest would be held at Harmon Park on Saturday, September 10, after a two-year hiatus due to the pandemic.
- Ms. Reimer said that applications were being accepted for the 2022-23 Teen Council. She added that the United Community Services’ Drug and Alcoholism Council was beginning to review grant applications funded by the state liquor-by-the-drink tax. Lastly, she noted that the Environmental Committee met on August 24, at which a discussion on sustainable lawns was held.
- Mr. Cole Robinson said the Diversity Committee held a town hall meeting to discuss early childhood education in August. The meeting featured a panel of individuals involved in education from the Shawnee Mission School District, the State of



Kansas, and the Greater Kansas City Chamber of Commerce. Mr. Robinson also stated that the Police Pension Fund Committee met in July to review the performance of the fund.

MAYOR'S REPORT

- Mayor Mikkelson said that he had attended the following events since the previous Council meeting:
 - Police Night Out at the Corinth Shops
 - Back to School with a Firefighter sponsored by the Prairie Village Foundation
 - The KU Kickoff event at the Corinth Shops
 - The MARC Board and UCS Board meetings
- The Mayor stated that he had met with several small groups of residents to discuss housing initiatives.
- The Mayor and staff met with the new director of the Johnson County Library and discussed a potential civic center partnership.
- The Mayor noted that he had attended a Women in Public Finance event, hosted by chapter member Deputy City Administrator Nickie Lee at the Verbena restaurant. She and Councilmember Courtney McFadden gave a presentation on the Meadowbrook development project.
- The Mayor mentioned that the Arts Council held a Ukrainian Art Auction in conjunction with Global Ties. Over 90 artists contributed original artwork which were auctioned off. Proceeds from sales went to a Ukrainian refugee fund.
- Mayor Mikkelson stated he would be attending several upcoming events including:
 - A Johnson County / Wyandotte County Mayors dinner on September 7, at which Westwood Mayor David Waters would be named the new Chair.
 - The Johnson County Department of Health and Environment's health summit on September 9.
 - A ribbon-cutting and open house event for the Public Works facility on Tuesday, September 13.
 - The Lancer Day parade on Friday, September 16.
 - A "Green Fair" co-sponsored by the Environmental Committee on Saturday, September 17.
 - The third annual "Doggie Dash 3K" at Harmon Park on Saturday, September 17.
 - A "Library Lets Loose" fundraiser on Saturday, September 17.

STAFF REPORTS

- Mr. Jordan said that the September plan of action and plan of action update were included in the agenda packet. He also provided an update on current employee recruitment efforts.



- Chief Roberson stated that eleven students had enrolled in the Citizens' Police Academy, which would begin the following week.
- Mr. Bredehoeft noted that State Line Road between 75th Street and 79th Street had been repaved the prior week in conjunction with the City of Kansas City, Missouri. He also said the open house for the new Public Works facility would run from 5:00 p.m. to 7:00 p.m. on Tuesday, September 13th.

OLD BUSINESS

There was no old business to come before the Council.

NEW BUSINESS

COU2022-61

Public hearing to receive comments regarding the City exceeding the revenue neutral rate

Consider Resolution 2022-14 approving a tax rate of mill levy rate in excess of the revenue neutral rate for the 2023 budget year

Ms. Lee said that the Governing Body had approved the preliminary budget at its June 21 meeting and approved the notice to exceed the revenue neutral rate on July 18. The proposed 2023 budget would maintain the same level of services as the 2022 budget and include approved decision package items. Funding the budget with existing services and the decision packages would allow for a one-mill decrease of the mill levy rate but would still exceed the revenue neutral rate due to revenue generated from increased property valuations. Ms. Lee noted that the revenue neutral rate was defined as the tax rate in mills that would generate the same property tax in dollars as the previous tax year using the current tax year's total assessed valuation. The 2023 recommended budget was based on a total mill rate of 18.322, one mill lower than the 2022 rate of 19.322.

Ms. Lee added that per Senate Bill 13, the recommended budget required a public hearing to exceed the revenue neutral rate provided by the County Clerk, which in Prairie Village would be 17.247 mills in 2023. Notice of intent to exceed the revenue neutral rate was provided to the County Clerk prior to July 20th and the public hearing notice was published on July 26, 2022.

At 8:50 p.m., Mayor Mikkelson opened the public hearing to receive comments regarding the City exceeding the revenue neutral rate. With no one present to speak, Mayor Mikkelson closed the public hearing at 8:51.

Mrs. McFadden made a motion to approve Resolution 2022-14, approving a tax rate or mill levy rate in excess of the revenue neutral rate for the 2023 budget year. Ms. Selders seconded the motion. A roll call vote was taken with the following votes cast: "aye":



Herring, C. Robinson, Selders, Nelson, Wolf, Limbird, D. Robinson, Reimer, Shelton, McFadden, Graves, Gallagher. The motion passed unanimously.

**COU2022-62 Public hearing for the 2023 budget
Consider 2023 budget adoption**

Ms. Lee stated that the “all in number” for expenditures in the budget represented an 8.5% increase over 2022, totaling \$27,286,443. Proposed increases included 5% for contract services, 12% for personnel, 12% for commodities, and 15% for capital outlay.

Once submitted to the County Clerk, the budget would set the budget authority for each fund. Ms. Lee noted that the City was authorized by K.S.A. 79-2929(a) to amend the budget before December 31 to spend money not in the original budget. The additional expenditures must be made from existing revenue and cannot require additional tax levies.

At 8:52 p.m., Mayor Mikkelson opened the public hearing to receive comments regarding the proposed 2023 budget. With no one present to speak, Mayor Mikkelson closed the public hearing at 8:53.

Mrs. McFadden made a motion for the City Council to adopt the 2023 budget as presented. Mr. Graves seconded the motion. A roll call vote was taken with the following votes cast: “aye”: Herring, C. Robinson, Selders, Nelson, Wolf, Limbird, D. Robinson, Reimer, Shelton, McFadden, Graves, Gallagher, Mikkelson. The motion passed unanimously.

**COU2022-63 Consider storm drainage repair program construction contract with
Infrastructure Solutions LLC**

Mr. Speegle said that bids for the project were opened on August 5, 2022. One bid was received for \$402,800, which was 10% higher than the engineer’s estimate. As a result, the scope of items that exceeded estimated costs, such channel handrail replacements, were removed. A quote for the items was received utilizing the City’s open contract with Superior Bowen to bring them within budget.

Storm pipe replacements would be made at the following locations:

- Outlook Lane north of 83rd Street: storm sewer replacement in rear yards
- 7430 Village Drive: storm sewer replacement between properties
- Canterbury Street south of Somerset: storm sewer replacement between properties

The reduced bid as presented from Infrastructure Solutions LLC totaled \$306,400, lower than the engineer’s estimate of \$328,770. Mr. Speegle noted that Infrastructure Solutions had successfully completed two recent drainage projects for Prairie Village and performed well. Funding would come from the CIP under the drainage repair program in DRAIN-21X



and DRAIN-22X. The Village Drive and Canterbury Street project locations would also receive system renewal funding from the Johnson County Stormwater Management Program, commonly referred to as SMAC funding:

• Johnson County SMP Funding	\$ 72,000
• DRAIN-21X	\$ 45,000 (transferred to DRAIN-22X)
• <u>DRAIN-22X</u>	<u>\$ 190,000</u>
Total	\$ 307,000

The improvements removed from the contract would be brought to the Governing Body in the form of a change order to the City’s current Superior Bowen contract at a future meeting.

Mr. Herring made a motion to approve the construction contract with Infrastructure Solutions LLC in the amount of \$306,400.00 for the storm drainage repair program. The motion was seconded by Ms. Limbird and passed unanimously.

COU2022-64 Consider professional services agreement with Clark & Enersen for the City Hall remodel through schematic design phase

Ms. Prenger stated that the City Hall remodel project had been funded in the CIP for preliminary design. The current phase would include the following:

- Facility assessment: analyze current condition of viability of existing site, building and systems for future renovation/expansion
- Programming: determine space needs, adjacency requirements of staff and plan for growth needs
- Concept development: utilize programming phase to develop conceptual options
- Schematic design: utilize the selected concept to take a deep dive into the layout, including structural analysis, code compliance and mechanical needs for the chosen concept

The facility assessment and programming would include all structures on the municipal campus (City Hall, the Police Department, and the community center).

Ms. Prenger said that five firms were notified of the project and four submitted proposals with their qualifications for design of municipal facilities and noting qualified LEED projects. The selection committee included Councilmembers Greg Shelton and Cole Robinson, along with six staff members. The committee reviewed and scored the proposals leading to the interview of two firms on August 19, 2022.

Clark & Enersen was chosen by the selection committee based on related experience with municipal structures and experience achieving LEED accreditation for projects.



Clark & Enersen was the architect of record for the LEED Platinum Public Works Facility. Ms. Prenger added that funding is available in the CIP for this phase.

Ms. Reimer asked what the next steps would be once the design process was completed. Ms. Prenger stated that the results of the design phase would be presented to Council along with cost estimates after completion.

Mr. Shelton made a motion to approve the professional services agreement with Clark & Enersen for the City Hall remodel (BG510003) through schematic design in the amount of \$130,000.00 The motion was seconded by Ms. Reimer and passed unanimously.

Mrs. McFadden made a motion for the City Council to move to the Council Committee of the Whole portion of the meeting. The motion was seconded by Mr. Nelson and passed unanimously

COUNCIL COMMITTEE OF THE WHOLE

COU2022-65 Consider approval of Resolution 2022-15 declaring it to be the intent of the Governing Body to vacate the right-of-way adjacent to 4401 Somerset Drive

Mr. Bredehoeft said that the owners of the property at 4401 Somerset Drive requested that the excess right-of-way located adjacent to their property be vacated by the City. The owners recently became aware that they did not own this specific area of land; after review, it was determined that this situation has existed since the property was originally platted in the 1950s. Property owners of the residence had always maintained this area, even though it technically belonged to the City.

Mr. Bredehoeft noted that the City's subdivision regulations did not address the process by which to vacate public property. City Attorney David Waters determined that the City must therefore follow state statute requirements and take the following steps:

- 1) The Governing Body must adopt a resolution to set the date for a public hearing in consideration of the easement vacation
- 2) Staff must issue public notice to the Legal Record and notify all public utilities of the date of the public hearing at least 20 days in advance
- 3) The Governing Body must hold a public hearing and adopt an ordinance authorizing the vacation of the easement
- 4) Staff must publish the ordinance summary and send copies of the ordinance to the County for recording

Mr. Bredehoeft added that City staff did not have concerns about vacating the public right-of-way pending concerns from any utilities affected.



Mr. Shelton made a motion to recommend approval, setting the date for a public hearing and resolution adoption to vacate the public right-of-way located adjacent to 4401 Somerset Drive for Monday, November 7, 2022. Ms. Reimer seconded the motion, which passed unanimously.

Discuss MIRD0007 - Mission Road at 68th Street flood control project and budget

Mr. Speegle said that the project would address roadway and home flooding along Mission Road north of Tomahawk Road that occurred during periods of very heavy rain that caused Brush Creek to overflow. A preliminary engineering study was completed in 2018 to secure Johnson County Stormwater Management Program (SMAC) funding for 50% of the project costs. Preliminary design began in the spring of 2021, and construction is anticipated to start in the spring of 2023.

The project will raise Mission Road between 68th Terrace and 67th Terrace to keep Brush Creek flow east of Mission Road. Additionally, the storm sewer system would be expanded along Mission Road and to the west as part of the flood reduction design. The project would also allow for an improved park setting at Schliffke Park. Utilities, including WaterOne and Johnson County Wastewater will upgrade their facilities in conjunction with the project.

Mr. Speegle said that the project was previously budgeted at \$3,650,000 for construction, but that current cost estimates had increased the overall construction estimate to \$3,950,000. The estimate included increases for additional channel modifications and miscellaneous construction cost increases.

The Johnson County Stormwater SMAC Program has agreed to adjust the overall project budget to account for the project cost increase in their budget. City stormwater funds would be needed to account for the remaining 50% of the increase. The project is anticipated to be bid for construction in early 2023. At that time, the final bid cost will be used to determine the funding transfer amount required from the drainage program to MIRD0007. Mr. Speegle noted that there were funds available in the 2023 drainage program for the transfer, and only the amount necessary for construction would be transferred at the time of bid award.

Several Councilmembers shared their support for the proposed removal of the existing parking lot at the site and replacing it with green space. Mr. Nelson suggested that consideration be given to burying the power lines at the park.

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



PRAIRIE VILLAGE
KANSAS

ANNOUNCEMENTS

Announcements were included in the Council meeting packet.

ADJOURNMENT

Mayor Mikkelson declared the meeting adjourned at 9:57 p.m.

Adam Geffert
City Clerk

CITY TREASURER'S WARRANT REGISTER

DATE WARRANTS ISSUED:

Warrant Register Page No. 1

September 19, 2022

**Copy of Ordinance
3017**

Ordinance Page No. _____

An Ordinance Making Appropriate for the Payment of Certain Claims.
Be it ordained by the governing body of the City of Prairie Village, Kansas.

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

NAME	DATE	AMOUNT	TOTAL
EXPENDITURES:			
Accounts Payable			
26562-26644	7/8/2022	852,708.87	
26645-26655	7/15/2022	138,453.74	
26656-26739	7/22/2022	405,965.46	
26740-26754	7/29/2022	31,272.29	
Payroll Expenditures			
7/1/2022		406,047.47	
7/15/2022		413,833.98	
7/29/2022		413,670.81	
Electronic Payments			
Electronic Pmnts	7/1/2022	152.92	
	7/5/2022	6,323.69	
	7/11/2022	214.38	
	7/15/2022	8,352.23	
	7/19/2022	25,070.97	
	7/25/2022	152.92	
TOTAL EXPENDITURES:			2,702,219.73
Voided Checks	Check #	(Amount)	
Jeremy Shull	26679	(276.00)	
Zac Stetzel	26681	(276.00)	
TOTAL VOIDED CHECKS:			(552.00)
GRAND TOTAL CLAIMS ORDINANCE			2,701,667.73

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

Passed this 19th day of September 2022.

Signed or Approved this 19th day of September 2022.

ATTEST: _____

City Treasurer

ATTEST: _____

Jasen A. [Signature] 9/19/22
Finance Director

CITY TREASURER'S WARRANT REGISTER

DATE WARRANTS ISSUED:

Warrant Register Page No. 1

September 19, 2022

Copy of Ordinance
3018

Ordinance Page No. ____

An Ordinance Making Appropriate for the Payment of Certain Claims.
Be it ordained by the governing body of the City of Prairie Village, Kansas.

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


NAME	DATE	AMOUNT	TOTAL
EXPENDITURES:			
Accounts Payable			
26755-26851	8/5/2022	169,910.05	
26852-26858	8/12/2022	4,872.97	
26859-26929	8/19/2022	622,270.52	
26930-26937	8/26/2022	12,289.34	
Payroll Expenditures			
8/12/2022		403,177.09	
8/26/2022		383,929.12	
Electronic Payments			
Electronic Pmnts	8/1/2022	22,393.26	
	8/10/2022	5,368.65	
	8/16/2022	22,109.69	
	8/24/2022	554.89	
	8/26/2022	29,320.28	
	8/31/2022	855,362.50	
TOTAL EXPENDITURES:			2,531,558.36
Voided Checks	Check #	(Amount)	
Goodyear Auto Service Center	26792	(287.07)	
TOTAL VOIDED CHECKS:			(287.07)
GRAND TOTAL CLAIMS ORDINANCE			2,531,271.29

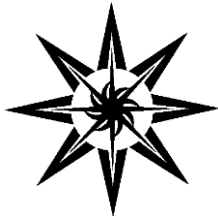
Section 2. That this ordinance shall take effect and be in force from and after its passage.

Passed this 19th day of September 2022.

Signed or Approved this 19th day of September 2022.

ATTEST: _____
City Treasurer

ATTEST:  9/19/22
Finance Director



PUBLIC WORKS DEPARTMENT

Council Consent Agenda: September 19, 2022

COU2022-65 CONSIDER APPROVAL OF RESOLUTION 2022-15 DECLARING IT TO BE THE INTENT OF THE GOVERNING BODY TO VACATE THE RIGHT-OF-WAY ADJACENT TO 4401 SOMERSET DRIVE

RECOMMENDATION

Move to approve COU2022-15, setting the date for a public hearing and ordinance adoption to vacate public Right of Way located adjacent to 4401 Somerset Drive for Monday, November 7, 2022.

BACKGROUND

The owners of the property at 4401 Somerset Drive have requested that excess right of way located adjacent to their property be vacated by the City. The owners recently became aware that they did not own this area of land. The attached property map shows this area highlighted in orange that the residents have maintained for years. After looking into this location further it was determined that this situation has existed since the property was originally platted in the 1950's. The owners of 4401 Somerset Drive had always maintained this area. The original plat for this area contemplated a turn lane being constructed from 87th to Somerset Drive. The need for a future turn lane from 87th to Somerset Drive no longer became necessary once Roe Avenue and the 87th Street Cul-de-sac were constructed.

The City's current subdivision regulations do not currently address the process by which to vacate public property. After consulting with City Attorney David Waters, to vacate the easement the City must follow the state statute requirements absent our own regulations. In order to vacate the easement, the City must take the following steps:

- 1) The Governing Body must adopt a resolution (attached) to set the date for a public hearing in consideration of the easement vacation.
- 2) Staff must issue public notice to the Legal Record and notify all public utilities of the date of the public hearing at least 20 days in advance.
- 3) The Governing Body must hold a public hearing and adopt an ordinance authorizing the vacation of the easement.
- 4) Staff must publish the ordinance summary and send copies of the ordinance to the County for recording.

At this time, City staff does not have concerns about vacating this public right of way pending concerns brought to our attention from any utilities that may be affected.

ATTACHMENTS

Resolution 2022-15

Written request from property owners at 4401 Somerset Drive

Plot plan illustrating the easement to be vacated

PREPARED BY

Keith Bredehoeft, Public Works Director

May 12, 2022

RESOLUTION NO. COU2022-15

A RESOLUTION DECLARING IT TO BE THE INTENT OF THE GOVERNING BODY OF THE CITY OF PRAIRIE VILLAGE, KANSAS, TO VACATE AND DISCONTINUE CERTAIN PUBLIC RIGHT-OF-WAY ESTABLISHED BY PLAT.

WHEREAS, reference is hereby made to that certain public right-of-way located generally at Somerset Drive and West 87th Street, as more fully described below, in the City of Prairie Village, Johnson County, Kansas (the "Right-of-Way"), which Right-of-Way is located adjacent to that certain real property commonly known and numbered as 4401 Somerset Drive, and legally described as Lot 110, Town & Country Estates (the "Property"), according to the recorded plat thereof filed with the office of the Register of Deeds for Johnson County, Kansas, November 15, 1956, in Book 19 (the "Plat").

WHEREAS, a petition or request for a vacation of such Right-of-Way has been submitted to the City of Prairie Village, Kansas; and

WHEREAS, pursuant to K.S.A. 12-504 *et seq.*, cities are authorized to vacate public rights-of-way, including the Right-of-Way.

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

Section 1. It is the intention of the Governing Body of the City of Prairie Village, Kansas, to consider the vacation of the Right-of-Way, as described on Exhibit A hereto; provided, that such vacation shall be limited to the right-of-way interests granted under the Plat, and shall not include rights-of-way or easements under separate grants.

Section 2. Notice is hereby given that a public hearing will be held by the Governing Body to consider the proposed vacation of public utility easements on November 7, 2022, at Prairie Village City Hall, 7700 Mission Road, Prairie Village, Kansas, 66208, the public hearing to commence at 6:00 p.m. or as soon thereafter as the Governing Body can hear the matter; provided, that if, as a result of the COVID-19 pandemic, such public hearing may not be held in person but rather via remote meeting, such remote meeting shall be held at the same date and time, and access instructions for remote participation shall be available at the City's website, www.pvkansas.com, and included with the published agenda for such meeting. At the public hearing, the Governing Body will receive public comment on the foregoing matters, and may, after the conclusion of such public hearing, consider the findings necessary for vacation of the Right-of-Way.

Section 3. A copy of this resolution shall be published once in the official City newspaper not less than twenty (20) days preceding the date fixed for the public hearing. City staff is further hereby authorized and directed to notify all utility companies and other holders of interest in such Right-of-Way of the proposed vacation.

Section 4. This resolution shall be in full force and effect from and after its adoption.

ADOPTED this ____ day of _____, 2022, by the City Council of the City of Prairie Village, Kansas.

Eric Mikkelson, Mayor

ATTEST:

Adam Geffert, City Clerk

EXHIBIT A

All that part of a 50.00 feet wide roadway right-of-way located between Tract "A" and Lot 110, and all that part of Tract "A", all in TOWN & COUNTRY ESTATES, a recorded subdivision of land in the City of Prairie Village, Johnson County, Kansas, as prepared by Robert L. Ubben, Kansas Licensed Land Surveyor 1247, on July 22, 2022, described as follows:

Commencing at the most Northerly corner of said Lot 110, said point being monumented by a found 1/2" rebar; thence South 47°27'01" West, along the Northwest line of said Lot 110, a distance of 220.51 feet to the Point of Beginning; thence in a southerly direction along the Westerly curved line of said Lot 110, around a curve to the left that is tangent with the exit of the last described course, having a central angle of 122°01'55", a radius of 106.40 feet, an arc length of 226.62 feet; thence South 86°05'42" West, departing the Westerly line of said Lot 110, a distance of 95.31 feet to a point on the Southeast curved line of said Tract "A"; thence continuing South 86°05'42" West, departing the Northeast curved line of said Tract "A", a distance of 44.43 feet; thence in a northwesterly direction along a curve to the left that is non-tangent with the exit of the last described course, having an initial tangent bearing of North 01°07'12" East, a central angle of 57°49'34", a radius of 60.00 feet, an arc length of 60.56; thence North 23°32'29" East a distance of 32.60 feet; thence North 43°25'22" East a distance of 8.51 feet to a point on the Northeast curved line of said Tract "A"; thence continuing North 43°25'22" East, departing the Northeast curved line of said Tract "A", a distance of 80.53 feet; thence North 47°27'01" East a distance of 65.94 feet to the Point of Beginning. Containing 11,440 square feet or 0.263 acres, more or less.

The bearing used in this description are Grid North based on the Kansas State Plane Coordinate System, North Zone, NAD83, and distances are as measured on the ground.

This description prepared by:
Robert L. Ubben
KS Licensed Land Surveyor 1247
Affinis Corp
8900 Indian Creek Parkway, Suite 450
Overland Park, KS 66210
913-239-1100



August 2, 2022

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

Re: Vacation of property herein described in the attached documents as Tract A, adjacent to Lot 110 of Town and Country Estates

Dear Council Members,

Before we begin with the issue at hand, please allow us to acknowledge the courteous and professional manner in which Keith Bredehoeft has addressed our inquiries and concerns. These attributes serve the City of Prairie Village well and we appreciate them and him.

This is our formal request for the City of Prairie Village to vacate the property described in the attached documents as "Tract A" which lies adjacent to our property, Lot 110 of Town and Country Estates, located at 4401 Somerset Drive in Prairie Village. Tract A is approximately 11,440 square feet or 0.263 acres and was originally designated to be a pocket park for the developing neighborhoods.

By way of providing some background information, our home was built in 1957 and for more than 60 years, the ownership of Lot 110 has cared for and maintained Tract A, the parcel in question. In our discussions with Mr. Bredehoeft, we demonstrated that in the last 11 years since we have lived here, we have spent over \$31,000 in caring for Tract A. We mow it, we irrigate it, and we maintain it (including removal of a large pine at the far west end of Tract A which was infected with Pine Bark Beetle and the subsequent treatment of remaining pines to prevent spread of the infestation to neighboring pines.

Under the Covenants of our Homeowners Association, even though there is an expanse of land to the east of our home and adjacent to Tract A, we can never subdivide our property, so Tract A, when ceded to us, will remain the open, green space that is its current condition. It will also continue to serve as a bio-retention basin for water which collects at this low intersection near Somerset and Roe.

With the development of Franklin Park just west of Tract A, there is no longer a need for the "pocket park" designation originally intended for Tract A. Given the history of care of Tract A by the owners of Lot 110, it is our position that Tract A should be vacated by the City of Prairie Village and added to the description of Lot 110, thereby increasing the size of Lot 110. We believe this is a logical step toward ensuring ongoing care for and maintenance of this piece of land and would maintain the privacy of the residents of Lot 110 for the future.

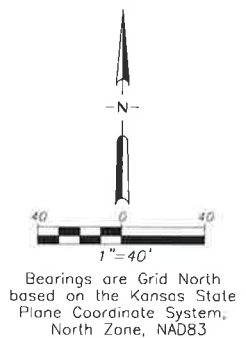
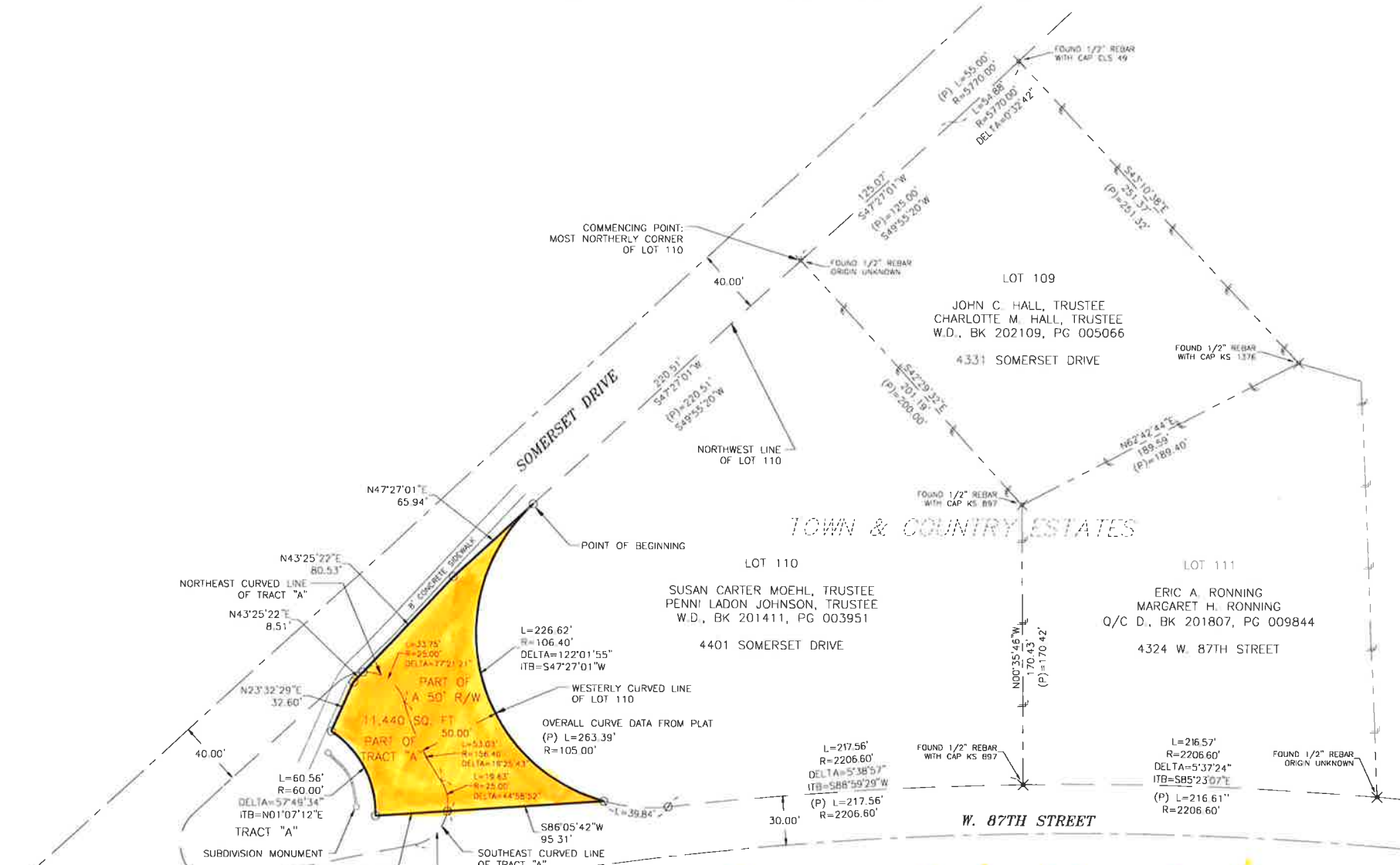
Your consideration is greatly appreciated. We would be happy to answer any questions Council Members may have regarding this proposal.

Most Sincerely,



Penni Johnson, Susan Moehl, and Athena Heironimus
Attachments

SURVEY
Part of existing roadway right-of-way and part of Tract "A"
all in TOWN & COUNTRY ESTATES, a recorded subdivision of land
in the City of Prairie Village, Johnson County, Kansas



TRACT A - Area to be Vacated

LEGAL DESCRIPTION AS PREPARED BY THIS SURVEYOR OF PROPERTY SURVEYED

All that part of a 50.00 foot wide roadway right-of-way located between Tract "A" and Lot 110, and all that part of Tract "A", all in TOWN & COUNTRY ESTATES, a recorded subdivision of land in the City of Prairie Village, Johnson County, Kansas, as prepared by Robert L. Ubben, Kansas Licensed Land Surveyor 1247, on July 22, 2022, described as follows:

Commencing at the most northerly corner of said Lot 110, said point being monumented by a found 1/2" rebar, thence South 47°27'01" West, along the Northwest line of said Lot 110, a distance of 220.51 feet to the Point of Beginning; thence in a southerly direction along the Westerly curved line of said Lot 110, around a curve to the left that is tangent with the exit of the last described course, having a central angle of 122°01'55", a radius of 106.40 feet, an arc length of 226.62 feet; thence South 86°05'42" West, departing the Westerly line of said Lot 110, a distance of 95.31 feet to a point on the Southeast curved line of said Tract "A"; thence continuing South 86°05'42" West, departing the Northeast curved line of said Tract "A", a distance of 44.43 feet; thence in a northwesterly direction along a curve to the left that is non-tangent with the exit of the last described course, having an initial tangent bearing of North 01°07'12" East, a central angle of 57°49'34", a radius of 60.00 feet, an arc length of 60.56 feet; thence North 23°32'29" East a distance of 32.60 feet; thence North 43°25'22" East a distance of 80.53 feet to a point on the Northeast curved line of said Tract "A"; thence continuing North 43°25'22" East, departing the Northeast curved line of said Tract "A", a distance of 80.53 feet, thence North 47°27'01" East a distance of 65.94 feet to the Point of Beginning, containing 11,440 square feet or 0.263 acres, more or less.

The bearing used in this description are Grid North based on the Kansas State Plane Coordinate System, North Zone, NAD83, and distances are as measured on the ground.

GENERAL SURVEY NOTES:

All distances and bearings on this survey are measured values unless indicated otherwise by a note indicating a plotted (P) value. All distances shown are ground distance values.

All measured bearings shown are Grid North, based on the Kansas State Plane Coordinate System, North Zone, NAD83.

No title commitment has been provided for this project as of the date of issuance of this survey. This company has made no investigation or independent search for encumbrances, restrictive covenants, overriding title evidence, or any other facts that an accurate and current title search may disclose.

No utility research or locates were performed as part of this survey and therefore are not shown.

DOCUMENTS OF RECORD USED FOR THIS SURVEY:

Kansas Warranty Deed recorded November 17, 2014, in Book 201411 of Page 003951

Kansas Warranty Deed recorded September 15, 2021, in Book 202109 of Page 005066

Kansas Quitclaim Deed recorded July 30, 2018, in Book 201807 of Page 009844

The subdivision plat of TOWN & COUNTRY ESTATES, recorded November 16, 1956, in Book 19 of Plots at Page 73.

- ABBREVIATIONS**
- (P) = PLATTED BEARING OR DISTANCE
 - R/W = RIGHT-OF-WAY
 - O/C D = QUITCLAIM DEED
 - W.D. = WARRANTY DEED
- LINE LEGEND**
- LOT LINE
 - - - - - EXIST. RIGHT-OF-WAY
 - - - - - EXIST. ROADWAY CENTERLINE
 - LINE SURVEYED AND MONUMENTED
- PROPERTY CORNER MONUMENT LEGEND**
- ✕ PROPERTY PIN FOUND AND ACCEPTED AS NOTED
 - SET 1/2"x24" REBAR WITH A PLASTIC CAP STAMPED AFFINIS KS LS #133



This survey was performed by:
 Affinis Corp
 8900 Indian Creek Parkway, Suite 450
 Overland Park, Kansas, 66210
 Telephone (913) 238-1100
 Attention: Robert L. Ubben, KS LS #1247

Surveyors Certification:
 I, Robert L. Ubben, Kansas Licensed Land Surveyor No. 1247, do certify that this survey was completed in the field on 7/22/2022 and is based on an actual ground survey performed by me and persons under my direct supervision. This survey was executed in accordance with the current Kansas Minimum Standards for Property Boundary Surveys, and the results of said survey are correctly represented on this plat.

Robert L. Ubben, Kansas Professional Land Surveyor No. 1247

Unadjusted Error of Closure of Courses Shown
 Error Distance: 0.001
 North: 0.0009' East: 0.0028'
 Perimeter: 614.50'
 Precision: 1:215,803

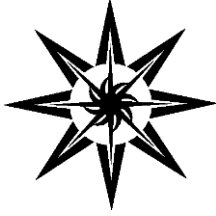
Survey
 Performed for The City of Prairie Village, Kansas
 Part of existing roadway right-of-way and part of Tract "A"
 all in TOWN & COUNTRY ESTATES, a recorded subdivision of
 and in the City of Prairie Village, Johnson County, Kansas

8900 Indian Creek Parkway, Suite 450
 Overland Park, Kansas 66210
 Phone: 913-238-1100
 Toll Free: 877-527-5468
 Fax: 913-238-1111
 www.affinis.us

Affinis
 corp
 ENGINEERS & SURVEYORS

Drawn: MRLU
 Created: JAM
 Approved: MRLU

1
 OF 1



PUBLIC WORKS DEPARTMENT

Council Consent Agenda Date: September 19, 2022

CONSIDER BID AWARD FOR 2022 TREE TRIMMING PROGRAM

RECOMMENDATION

Staff recommends the City Council approve the award of a bid to Smith Brothers Lawn & Landscape LLC for \$76,144 for trimming trees in City right-of-way and parks.

BACKGROUND

This bid is the annual tree trimming of trees in the City right-of-way. There were three areas and three parks bid but funding will only cover the trimming of two areas and three parks. A map is attached delineating the two areas and three parks for trimming this year. All the trees will be trimmed to remove any dead wood larger than 2-inches over the right-of-way, remove limbs interfering with sight line to traffic signals and street signs, and with a cone under the street lights.

Smith Brothers Lawn & Landscape has completed this work for the City in a previous year with good results.

Four bids were received and opened on September 9, 2022, by the City Clerk. The bid tab is:

Bidder	Total
Smith Brothers	\$ 76,144.00
KC Tree	\$ 94,597.65
Arbor Masters	\$175,050.00
KC Arborist	175,787.00

FUNDING SOURCE

Funds are available in the 2022 Public Works Operating Budget.

ATTACHMENTS

Construction Agreement for Tree Trimming
Tree Trimming Area Map

PREPARED BY

Keith Bredehoeft, Director of Public Works

September 14, 2022

CONSTRUCTION AGREEMENT



2022 Tree Trimming

BETWEEN

CITY OF PRAIRIE VILLAGE, KS

AND

Smith Brothers Tree Service LLC

CONSTRUCTION CONTRACT
FOR
2022 Tree Trimming

BETWEEN
THE CITY OF PRAIRIE VILLAGE, KANSAS
AND
SMITH BROTHERS TREE SERVICE LLC

THIS AGREEMENT, is made and entered into this ____ day of _____, 20____, by and between the City of Prairie Village, Kansas, hereinafter termed the “City”, and Smith Brothers Tree Service LLC, hereinafter termed in this agreement, “Contractor”, for the construction and completion of Project 2022 Tree Trimming, (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.

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- 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.

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- 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 Seventy Six Thousand One Hundred Forty Four Dollars DOLLARS (\$76,144.00) for all Work covered by and included in the Contract; payment thereof to be made in cash or its equivalent and in a manner provided in the Contract Documents.

5. WORK SUPERINTENDENT

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

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

6. PROJECT MANAGER

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

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

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

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

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

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

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

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

Contract and will issue a final Certificate for Payment to the City upon compliance with the requirements of this Contract.

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

7. WORK SCHEDULE:

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

Project Segments will be started and completed within the Contract Time. The Work Schedule is subject to approval by the City.

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

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- 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

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- 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, 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 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, except as provided herein.
- 13.12 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.

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

17. SUCCESSORS AND ASSIGNS

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

Subcontractor shall not constitute a waiver of any right of the City to reject Defective Work, material or equipment not in compliance with the requirements of the Contract Documents. The Contractor shall not make any substitution for any Subcontractor accepted by the City unless the City so agrees in writing.

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

18. NON-DISCRIMINATION LAWS

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

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

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

18.2 The Contractor further agrees that it shall abide by the Kansas Age Discrimination In Employment Act (K.S.A. 44-1111 et seq.) and the applicable provision of the Americans With Disabilities Act (42 U.S.C. 12101 et seq.) as well as all other federal, state and local laws.

19. FEDERAL LOBBYING ACTIVITIES

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

19.1 31 USCS Section 1352 requires all subgrantees, Contractors, Subcontractors, and consultants/Architects who receive federal funds via the City to certify that they will not use federal funds to pay any person for influencing or attempting to influence a federal agency or Congress in connection with the award of any federal contract, grant, loan, or cooperative agreements.

19.2 In addition, contract applicants, recipients, and subrecipients must file a form disclosing any expenditure they make for lobbying out of non-federal funds during the contract period.

19.3 Necessary forms are available from the City and must be returned to the City with other Contract Documents. It is the responsibility of the general contractor to obtain executed forms from any Subcontractors who fall within the provisions of the Code and to provide the City with the same.

20. RELATIONS WITH OTHER CONTRACTORS:

20.1 The Contractor shall cooperate with all other contractors who may be performing work on behalf of the City, and workers who may be employed by the City, or any other entity on any work in the vicinity of the Work to be done under this Contract, and the Contractor shall so

conduct his/her operations as to interfere to the least possible extent with the work of such contractors or workers. The Contractor shall be responsible for any injury or damage, that may be sustained by other contractors, workers, their work or employees of the City, because of any fault or negligence on the Contractor's part, and shall, at his/her own expense, repair or pay for such injury or damage. If the work of the Contractor is delayed because of any acts or omissions of any other Contractor or Contractors, the Contractor shall have no claim against the City on that account other than for an extension of time.

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

21. RIGHT OF CITY TO TERMINATE

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

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

22. MISCELLANEOUS:

22.1 The Contractor warrants to the City that all labor furnished to progress the Work under the Contract will be competent to perform the tasks undertaken, that the product of such labor will yield only first-class results, that materials and equipment furnished will be of good quality and new unless otherwise permitted by this Contract, and that the Work will be of good quality, free from faults and defects and in strict conformance with the Project Manual. All Work not conforming to these requirements may be considered defective.

22.2 The Contractor shall obtain and pay for all permits, fees and licenses necessary or ordinary for the Work. The Contractor shall comply with all lawful requirements, including federal and state laws, City and County laws and ordinances and building codes, applicable to the Work and shall give and maintain copies of all notices required by applicable law pertaining to the Work.

22.3 Provision for Emergencies. Whenever, in the opinion of the City, the Contractor has not taken sufficient precaution for the safety of the public or the protection of the Work to be constructed under this Contract, or of adjacent structures or property which may be injured by process of construction, and whenever, in the opinion of the City, an emergency shall arise and immediate action shall be considered necessary in order to protect property interests and to avoid personal injury and/or death, then the City, with or without notice to the Contractor, shall provide suitable protection to the said interests by causing such Work to be done and materials to be furnished at places as the City may consider necessary and adequate. The cost and expense of such Work and material so furnished shall be borne by the Contractor and, if the same shall not be paid on presentation of the bills therefore, such costs shall be deducted from any amounts due or to become due the Contractor. The performance of such emergency Work shall in no way relieve the Contractor of responsibility for damages which may occur during or after such precaution has been duly taken.

22.4 Both the business address of the Contractor given in the Bid or proposal upon which this Contract is founded, and the Contractor's Office near the Work, is hereby designated as the places to which all notices, letters, and other communications to the Contractor may be mailed or delivered. The delivering at either of the above named addresses, or depositing in any mailbox regularly maintained by the Post Office, of any notice, letter or other communication so addressed to the Contractor, and the date of said service shall be the date of such delivery or mailing. Such addresses may be changed at any time by an instrument in writing, executed by the Contractor, presented, and delivered to the Project Manager and to the City. Nothing herein contained shall be deemed to preclude or render inoperative the service of any notice, letter, or communication upon the Contractor personally.

22.5 It is mutually agreed by and between the parties to this Contract that all royalties and fees for and in connection with patents, or patent infringement, claims for materials, articles, apparatus, devices or equipment (as distinguished from processes) used in or furnished for

the work shall be included in the Contract Price and the Contractor shall satisfy all demands that may be made at any time for such, and the Contractor shall at its cost and expense, defend any and all suits or proceedings that may be instituted at any time against the City for infringement or alleged infringement of any such patents involved in the work, and Contractor shall pay any award of damages.

- 22.6 The right of general administration of the City shall not make the Contractor an agent of the City, and the liability of the Contractor for all damages to persons, firms, and corporations, arising from the Contractor's execution of the Work, shall not be lessened because of such general administration, but as to all such persons, firms, and corporations, and the damages, if any, to them or their property. The Contractor herein is an independent Contractor in respect to the work.
- 22.7 For a period of time, from the inception of the Contract to three (3) years from the date of final payment under the Contract, the Contractor and subcontractors shall maintain books, accounts, ledgers, invoices, drafts, pages and other records pertaining to the performance of this Contract. At all reasonable times during this period these records shall be available within the State of Kansas at a field or permanent business office for inspection by authorized representatives of the City or of any other agency, which has contributed funds in connection with the Contract or to which the City is obligated to make such inspections available. In addition, this requirement shall be included in all subcontracts entered into in connection with this Contract.
- 22.8 Titles, subheadings used herein, and other Contract Documents are provided only as a matter of convenience and shall have no legal bearing on the interpretation of any provision of the Contract Documents.
- 22.9 No waiver of any breach of this Contract shall be construed to be a waiver of any other subsequent breach.
- 22.10 Should any provision of this Agreement or other Contract Documents be determined to be void, invalid, unenforceable or illegal for whatever reason, such provision(s) shall be null and void; provided, however, that the remaining provisions of this Agreement and/or the other Contract Documents shall be unaffected thereby and shall continue to be valid and enforceable.
- 22.11 Without in any manner limiting Contractor's responsibilities as provided elsewhere in the Contract Documents, the Contractor shall assume full responsibility for the protection of all public and private property, structures, sewers, and utilities, for both above ground and underground facilities, along, beneath, above, across or near the site or sites of the Work being performed under this Agreement, or which are in any manner affected by the prosecution of the Work or the transportation of men/women or materials in connection therewith. Barriers shall be kept in place at all times to protect persons other than those engaged on or about the Work from accident, and the Contractor will be held responsible for all accidents to persons or property resulting from the acts of Contractor or its employees.
- 22.12 The Contractor shall keep fully informed of all existing and current regulations of the City, county, state, and federal laws, which in any way limit or control the actions or operations of those engaged upon the work, or affecting materials supplied, to or by them. The Contractor shall at all times observe and comply with all ordinances, laws, and regulations,

and shall protect and indemnify the City and the City's officers and agents against any claims or liability arising from or based on any violation of the same.

- 22.13 Nothing contained in the Contract Documents shall create, or be interpreted to create, privity or any other contractual agreement between the City and any person or entity other than the Contractor.
- 22.14 Duties and obligations imposed by the Contract Documents, rights, and remedies available hereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.
- 22.15 No action or failure to act by the City, Project Manager or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval or acquiescence in a breach hereunder, except as may be specifically agreed in writing.
- 22.16 Contractor specifically acknowledges and confirms that: (i) it has visited the site, made all inspections it deems appropriate and has read and fully understands the Contract Documents, including all obligations and responsibilities undertaken by it as specified herein and in other Contract Documents and knowingly accepts the same; (ii) it has furnished copies of all Contract Documents to its insurance carrier(s) and its surety(ies); and (iii) its insurance carrier(s) and surety(ies) agree to be bound as specified herein, in the Contract Documents and in the insurance policy(ies) and bonds as to liability and surety coverage.
- 22.17 It is specifically agreed between the parties executing this Agreement that the Contract Documents are not intended to create any third party beneficiary relationship nor authorize anyone not a party to this Agreement to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of this Agreement. The duties, obligations and responsibilities of the parties to this Agreement with respect to third parties shall remain as imposed by law.
- 22.18 This Agreement is entered into, under and pursuant to, and is to be construed and enforceable in accordance with the laws of the State of Kansas. Venue of any litigation arising in connection with this Agreement shall be the State courts of Johnson County, Kansas.

IN WITNESS WHEREOF, the City has caused this Agreement to be executed in its behalf, thereunto duly authorized, and the said Contractor has executed three (3) counterparts of this Contract in the prescribed form and manner, the day and year first above written.

CITY OF PRAIRIE VILLAGE

SMITH BROTHERS TREE SERVICE LLC
(typed company name)

By: _____
(signed)

By: _____
(signed)

Eric Mikkelson

(typed name)

Mayor

(typed title)

City of Prairie Village

Smith Brothers Tree Service LLC
(typed company name)

7700 Mission Road

5514 Norwood Rd
(typed address)

Prairie Village, Kansas 66208

Fairway, KS 66205
(typed city, state, zip)

913-912-9448
(typed telephone number)

(date of execution)

(date of execution)

SEAL

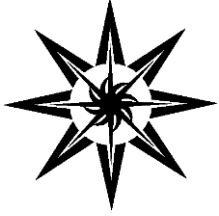
ATTEST:

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.)



PUBLIC WORKS DEPARTMENT

Council Meeting Date: September 19, 2022

COU2022-66

Consider Google Fiber Franchise Ordinance and Related Agreements

RECOMMENDATIONS:

RECOMMEND THE CITY COUNCIL APPROVE ORDINANCE NO. 2476 TO GOOGLE FIBER KANSAS, LLC, A CONTRACT FRANCHISE TO CONSTRUCT, OPERATE, AND MAINTAIN COMMUNICATIONS SERVICE FACILITIES WITHIN THE CITY RIGHT-OF-WAY.

RECOMMEND THE CITY COUNCIL APPROVE A FIRST AMENDMENT TO NETWORK COOPERATION AND SERVICES AGREEMENT WITH GOOGLE FIBER KANSAS, LLC.

RECOMMEND THE CITY COUNCIL APPROVE A FIRST AMENDMENT TO STRUCTURE ATTACHMENT AND CONDUIT OCCUPANCY AGREEMENT WITH GOOGLE FIBER KANSAS, LLC.

BACKGROUND:

In 2016, the City and Google Fiber entered into a certain “video service provider agreement” pursuant to K.S.A. 12-2021 *et seq.*, which was passed by the Kansas Legislature to expedite and facilitate the delivery of certain “video services” in the State. Pursuant to that agreement, Google Fiber operated as a “video service provider”. Recently, Google Fiber has moved away from providing its Google TV video services, and will no longer operate as a video service provider. Google Fiber will continue to provide broadband and internet services. Accordingly, Google’s ability to utilize the City right-of-way would be governed by K.S.A. 12-2001, the general “franchise” statute used to provide utilities with access.

Google has negotiated this form of franchise—which is similar in most all respects to those in place for other franchisees of the City—with a group of local city attorneys, including Prairie Village’s. The City of Overland Park, as the city attorney understands it, was the first local municipality to approve the form presented to the City Council this evening. The main difference between operations under the video service provider model and the franchise model may be in the fees payable to the City. Under the previous VSP agreement, Google Fiber was to pay an annual fee of 5% of its gross revenues for video services (of course, with Google Fiber ceasing operations of that service, such revenues are continually decreasing). Under this franchise, Google Fiber would pay the City a franchise fee equal to 2% of its gross revenues for broadband internet services that are provided through network facilities located in the City right-of-way. Google Fiber and the City expect that this will increase the fees payable to the City than under the current VSP arrangement.

As part of this, the city attorney is recommending minor “clean-up” amendments to two other agreements the City has in place with Google Fiber, a Network Cooperation and Services Agreement, and a Structure Attachment and Conduit Occupancy Agreement. The amendments do not materially alter the terms of such agreements, but instead amend them to reference that Google Fiber’s authorizations would now come under the franchise ordinance (and not the

previous VSP agreement), and to make all agreements coterminous on December 31, 2033, subject to two five-year renewals.

ATTACHMENTS:

Ordinance No. 2476 Granting a Franchise to Google Fiber to Construct, Operate, and Maintain Communications Service Facilities in the City Right-of-Way.

First Amendment to Network Cooperation and Services Agreement.

First Amendment to Structure Attachment and Conduit Occupancy Agreement.

PREPARED BY:

David E. Waters
Spencer Fane LLP

Date: September 19, 2022

ORDINANCE NO. 2476

AN ORDINANCE GRANTING TO GOOGLE FIBER KANSAS, LLC, A CONTRACT FRANCHISE TO CONSTRUCT, OPERATE, AND MAINTAIN COMMUNICATIONS SERVICE FACILITIES IN THE PUBLIC RIGHT-OF-WAY OF THE CITY OF PRAIRIE VILLAGE, KANSAS, AND PRESCRIBING THE TERMS THEREOF.

WHEREAS, the City of Prairie Village, Kansas, a city organized and existing under the laws of the State of Kansas (the "**City**"), has jurisdiction over the use of the public rights-of-way in the City ("**Public ROW**"); and

WHEREAS, Google Fiber Kansas, LLC, a Kansas limited liability company, and its direct parent, and its direct parent's subsidiaries, successors, or assigns ("**Franchisee**"), owns, maintains, operates, and controls a fiber optic infrastructure network in Public ROW ("**Network**"); and

WHEREAS, the Network consists of equipment and facilities that may include aerial or underground fiber optic cables, lines, wires, or strands; underground conduits, vaults, access manholes and handholes; electronic equipment; power generators; batteries; pedestals; boxes; cabinets; vaults; and other similar facilities ("**Network Facilities**"); and

WHEREAS, prior to the Effective Date (as defined herein), Franchisee operated the Network pursuant to an appropriate state video services franchise and Franchisee desires to continue to use and occupy Public ROW in order to install, operate, and maintain its Network for the purposes of offering certain communications services ("**Services**"), consisting of broadband Internet access service as defined in 47 C.F.R. § 8.1(b) ("**Broadband Internet Services**") and Voice over Internet Protocol services ("**VOIP Services**") to residents and businesses in the City ("**Customers**"), but excluding multichannel video programming services that would be subject to a video services franchise under K.S.A. 12-2021 et seq. and telecommunications services as defined in 47 C.F.R. § 153(53), K.S.A. 12-2001(c)(9) or K.S.A. 17-1902(a)(3); and

WHEREAS, in order to facilitate Franchisee's desire, and pursuant to K.S.A. 12-2001 and its home rule powers, the City is adopting this ordinance granting Franchisee the right to install, operate and maintain its Network in the Public ROW for the provision of Services to its Customers (this "**Contract Franchise**") and, upon acceptance by Franchisee, this Contract Franchise shall act as a binding agreement between the parties.

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

SECTION 1. Grant and Permission to Use and Occupy.

- 1.1. Permission to Use and Occupy Public ROW. Upon the Commencement Date, the City grants Franchisee permission to use and occupy the Public ROW for the purpose of constructing, installing, repairing, maintaining, operating, and if necessary removing the Network and the related Network Facilities (the "**Work**") in order to provide Services to Customers. This Contract Franchise does not authorize Franchisee to use any property other than the Public ROW as agreed herein (e.g., any City parkland or other recreational property, any governmental office property, any public safety property, or any public works facility). Franchisee's use of any other City property,

including poles and conduits, will be governed under a separate agreement regarding that use.

Franchisee shall not provide any additional services (other than the Services defined herein) for which a franchise or license is required by the City without first obtaining a separate franchise or license or amending this Contract Franchise, and Franchisee shall not knowingly allow the use of its Network Facilities by any third party in violation of any federal, state or local law.

- 1.2. Commencement Date. This Contract Franchise will be effective upon the later of the date on which (a) (i) Franchisee has discontinued provision of facilities-based linear video services to Customers, (ii) Franchisee has taken all actions necessary under its state video services franchise to terminate such state franchise and such state franchise has terminated, and (iii) Franchisee has notified the City of (i) and (ii); or (b) the Effective Date.
- 1.3. Subject to State and Local Law. This Contract Franchise is subject to the City's valid authority under state and local laws as they exist now or may be amended from time-to-time, and subject to the conditions set forth in this Contract Franchise.
- 1.4. Subject to City's Right to Use Public ROW. This Contract Franchise is subject and subordinate to the City's prior and continuing right to use the Public ROW, including constructing, installing, operating, maintaining, repairing, or removing sewers, water pipes, storm drains, gas pipes, utility poles, overhead and underground electric lines and related facilities, and other public utility and municipal uses.
- 1.5. Subject to Pre-Existing Property Interests. The City's grant and permission to use and occupy the Public ROW is subject to all valid pre-existing easements, restrictions, conditions, covenants, encumbrances, claims of title or other property interests that may affect the Public ROW. Franchisee will obtain at its own cost and expense any permission or rights as may be necessary to accommodate such pre-existing property interests.
- 1.6. No Grant of Property Interest. This Contract Franchise does not grant or convey any property interest, or any title, equitable or legal, in the Public ROW. Additionally, this Contract Franchise does not grant the right to use any facilities or property owned or controlled by a third-party without the consent of such third-party; and Franchisee is responsible for obtaining appropriate access or attachment agreements before locating its Network Facilities on property or facilities owned or controlled by a third-party.
- 1.7. Non-Exclusive. This Contract Franchise is not exclusive. The City expressly reserves the right to grant licenses, permits, franchises, privileges or other rights to any other individual, corporation, partnership, limited liability company, trust, joint stock company, business trust, unincorporated association, joint venture, governmental authority or other entity of any nature whatsoever ("**Person**"), as well as the right in its own name as a city, to use Public ROW for similar or different purposes allowed Franchisee under this Contract Franchise.
- 1.8. Reservation of Right. In entering into this Contract Franchise, the City does not in any manner waive its regulatory or other rights and powers under and by virtue of the laws

of the State of Kansas or applicable federal laws and regulations as the same may be amended, its Home Rule powers and other authority established pursuant to the Constitution of the State of Kansas, nor any of its rights and powers under or by virtue of present or future ordinances of the City.

SECTION 2. Franchisee's Obligations.

- 2.1. Use of Public ROW. Franchisee's use of the Public ROW shall always be subject and subordinate to the reasonable public health, safety and welfare requirements and regulations of the City. The City may exercise its home rule powers in its administration and regulation related to the management of the Public ROW; provided that any such exercise must be competitively neutral and may not be unreasonable or discriminatory. Franchisee shall be subject to all applicable laws and statutes, and/or rules, regulations, policies, resolutions and ordinances adopted by the City, relating to the construction and use of the Public ROW or otherwise relating to Franchisee's Network Facilities, including, but not limited to, the City's adopted building and electrical codes, the City's Use and Occupancy of the Public Right-of-Way Ordinance and amendments thereto, Codified at Chapter 13, Article 5 of the City Code, and the City's zoning and land use ordinances, and related rules and regulations and amendments thereto (each as may be amended from time to time)
- 2.2. Individual Permits Required. Franchisee will obtain the City's approval of required individual encroachment, construction, and other necessary permits before placing its Network Facilities in the Public ROW or other property of the City as authorized. Franchisee will pay all lawful processing, field marking, engineering, and inspection fees associated with the issuance of individual permits by the City.
- 2.3. Franchisee's Sole Cost and Expense. Franchisee will perform the Work at its sole cost and expense.
- 2.4. Compliance with Laws. Franchisee will comply with all applicable laws and regulations when performing the Work. Franchisee will place its Network Facilities in conformance with the required permits, plans, and drawings approved by the City. Franchisee shall also participate in the Kansas One Call utility location program. To the extent applicable, Franchisee shall obtain any necessary permit, license, certification, grant, registration or any other authorization required by any appropriate governmental entity, including, but not limited to, the FCC or the Kansas Corporation Commission (KCC).
- 2.5. Reasonable Care. Franchisee will exercise reasonable care when performing the Work and will use commonly accepted practices and equipment to minimize the risks of personal injury, property damage, soil erosion, and pollution of surface or groundwater. Franchisee's Network Facilities shall be so constructed and maintained as not to obstruct or hinder the usual travel or public safety on such public ways or obstruct the legal use of such public ways by other utilities.
- 2.6. No Nuisance. Franchisee will maintain its Network Facilities in good and safe condition so that its Network Facilities do not cause a public nuisance.
- 2.7. Repair. Franchisee will promptly repair any damage to the Public ROW, City property, or private property: (i) if such damage is directly caused by Franchisee's Work

(including Work by an Authorized Individual) and no other Person is responsible for the damage (e.g., where a Person other than Franchisee or its Authorized Individual fails to accurately or timely locate its underground facilities as required by applicable law); or (ii) as otherwise might be required under the provisions of City Code or other applicable regulations. Franchisee will repair the damaged property to a condition equal to or better than that which existed prior to the damage. Franchisee's obligation under this Section 2.7 will be limited by, and consistent with, any applicable seasonal or other restrictions on construction or restoration work.

- 2.8. As-Built Drawings and Maps. Franchisee will maintain accurate as-built drawings and maps of its Network Facilities located in the City and will provide them to the City upon reasonable request and on a mutually-agreed timetable (e.g., piecemeal following the closure of each permit, or all at once after all the Work is complete), subject to applicable confidentiality protections.
- 2.9. Network Design. Nothing in this Contract Franchise requires Franchisee to build to all areas of the City, and Franchisee retains the discretion to determine the scope, location, and timing of the design and construction of the Network.
- 2.10. Protection of Facilities. It shall be the responsibility of Franchisee to take adequate measures to protect and defend its Network Facilities in the Public ROW from harm or damage.

SECTION 3. City's Obligations.

- 3.1. Emergency Removal or Relocation by City. In the event of a public emergency that creates an imminent threat to the health, safety, or property of the City or its residents, the City may remove or relocate the applicable portions of the Network Facilities without prior notice to Franchisee. The City will, however, make best efforts to provide prior notice to Franchisee before making an emergency removal or relocation. In any event, the City will promptly provide to Franchisee a written description of any emergency removals or relocations of Franchisee's Network Facilities. Franchisee will reimburse the City for its actual, reasonable, and documented costs or expenses incurred for any such work performed by the City, the direct cause of which was Franchisee's construction, installation, operation, maintenance, repair, or removal of its Network Facilities. Franchisee's obligation to reimburse the City under this section will be separate from Franchisee's obligation to pay the Franchise Fee (as defined below).
- 3.2. Relocation to Accommodate Governmental Purposes. If Franchisee's then-existing Network Facilities would interfere with the City's planned use of the Public ROW or other City property for a legitimate governmental purpose, such as the construction, installation, repair, maintenance, or operation of a new water, sewer, or storm drain line, or a public road, curb, gutter, sidewalk, park, or recreational facility, Franchisee will, upon written notice from the City, relocate its Network Facilities at Franchisee's own expense to such other location or locations in the Public ROW as may be mutually agreed by the parties, taking into account the needs of the City's governmental purpose and Franchisee's interest in maintaining the integrity and stability of its Network. Franchisee will relocate its Network Facilities within a commercially reasonable period of time agreed to by the parties, taking into account the urgency of

the need for relocation, the difficulty of the relocation, and other relevant facts and circumstances.

- 3.3. Relocation to Accommodate Non-Governmental Purposes. If Franchisee's then-existing Network Facilities would interfere with (a) the City's planned use of the Public ROW for a non-governmental (e.g., commercial) purpose, or (b) a third-party's use of the Public ROW, Franchisee will not be required to bear the cost to relocate or adjust its Network Facilities and shall not be obligated to commence the relocation or adjustment until receipt of funds for such relocation or adjustment.
- 3.4. Non-Discrimination. The City will at all times treat Franchisee and provide access to the Public ROW in a non-discriminatory manner as compared to other similar non-incumbent holders of local or state franchise authority offering wired facilities-based Broadband Internet Services.
- 3.5. Post-Removal Restoration of Public ROW. When removal or relocation is required under this Contract Franchise, Franchisee will, after the removal or relocation of the Network Facilities, at its own cost, repair and return the Public ROW in which the facilities were located to a safe and satisfactory condition in accordance with the construction-related conditions and specifications as established by the City.

SECTION 4. Contractors and Subcontractors.

- 4.1. Use of Contractors and Subcontractors. Franchisee may retain contractors and subcontractors to perform the Work on Franchisee's behalf; provided, Franchisee shall be responsible for its contractors and subcontractors including responsible for their actions or failures to act, and Franchisee shall ensure its contractors and subcontractors adhere to the requirements of this Contract Franchise and any applicable laws. Accordingly, when and if applicable, references in this Contract Franchise to "Franchisee" shall include and apply to Franchisee's contractors and subcontractors.
- 4.2. Contractors to be Licensed. Franchisee's contractors and subcontractors used for the Work will be properly licensed under applicable law.
- 4.3. Authorized Individuals. Franchisee's contractors and subcontractors may submit individual permit applications to the City on Franchisee's behalf, so long as the permit applications are signed by individuals that Franchisee has authorized to act on its behalf via a letter of authorization provided to the City in the form attached as **Exhibit A ("Authorized Individuals")**. The City will accept permit applications under this Contract Franchise submitted and signed by Authorized Individuals, and will treat those applications as if they had been submitted by Franchisee under this Contract Franchise.

SECTION 5. Franchise Fee. Franchisee will pay the City a fee ("**Franchise Fee**") to compensate the City for Franchisee's use and occupancy of Public ROW pursuant to this Contract Franchise. Franchisee and the City acknowledge and agree that the Franchise Fee provides fair and reasonable compensation for Franchisee's use and occupancy of Public ROW and other City property as authorized, and shall in no way be deemed a tax of any kind. The Franchise Fee will begin accruing on the Commencement Date (as defined herein) and will be calculated as set forth in Section 5.1. Subject to any applicable statute of limitations, Franchisee's payment obligations

as of expiration or termination of Contract Franchise hereunder shall survive the expiration or termination of this Contract Franchise.

5.1. **Franchise Fee.** Franchisee will pay the City two percent (2.00%) (the "**Revenue Percentage**") of Gross Revenues for a calendar quarter, remitted within forty five (45) days of the end of each calendar quarter, commencing on the Commencement Date. The payment will be accompanied by a report showing the basis for the computation and such other relevant facts as may be required by the City to determine the accuracy of the payment. Subject to any applicable statute of limitations, Franchisee's payment obligations hereunder shall survive the expiration or termination of this Contract Franchise.

5.1.1. As used herein, "**Gross Revenues**" means all consideration of any kind or nature, including without limitation, cash, credits, property, and in-kind contributions (services or goods) received by Franchisee from Customers for Broadband Internet Services that are provided to Customers through Network Facilities located at least in part in Public ROW.

5.1.2. Gross Revenues do not include:

- (i) any revenue not actually received, even if billed, such as bad debt;
- (ii) refunds, rebates, or discounts made to Customers, or the City;
- (iii) revenue received from the sale of Broadband Internet Services for resale in which the purchaser is required to collect and remit a franchise or similar fee to the City from the purchaser's customer;
- (iv) revenue derived from the provision of Broadband Internet Services to Customers where none of the Network Facilities used to provide such Broadband Internet Services are located in Public ROW;
- (v) any forgone revenue from Franchisee's provision of Broadband Internet Services to Customers at no charge if required by state law;
- (vi) any revenue derived from advertising;
- (vii) any revenue derived from VOIP Services;
- (viii) any revenue derived from rental of modems or other equipment used to provide or facilitate the provision of the Broadband Internet Services;
- (ix) any revenue derived from referral or marketing agreements with third party providers of online services which Franchisee may make available to Customers;
- (x) any tax of general applicability imposed upon Franchisee or its Customers by the City or by any state, federal, or any other governmental entity, and required to be collected by Franchisee and remitted to the taxing entity (including but not limited to sales and use tax, gross receipts tax, excise

tax, utility users tax, public service tax, communications taxes, and fees not imposed by this Contract Franchise);

- (xi) any forgone revenue from Franchisee's provision, in Franchisee's discretion, of free or reduced cost Broadband Internet Services to any Person, including without limitation employees of Franchisee; provided, however, that any forgone revenue which Franchisee chooses not to receive in exchange for trades, barter, services, or other items of value will be included in Gross Revenues; and
- (xii) sales of capital assets or sales of surplus equipment.

5.2. Pass Through. To the extent allowed by either federal or state law, Franchisee may identify and collect, as a separate item on the regular bill of any Customer whose Broadband Internet Services are provided by Network Facilities located at least in part in Public ROW, that Customer's pro rata amount of the Franchise Fee.

5.3. Interest on Late Payments. Any payments that are due and payable under this Contract Franchise that are not received within thirty (30) days from the specified due date will be assessed interest at an annual rate equal to the applicable statutory interest rate in effect upon the due date.

5.4. No Accord. No acceptance by the City of any Franchise Fee shall be construed as an accord that the amount paid is in fact the correct amount, nor shall acceptance of any Franchise Fee payment be construed as a release or any claim of the City.

5.5. Audit. The City shall have the right to examine, upon 30-days written notice to Franchisee and no more often than once per calendar year, those records necessary to verify the correctness of the Franchise Fee paid by Franchisee.

5.6. Change in Franchise Fee. The parties may timely negotiate, in good faith and in conformance with applicable law, a potential change to either the Franchise Fee or the Revenue Percentage upon any of the following events:

5.6.1. A request by either party to reduce or increase the Franchise Fee.

5.6.2. A change in applicable law.

5.6.3. If during the term of this the Contract Franchise the City subsequently enters into a franchise with another comparable provider granting said provider the right to use and occupy the Public ROW for the provision of comparable wired facilities-based Broadband Internet Services for a fee more favorable than the Franchise Fee set forth in Section 5.1, then the City and Franchisee shall negotiate a lower Franchise Fee that is comparable to said other provider.

SECTION 6. Defense and Indemnity.

6.1. Franchisee shall indemnify and hold the City and its officers and employees harmless against any and all claims, lawsuits, judgments, costs, liens, losses, expenses, fees (including reasonable attorney fees and costs of defense), proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including personal

or bodily injury (including death), property damage or other harm for which recovery of damages is sought, to the extent that it is found by a court of competent jurisdiction to be caused by the negligence of Franchisee, any agent, officer, director, representative, employee or subcontractor of Franchisee, while installing, repairing or maintaining Facilities in the Public ROW.

- 6.2. The indemnity provided by this Section 6 does not apply to any liability resulting from the negligence of the City, its officers, employees, contractors or subcontractors. If Franchisee and the City are found jointly liable by a court of competent jurisdiction, liability shall be apportioned comparatively in accordance with the laws of this state without, however, waiving any governmental immunity available to the City under state law and without waiving any defenses of the parties under state or federal law. Likewise, the indemnity provided by this Section 6 does not apply to any liability resulting from the negligence of any third party not associated with Franchisee, or for any portion of any harm caused by the same. This section is solely for the benefit of the City and Franchisee and does not create or grant any rights, contractual or otherwise, to any other person or entity.
- 6.3. Franchisee or the City shall promptly advise the other in writing of any known claim or demand against Franchisee or the City relating to or arising out of Franchisee's activities in the Public ROW.

SECTION 7. Limitation of Liability. NEITHER PARTY WILL BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES IN CONNECTION WITH THIS CONTRACT FRANCHISE. THE PARTIES ACKNOWLEDGE THAT THIS LIMITATION WILL BE SUBJECT TO AND MAY BE LIMITED BY APPLICABLE LAW.

SECTION 8. Performance Bond. If Franchisee has not previously provided the City with a performance bond under any prior agreement, Franchisee will, promptly after the Commencement Date, provide the City with a performance bond in the amount of fifty thousand dollars (\$50,000.00) naming the City as obligee and guaranteeing Franchisee's faithful performance of its obligations under this Contract Franchise. The performance bond will remain in full force during the Term of this Contract Franchise. The bond must be with good and sufficient sureties, issued by a surety authorized to transact business in the State of Kansas, and satisfactory to the City Attorney in form and substance. At Franchisee's election, any performance bond previously provided by Franchisee to the City and associated with its state or local video service franchise may be applied to its obligations, in whole or in part, under this paragraph.

SECTION 9. Insurance.

- 9.1. Franchisee will carry and maintain:
 - 9.1.1. Commercial General Liability (CGL) insurance, with policy limits not less than \$2,000,000 in aggregate and \$1,000,000 for each occurrence covering bodily injury and property damage with the following features: (a) CGL primary insurance endorsement; and (b) CGL policy will include an endorsement which names the City, its employees, and officers as additional insureds.
 - 9.1.2. Workers' Compensation insurance with policy limits not less than the Kansas Statutory requirements.

9.1.3. Business Automobile Policy covering all owned, hired and nonowned private passenger autos and commercial vehicles. Limits of liability not less than \$1,000,000 each occurrence, \$1,000,000 aggregate.

9.2. All insurance certificates, endorsements, coverage verifications and other items required pursuant to this Contract Franchise will be mailed directly to the City's insurance compliance representative upon the City's written request.

SECTION 10. Term.

10.1. This Contract Franchise is effective on the Effective Date set forth in Section 15 and will expire at 11:59 pm on December 31, 2033 ("**Original Term**"), unless earlier terminated in accordance with the provisions herein. Thereafter, this Contract Franchise will automatically renew for two (2) successive 5-year terms (each a "**Renewal Term**") unless a party provides at least six (6) months' prior written notice to the other party of its intent not to renew at the end of the then current term. Each Renewal Term shall be deemed a continuation of this Contract Franchise and not as a new franchise or amendment.

10.2. In the event the parties are actively negotiating in good faith a new contract franchise or an amendment to this Contract Franchise upon the termination date of this Contract Franchise, the parties by written mutual agreement may extend the termination date of this Contract Franchise to allow for further negotiations. Such extension period shall be deemed a continuation of this Contract Franchise and not as a new franchise or amendment.

10.3. Upon written request of either the City or Franchisee, this Contract Franchise shall be renegotiated at any time in accordance with the requirements of state law upon any of the following events: changes in federal, state, or local laws, regulations, or orders that materially affect any rights or obligations of either the City or Franchisee, including but not limited to the scope of the Contract Franchise granted to Franchisee or the compensation to be received by the City hereunder.

SECTION 11. Termination.

11.1. Termination by City. The City may terminate this Contract Franchise if Franchisee is in material breach of this Contract Franchise, provided that the City must first provide Franchisee written notice of the breach and one hundred twenty (120) days to cure, unless the cure cannot reasonably be accomplished in that time period, in which case Franchisee must commence its efforts to cure within that time period and the cure period will continue as long as such diligent efforts continue. No termination under this paragraph will be effective until the relevant cure period has expired. Nothing herein shall prevent the City from invoking any other remedy that may otherwise exist at law.

SECTION 12. Assignment. Except as set forth below, Franchisee shall not assign or transfer its rights or obligations under this Contract Franchise, in whole or part, to a third party, without the written consent of the City. Any agreed upon assignee will take the place of the Franchisee, and the Franchisee will be released from all of its rights and obligations upon the completion of the requirements of Subsection 12.3 below; provided, however, such release shall not include any liability or obligations under the Contract Franchise, whether of indemnity or otherwise, which may

constitute a breach of the Contract Franchise and have accrued prior to the date of such assignment.

12.1. Notwithstanding the foregoing, Franchisee may at any time, on written notice to the City, assign this Contract Franchise or any or all of its rights and obligations under this Contract Franchise:

12.1.1. to any Affiliate (as defined below) of Franchisee;

12.1.2. to any successor in interest of Franchisee's business operations in the City in connection with any merger, acquisition, or similar transaction if Franchisee reasonably determines after a reasonable investigation that the successor in interest has the resources and ability to fulfill the obligations of this Contract Franchise; or

12.1.3. to any purchaser of all or substantially all of Franchisee's Network Facilities in the City if Franchisee reasonably determines after a reasonable investigation that the purchaser has the resources and ability to fulfill the obligations of this Contract Franchise.

12.2. Following any assignment of this Contract Franchise to an Affiliate, Franchisee will remain responsible for such Affiliate's performance under the terms of this Contract Franchise. For purposes of this section, (a) "Affiliate" means any Person that now or in the future, directly or indirectly controls, is controlled with or by, or is under common control with Franchisee; and (b) "control" means, with respect to: (i) a U.S. corporation, the ownership, directly or indirectly, of fifty percent (50%) or more of the voting power to elect directors thereof, or (ii) a non-U.S. corporation, if the voting power to elect directors thereof is less than fifty percent (50%), the maximum amount allowed by applicable law; and (iii) any other Person, fifty percent (50%) or more ownership interest in said Person, or the power to direct the management of such Person.

12.3. Franchisee shall: furnish the City with written notice of the assignment/transfer; provide a point of contact for the assignee; and advise the City of the effective date of the assignment. Additionally, Franchisee's obligations under this Contract Franchise with regard to indemnity, bond and insurance shall continue until the assignee has taken the appropriate measures necessary to assume and replace the same, the intent being that there shall be no lapse in any coverage as a result of the assignment.

SECTION 13. Notice and Emergency Contact.

13.1. Emergency Contact. Franchisee shall maintain with the City a point of contact who shall be available to act on behalf of Franchisee in the event of an emergency. Franchisee shall provide the City's ROW Coordinator and City Engineer with said contact's name, address, telephone number and e-mail address.

Emergency notice by the City to Franchisee may be made by telephone to Franchisee's Emergency Contact at (866) 954-1572 or by email to gfiber-noc-leads@google.com.

(Or to replacement Emergency Contact that is later designated by Franchisee in writing.)

Emergency notice by Franchisee to the City may be made by telephone to the City's Public Works Department at (913) 385-4647.

(Or to replacement Emergency Contact that is later designated by the City in writing.)

- 13.2. **Notice.** All other notices related to this Contract Franchise will be in writing and sent, if to Franchisee to the email addresses set forth below, and if to the City to the address set forth below. Notices are effective (a) when delivered in person, (b) upon confirmation of a receipt when transmitted by electronic mail, (c) on the next business day if transmitted by registered or certified mail, postage prepaid (with confirmation of delivery), (d) on the next business day if transmitted by overnight courier (with confirmation of delivery), or (e) three (3) days after the date of mailing, whichever is earlier.

Franchisee's e-mail address for notice is: googlefibernotices@google.com, with a copy to legal-notices@google.com.

(Or to replacement Notice contact that is later designated by Franchisee in writing.)

City's address for notice is: City of Prairie Village, Kansas, 7700 Mission Road, Prairie Village, Kansas 66208, Attn: City Clerk, with a copy to City of Prairie Village, Kansas, 7700 Mission Road, Prairie Village, Kansas 66208, Attn: City Administrator.

(Or to replacement Notice contact that is later designated by the City in writing.)

SECTION 14. General Provisions. This Contract Franchise is governed by the laws of the state where the City is located (Kansas). Neither party will be liable for failure or delay in performance to the extent caused by circumstances beyond its reasonable control. The failure of either party to insist upon the strict performance of any one or more terms or provisions of this Contract Franchise shall not be construed as a waiver or relinquishment for the future of any such term or provision, and the same shall continue in full force and effect. This Contract Franchise sets out all terms agreed between the parties and supersedes all previous or contemporaneous agreements between the parties relating to its subject matter, including but not limited to, the parties' Video Service Provider Agreement dated May 16, 2016, entered into pursuant to K.S.A. 12-2024 (Kansas Video Competition Act). This Contract Franchise, including any exhibits, constitutes the entire agreement between the parties related to this subject matter, and any change to its terms must be in writing and signed by the parties. The parties may execute this Contract Franchise in counterparts, including facsimile, PDF, and other electronic copies, which taken together will constitute one instrument. Each party to this Contract Franchise agrees that Franchisee may use electronic signatures. If any clause, sentence, or section of this Contract Franchise, or any portion thereof, shall be held to be invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remainder, as a whole or any part thereof, other than the part declared invalid; provided, however, the City or Franchisee may elect to declare the entire Contract Franchise is invalidated if the portion declared invalid is, in the judgment of the City or Franchisee, an essential part of the Contract Franchise.

SECTION 15. Acceptance of Terms and Effective Date. This Contract Franchise shall take effect and be in force from and after (i) its passage and approval by the City, (ii) written acceptance by Franchisee, and (iii) publication in the official city newspaper in accordance with Statute (the "**Effective Date**"). Franchisee shall have sixty (60) days after the final passage and approval of this Contract franchise to file with the City Clerk its acceptance in writing of the provisions, terms and conditions of this Contract franchise, and when so accepted, this Contract franchise and acceptance shall constitute a contract between the City and Franchisee. In accordance with

Kansas Statute, Franchisee shall be responsible for payment of all costs and expense of publishing this Contract franchise, and any amendments thereof.

PASSED by the City Council of the City of Prairie Village, Kansas on _____, 2022.

APPROVED by the Mayor on _____, 2022.

CITY OF PRAIRIE VILLAGE, KANSAS

Eric Mikkelson, Mayor

ATTEST:

Adam Geffert, City Clerk

APPROVED AS TO LEGAL FORM:

David E. Waters, City Attorney

ACCEPTANCE OF FRANCHISE ORDINANCE

WHEREAS, the Governing Body of the City of Prairie Village, Kansas, did on the 19th day of September, 2022, adopt and pass Ordinance No. 2476 entitled:

AN ORDINANCE GRANTING TO GOOGLE FIBER KANSAS, LLC, A CONTRACT FRANCHISE TO CONSTRUCT, OPERATE, AND MAINTAIN COMMUNICATIONS SERVICE FACILITIES IN THE PUBLIC RIGHT-OF-WAY OF THE CITY OF PRAIRIE VILLAGE, KANSAS, AND PRESCRIBING THE TERMS THEREOF.

AND

WHEREAS, said Ordinance was duly signed by the Mayor of the City of Prairie Village, Kansas, and was (or will be) duly published according to Kansas law; and

NOW THEREFORE, Google Fiber Kansas, LLC hereby submits its acceptance of the provisions, terms and conditions of said Ordinance.

GOOGLE FIBER KANSAS, LLC

By: _____
Name: _____
Title: _____
Date: _____

Address:
1600 Amphitheatre Parkway
Mountain View, CA 94043

Subscribed and sworn before me this ____ day of _____, 2022

Notary Public

My appointment expires: _____

**EXHIBIT A
FORM OF LETTER OF AUTHORIZATION**

[Franchisee LETTERHEAD]
[Date]
Via Email ([Email Address])

City of Prairie Village, Kansas
[Addressee]
[Address]

Re: [Amended] Letter of Authorization

Dear [Name],

In accordance with Section 4.3 of the Contract Franchise dated _____ between the City of **Prairie Village, Kansas, and Google Fiber Kansas, LLC ("Google Fiber")**, Google Fiber hereby designates the following Authorized Individuals (as that term is defined in the Contract Franchise), who may submit and sign permit applications and other submissions to the City on behalf of Google Fiber. *[If applicable: This letter amends and supersedes the Letter of Authorization dated _____.]*

[Insert name and title for each Authorized Individual, including any Authorized Individual previously named and whose authority continues. Strike through the names of any individuals who are no longer authorized, if any.]

1. Name, Title
2. Name, Title
3. Name, Title (previously authorized, authorization continues)
4. ~~Name, Title~~ (authorization withdrawn)

This authorization may be withdrawn or amended and superseded by a written amendment to this Letter of Authorization, which will be effective 24 hours after receipt by the City.

Kind regards,

[Name]

Manager, **Google Fiber Kansas, LLC**

**FIRST AMENDMENT TO
NETWORK COOPERATION AND SERVICES AGREEMENT**

THIS FIRST AMENDMENT TO NETWORK COOPERATION AND SERVICES AGREEMENT ("First Amendment") is made and entered into as of the ____ day of _____, 2022, by and between the **City of Prairie Village, Kansas**, a Kansas municipal corporation (the "City"), and **Google Fiber Kansas, LLC**, a Kansas limited liability company ("Network Provider").

RECITALS

- A. City and Network Provider entered into that certain Network Cooperation and Services Agreement dated September 30, 2013 (the "Agreement").
- B. The parties desire to amend the Agreement as set forth herein.

AGREEMENT

1. Capitalized Terms. Capitalized terms used in this First Amendment but not otherwise defined herein shall have the meaning ascribed thereto in the Agreement.
2. Right of Way Regulations. The term "Right of Way Regulations", as defined and used in the Agreement, is hereby amended to mean "that certain Ordinance No. 2476 (2022) of the City pursuant to which Network Provider was granted a contract franchise as to the City's right-of-way, and all applicable laws, statutes and/or City ordinances and regulations in effect from time to time relating to the use and occupancy of the public right of way and all applicable regulations and ordinances and the City's standard processes and practices generally made available to all service providers.
3. Conflict of Terms. In the event of any direct conflict between the Agreement (as amended by this First Amendment), and City Ordinance No. 2476 (2022), the terms of such City Ordinance No. 2476 (2022) shall prevail.
4. Term of Agreement. Notwithstanding anything in the Agreement to the contrary, the Service Term (as defined in the Agreement) and the Agreement shall not exceed the term under, and shall automatically terminate upon the expiration or termination of, Network Provider's contract franchise under Ordinance No. 2476 (2022); provided, that this First Amendment shall not be deemed to extend or renew the Service Term beyond that provided in the Agreement.
5. Miscellaneous. Except as expressly modified by this First Amendment, the Agreement remains unmodified and in full force and effect, and is hereby ratified and affirmed in all respects. To the extent of any conflict or inconsistency between this First Amendment and the Agreement, the terms and conditions of this First Amendment shall control. Time is of the essence with respect to the performance of each of the covenants and agreements contained in this First Amendment. This First Amendment shall be binding upon and inure to the benefit of the parties hereto and their respective successors, representatives and permitted assigns. This First Amendment may be executed in any number of counterparts with the same effect as if all signing parties had signed the same document. All counterparts shall be construed together and constitute the same document. Signature pages may be detached from the counterparts and attached to a single copy of this First Amendment to physically form one document. Facsimile,

electronic, scans, copies, or other digital signatures shall be acceptable and shall bind the party transmitting such signature to the same extent as an original.

IN WITNESS WHEREOF, this First Amendment has been executed by the parties effective as of the date first above written.

CITY OF PRAIRIE VILLAGE, KANSAS

GOOGLE FIBER KANSAS, LLC

Eric Mikkelson, Mayor

By:_____

Printed Name:_____

ATTEST:

Title:_____

Adam Geffert, City Clerk

APPROVED AS TO LEGAL FORM:

David E. Waters, City Attorney

**FIRST AMENDMENT TO
STRUCTURE ATTACHMENT AND CONDUIT OCCUPANCY AGREEMENT**

THIS FIRST AMENDMENT TO STRUCTURE ATTACHMENT AND CONDUIT OCCUPANCY AGREEMENT ("First Amendment") is made and entered into as of the ____ day of _____, 2022, by and between the **City of Prairie Village, Kansas**, a Kansas municipal corporation ("Licensor"), and **Google Fiber Kansas, LLC**, a Kansas limited liability company ("Licensee").

RECITALS

- A. Licensor and Licensee entered into that certain Structure Attachment and Conduit Occupancy Agreement dated September 30, 2013 (the "Agreement").
- B. The parties desire to amend the Agreement as set forth herein.

AGREEMENT

- 1. Capitalized Terms. Capitalized terms used in this First Amendment but not otherwise defined herein shall have the meaning ascribed thereto in the Agreement.
- 2. Term. Section 1.07 of the Agreement is hereby deleted in its entirety and replaced with the following:

Section 1.07 Term.

This Agreement shall become effective as of September 30, 2013 (the "Effective Date") and shall expire at 11:59 pm on December 31, 2023. This Agreement will automatically renew for successive five (5) year periods unless Licensee is no longer operating its network within Prairie Village, Kansas. Provided, that notwithstanding anything in the Agreement to the contrary, the term of this Agreement shall not exceed the term under, and shall automatically terminate upon the expiration or termination of, Licensee's contract franchise with Licensor under Ordinance No. 2476 (2022).

- 3. Access to Right-of-Way. Section 5.02 of the Agreement is hereby deleted in its entirety and replaced with the following:

Section 5.02 Access to Right-of-Way.

Licensor shall provide Licensee with access to and use of the Right-of-Way to the extent provided in, and pursuant to the terms and conditions of, Licensee's contract franchise with Licensor under Ordinance No. 2476 (2022), and to the extent Licensor holds any rights to the Right-of-Way pursuant to agreements with third parties and such agreements expressly or impliedly grant Licensor the right to provide such rights to others. Where Licensor notifies Licensee that Licensor's agreement with a third-party does not expressly or impliedly grant Licensor the ability to provide such access and use rights to others, upon Licensee's request, Licensor shall use its best efforts to obtain the consent of the owner or grantor and to otherwise secure such rights for Licensee, but further provided that restrictions

on access that are done as a legitimate exercise of the Licensor's police powers will never be considered unreasonable.

4. Conflict of Terms. In the event of any direct conflict between the Agreement (as amended by this First Amendment), and City Ordinance No. 2476 (2022), the terms of such City Ordinance No. 2476 (2022) shall prevail.

5. Miscellaneous. Except as expressly modified by this First Amendment, the Agreement remains unmodified and in full force and effect, and is hereby ratified and affirmed in all respects. To the extent of any conflict or inconsistency between this First Amendment and the Agreement, the terms and conditions of this First Amendment shall control. Time is of the essence with respect to the performance of each of the covenants and agreements contained in this First Amendment. This First Amendment shall be binding upon and inure to the benefit of the parties hereto and their respective successors, representatives and permitted assigns. This First Amendment may be executed in any number of counterparts with the same effect as if all signing parties had signed the same document. All counterparts shall be construed together and constitute the same document. Signature pages may be detached from the counterparts and attached to a single copy of this First Amendment to physically form one document. Facsimile, electronic, scans, copies, or other digital signatures shall be acceptable and shall bind the party transmitting such signature to the same extent as an original.

IN WITNESS WHEREOF, this First Amendment has been executed by the parties effective as of the date first above written.

CITY OF PRAIRIE VILLAGE, KANSAS

GOOGLE FIBER KANSAS, LLC

Eric Mikkelson, Mayor

By:_____

Printed Name:_____

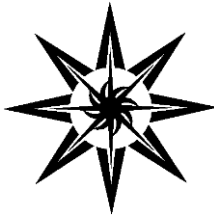
ATTEST:

Title:_____

Adam Geffert, City Clerk

APPROVED AS TO LEGAL FORM:

David E. Waters, City Attorney



PUBLIC WORKS DEPARTMENT

Council Meeting Date: September 19, 2022

COU2022-67

CONSIDER APPROVAL OF CONTRACT WITH McCONNELL AND ASSOCIATES FOR THE WINDSOR PARK TENNIS COURT RESURFACING

RECOMMENDATION

Move to authorize the Mayor to sign the construction contract with McConnell and Associates in the amount of \$104,739.40 for Project BG930001 Windsor Park Tennis Court Resurfacing.

BACKGROUND

On July 20, 2022 the City Clerk opened bids for the project. Two bids were received:

PrimeTime	\$ 169,000.00
McConnell and Associates	\$ 156,482.40

The bid as read was significantly over the engineer's estimate for all bid items. The current bid environment continues to be unique and challenging based on a number of factors. Specifically for this project the specialty work not normally included with a tennis court resurfacing was almost three times higher than expected. Engineers estimate for these items were based on current contract with Superior Bowen.

Staff reduced the specialty scope items for this contract. They will be constructed in tandem with the roadway work/parking lot work on Windsor from Cherokee to 75th Street.

The contract as presented includes the court overlay, resurfacing and a fencing change to create an ADA accessible entrance at the court.

Reduced bid as presented for award:

McConnell and Associates	\$104,739.00
Engineer's Estimate	\$ 76,640.00

The Engineer has reviewed the bid and has recommended award of the project as presented. The bid as awarded is over budget by \$15,000. Park Reserve dollars will be transferred into the project.

FUNDING SOURCE

BG930001	\$ 90,000
PARKRESV	\$ 15,000 (transfer to BG930001)
TOTAL	\$ 105,000

ATTACHMENTS

Construction Agreement with McConnell and Associates

PREPARED BY

Melissa Prenger, Senior Project Manager

September 15, 2022

CONSTRUCTION AGREEMENT



BG930001

WINDSOR PARK Tennis Court and Trail

BETWEEN

CITY OF PRAIRIE VILLAGE, KS

AND

McCONNELL & ASSOCIATES

CONSTRUCTION CONTRACT
FOR
BG930001 | WINDSOR PARK Tennis Court and Trail

BETWEEN
THE CITY OF PRAIRIE VILLAGE, KANSAS
AND
McCONNELL & ASSOCIATES

THIS AGREEMENT, is made and entered into this ____ day of _____, 2022, by and between the City of Prairie Village, Kansas, hereinafter termed the “**City**”, and McConnell & Associates Corp., hereinafter termed in this agreement, “**Contractor**”, for the construction and completion of Project WINDSOR PARK Tennis Court and Trail, (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 One Hundred Four Thousand, Seven Hundred Thirty Nine and 40/100 **DOLLARS (\$104,739.40)** for all Work covered by and included in the Contract; payment thereof to be made in cash or its equivalent and in a manner provided in the Contract Documents.

5. WORK SUPERINTENDENT

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

6. PROJECT MANAGER

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

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

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

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

7. WORK SCHEDULE:

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

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

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

8. DELAYS AND EXTENSIONS OF TIME

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

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

9. ADVERSE WEATHER:

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

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

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

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

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

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

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

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

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

9.7 Upon receipt of the Notice to Proceed, and continuing throughout the Contract, the Contractor shall record on its daily construction report, the occurrence of Adverse Weather and resultant impact to the Work Schedule.

9.8 The number of actual Adverse Weather delay days shall include days affected by actual Adverse Weather (even if Adverse Weather occurred in the previous month), and shall be

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

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

10. LIQUIDATED DAMAGES

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

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

11. PAYMENT PROCEDURE

11.1 Based upon Applications for Payment submitted to the Project Manager by the Contractor and Certificates for Payment issued by the Project Manager, the City shall make progress payments on account of the contract sum to the Contractor as provided below and elsewhere in the Contract Documents.

11.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month or on a mutually agreed date by City and Contractor.

11.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the City no later than the time of payment. The Contractor further warrants that upon submittal on the first day of each month of an Application for Payment, all Work for which payments have been received from the City shall be free and clear of liens, claims, security interest or other encumbrances in favor of the Contractor or any other person or entity whatsoever.

11.4 Each application for payment must be submitted with Contractor's waiver for period of construction covered by application. Each Application for Payment will be submitted with executed waivers from the subcontractors or sub-contractors and suppliers for the previous period of construction covered by the previous application. The final payment application must be submitted together with or preceded by final or complete waivers from every entity involved with performance of the Work covered by the payment request.

11.5 The Contractor will submit waivers on forms, and executed in a manner, acceptable to City.

11.6 The Contractor shall promptly pay each Subcontractor out of the amount paid to the Contractor because of such Subcontractor's Work the amount to which such Subcontractor is entitled. In the event the City becomes informed that the Contractor has not paid a Subcontractor as herein provided, the City shall have the right, but not the duty, to issue future checks in payment to the Contractor of amounts otherwise due hereunder naming the Contractor and such Subcontractor as joint payees. Such joint check procedure, if employed by the City, shall be deemed payment to the Contractor but shall create no rights in favor of any person or entity beyond the right of the named payees to payment of the check and shall not be deemed to commit the City to repeat the procedure in the future.

11.7 The Project Manager will, upon receipt of a written Application for Payment from the Contractor, review the amount of Work performed during the preceding period and the value thereof at the unit prices contracted. From the amounts so ascertained, there shall be deducted ten percent (10%) to be retained until after final completion of the entire Work to the satisfaction of the City. The Project Manager will submit an estimate each month to the

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

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

12. COMPLETION AND FINAL PAYMENT

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

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

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

13. CLAIMS BY THE CONTRACTOR

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

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

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

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

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

14. CHANGES IN THE WORK

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

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

- 14.5 If unit prices are provided in the Contract, and if the quantities contemplated are so changed in a proposed Change Order that the application of such unit prices to the quantities of Work proposed would cause substantial inequity to the City or to the Contractor, the applicable unit prices shall be equitably adjusted.
- 14.6 The execution of a Change Order by the Contractor shall constitute conclusive evidence of the Contractor's agreement to the ordered changes in the Work, this Contract as thus amended, the Contract Price and the Contract Time. The Contractor, by executing the Change Order, waives and forever releases any claim including impact against the City for additional time or compensation for matters relating to or arising out of or resulting from the Work included within or affected by the executed Change Order.

15. INSURANCE AND BONDS.

- 15.1 The Contractor shall secure and maintain, throughout the duration of the agreement, insurance (on an occurrence basis unless otherwise agreed to) of such types and in at least such amounts as required herein. Contractor shall provide certificates of insurance and renewals thereof on forms acceptable to the City. The City shall be notified by receipt of written notice from the insurer or the Contractor at least thirty (30) days prior to material modification or cancellation of any policy listed on the Certificate.
- 15.2 The Contractor, upon receipt of notice of any claim in connection with this Agreement, shall promptly notify the City, providing full details thereof, including an estimate of the amount of loss or liability. The Contractor shall monitor and promptly notify the City of any reduction in limits of protection afforded under any policy listed in the Certificate (or otherwise required by the Contract Documents) if the Contractor's limits of protection shall have been impaired or reduced to such extent that the limits fall below the minimum amounts required herein. The Contractor shall promptly reinstate the original limits of liability required hereunder and shall furnish evidence thereof to the City.
- 15.3 Minimum Requirements Commercial General Liability Policy Limits -

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

Policy MUST include the following conditions:

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

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

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

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

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

Limits -

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

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

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

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

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

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

16. INDEMNITY

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

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

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

17. SUCCESSORS AND ASSIGNS

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

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

18. NON-DISCRIMINATION LAWS

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

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

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

19. FEDERAL LOBBYING ACTIVITIES

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

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

20. RELATIONS WITH OTHER CONTRACTORS:

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

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

21. RIGHT OF CITY TO TERMINATE

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

22. MISCELLANEOUS:

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

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

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

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

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

CITY OF PRAIRIE VILLAGE

McConnell & Associates Corp.

(typed company name)

By: _____
(signed)

By: _____
(signed)

Eric Mikkelson

(typed name)

Mayor

(typed title)

City of Prairie Village

McConnell & Associates Corp.

(typed company name)

7700 Mission Road

1225 Iron Street

(typed address)

Prairie Village, Kansas 66208

North Kansas City, MO 64116

(typed city, state, zip)

816-842-6066

(typed telephone number)

(date of execution)

(date of execution)

SEAL

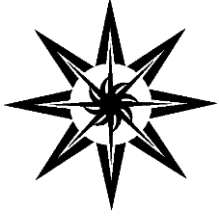
ATTEST:

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.)



ADMINISTRATION/CITY ATTORNEY

Council Meeting Date: September 19, 2022

COU2022-68: Consider updates to City Council Policy: CP028 - Remote Participation for Public Meetings

RECOMMENDATION:

RECOMMEND THE CITY COUNCIL DISCUSS AND APPROVE UPDATES TO CITY COUNCIL POLICY CP028—REMOTE PARTICIPATION FOR PUBLIC MEETINGS.

BACKGROUND:

On March 12, 2020, Kansas Governor Kelly issued a state of disaster emergency related to the Covid-19 pandemic. As part of that, jurisdictions were required or at least highly encouraged to stay in place, avoid gatherings, and avoid holding meetings in person so as to help control spread of the novel coronavirus.

In response to these requirements, in March 2020 the Kansas Attorney General promulgated Kansas Administrative Regulation (K.A.R.) 16-20-1 which addressed how to effectuate compliance with the Kansas Open Meetings Act (K.S.A. 75-4317 *et seq.*) (“KOMA”) during such an emergency declaration. Among other things, this regulation expanded the ability of the City to use “virtual” meetings or to otherwise hold meetings by remote means. Certainly, during the pandemic, both members of the Governing Body, Planning Commission, and other city committee, and also members of the public, became accustomed to holding meetings entirely by remote means.

In 2020 and 2021, the Kansas Legislature passed certain revisions to the Kansas emergency management act, which limited the governor’s authority and brought an end to the Covid-19 state of disaster emergency. This, in turn, brought to an end the Attorney General’s temporary administrative regulation regarding KOMA (“This regulation shall be in effect only as follows: (1) During a state of disaster emergency lawfully declared by the governor pursuant to K.S.A. 48-924(a) through (c), and amendments thereto, or other emergency declaration lawfully declared pursuant to applicable emergency-powers provisions of local, state, or federal law ...”). K.A.R. 16-20-1(a).

Recently, the Attorney General has been clarifying his office’s position, such that cities must allow the public to attend meetings in person. While this does not, in and of itself, prevent the City and its bodies from holding virtual meetings, the position of the Attorney General is that the City must—even for purely remote or virtual meetings—provide a physical location and place for members of the public to come to watch the meeting, listen to it, and participate (*e.g.*, to the extent the meeting constitutes a “public hearing” as required by law).

This would apply to any body of the City that must comply with KOMA, including committees. It is not sufficient—in the absence of the temporary Covid-19 administrative regulation—to provide an online link for members of the public to view and listen to virtual meetings.

The City must provide a room, someone to ensure the meeting can be seen and heard, and other necessary accommodations to allow members of the public to view the public meeting.

Of course, what this also means is that, if possible, bodies of the City—including committees—would likely want to strive, if possible, to have their meetings in person and at City facilities so as to allow the public to attend in person, and avoid duplication of rooms and City staff dedicating to supporting such meetings.

With this guidance, City Staff is again recommending revisions to the City’s remote meeting policy. Primarily, Staff recommend adding language to provisions on predominantly remote meetings that “to the extent required by KOMA and any regulations, temporary or otherwise, issued in accordance with KOMA, the City shall provide an in-person alternative means to access and view the Public Meeting.” However, given that the previous version of the policy was adopted at the beginning of the Covid-19 pandemic, and the City has become more familiar with options and technology, Staff believes it is appropriate to bring additional revisions for the Council’s review and consideration, as contained in the agenda packet.

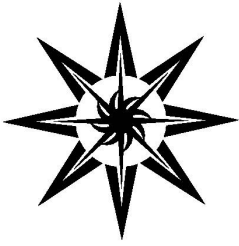
ATTACHMENTS

Updates to City Council Policy: CP028 - Remote Participation for Public Meetings

PREPARED BY

David E. Waters
City Attorney

Date: August 29, 2022



City Council Policy: CP028 - Remote Participation for Public Meetings

Effective Date: ~~December 15~~ _____, ~~2014~~2022

Amends: April ~~—20~~, 2020

Approved By: City Council

I. SCOPE

Any meeting of the Governing Body, the Council Committee of the Whole, the Planning Commission and Board of Zoning Appeals, and any other established committee (unless otherwise specified in this Policy, each a "Body" or collectively, the "Bodies"), and any other meeting which is or would be subject to the requirements of the Kansas Open Meetings Act, as amended (each, a "Public Meeting").

[NOTE TO DRAFT: The Planning Commission is authorized by City Code 16-102 to adopt its own bylaws for the transaction of business and hearing procedures. Except where this Policy reflects requirements of the Kansas open meetings act (KOMA), the Planning Commission may be authorized to operate outside the terms of this Policy; provided, that this Policy may govern the extent to which City staff is authorized by the City Council to handle Remote Participation for the Planning Commission. This Policy nevertheless includes the Planning Commission as a "Body" so as to not have to draw a distinction for the Planning Commission in every case. The Planning Commission should consider proper updates to its own bylaws.]

II. PURPOSE

To establish a policy allowing for and regulating:

- (1) the holding of Public Meetings by a Body with only or predominantly by Remote Participation (defined below); and
- (2) Remote Participation by members of any Body (each, a "Member" or collectively, "Members") who are not physically present at otherwise in-person Public Meetings, so that such Members may participate in the decision process for matters of high importance to the City.

Members of such Bodies are strongly encouraged to physically attend Public Meetings whenever possible.

III. RESPONSIBILITY

City Administrator

IV. DEFINITIONS

"Remote Participation" is defined as the participation of a Member in a Public Meeting via electronic or other means of telecommunication, when such Member is not or cannot be present at an in-person Public Meeting.

As used herein, the term "predominantly" as to Remote Participation shall mean a Public Meeting held pursuant to Section V.A below, such that a quorum of the Body is participating or is called to participate via Remote Participation. The term "in-person" as to a Public Meeting shall mean a Public Meeting not held predominantly by Remote Participation.

Other terms used herein shall be as defined herein.

V. POLICY

A. Public Meetings Held Predominantly by Remote Participation.

1. It is the intent of the City that each Body meeting for a Public Meeting meet physically, in person; provided, that Remote Participation is allowable pursuant to this Policy. Regular and special Public Meetings of any Body may only be held predominantly via Remote Participation to the extent that the Mayor (or other authorized official) has exercised his or her authority under Chapter 1, Article 13 of the Prairie Village City Code, or to the extent that, in the opinion of the chairperson of such Body in

consultation with the City Administrator, any other lawful order of applicable governmental authorities prohibits (or makes impracticable) the holding of in-person Public Meetings.

2. If any Public Meeting is to be held predominantly via Remote Participation, the City and the Body shall comply with all requirements of the Kansas Open Meetings Act, as amended ("KOMA") and any regulations, temporary or otherwise, issued in accordance with KOMA. This includes, but is not limited to, making provision for proper notifications and the ability of the public to view, listen, or otherwise participate in the Public Meeting, subject to the requirements and limitations of KOMA.
3. The Mayor (in the case of Public Meetings of the Governing Body and the Council Committee of the Whole) (or, in the absence of the Mayor, the Council President or his or her designee) and the chairperson of any other Body shall coordinate the holding of any Public Meeting held predominantly via Remote Participation with the City Administrator or his or her designee.
4. If the medium for Remote Participation by the full Body allows, the City shall provide an alternative means to access the Public Meeting for members of the public who do not have internet access; provided, that to the extent required by KOMA and any regulations, temporary or otherwise, issued in accordance with KOMA, the City shall provide an in-person alternative means to access and view the Public Meeting. The City Administrator, or his or her designee, shall provide directions describing how members of the public will be able to electronically access, listen to, or observe the Public Meeting, including in-person. Prior to any Public Meeting held predominantly by Remote Participation, the City Administrator, or his or her designee, shall provide electronic or paper copies of an agenda, if any, to any individual requesting the agenda.
5. The chairperson of any Body shall clearly state each motion before the Body votes and announce the results of the final vote. The chairperson shall also clearly identify and authorize by delegation each Member of the Body or City staff who will be permitted to sign any binding document for the Body.
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B. Individual Remote Participation at In-Person Public Meetings.

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[NOTE TO DRAFT: Consider whether to add Planning Commission (notwithstanding Planning Commission having its own bylaws), or to allow any committee to meet predominantly by Remote Participation; consider whether to allow executive sessions or training, etc., to allow Remote Participation.]
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 - (c) Remote Participation will not be used for any Public Meeting that takes place outside of ~~the Council Chamber at~~ Prairie Village City Hall.
 - (d) All Members of ~~the Governing~~ Body will be subject to a limit of two (2) ~~City Council meetings~~ Public Meetings per calendar year in which Remote Participation is accepted for individual attendance at a Public Meeting that is held in-person. Any Public Meeting of the ~~Governing~~ Body in which a Member utilizes Remote Participation for an in-person Public Meeting, whether attended in whole or in part via Remote Participation, will count toward the two-meeting-per-year limit specified above.

[NOTE TO DRAFT: Verify the two-meeting limit, based on current practices, and enforcement. Breach of this portion of the Policy could certainly provide a basis for removal from committees, but could not serve as a basis for ouster of an elected official.]

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- E.** Each Member participating by Remote Participation shall take care that he or she is not unduly influenced by others, and that his or her participation will be full and absent distraction. Each Member participating by Remote Participation shall state such Member's name and title each time the Member begins speaking or voting so that such Member can be readily identified by remote listeners and observers.
- F.** Each Member participating by Remote Participation shall ensure that microphones, phones, or other electronic devices are muted when such Member is not speaking to that the ability of remote listeners and observers to hear the proceedings is not necessarily impeded.
- G.** In the event that full participation requires the use of documents, briefs, visual presentation of information, or any information conveyed via physical media, cityCity staff will make reasonable efforts to assist in providing Members utilizing Remote Participation with the information, via physical or electronic means.
- H.** Should the Member utilizing Remote Participation experience technical difficulties, the chairperson of the Body, at his or her reasonable discretion, may suspend discussion until the Member is again able to be fully present, or so as to preserve a quorum. Should technical difficulties occur, the chairperson of the Body will retain authority to discontinue any Remote Participation and continue the Public Meeting. In general, delays collectively lasting longer than fifteen (15) minutes will result in discontinuation of Remote Participation by the Member and termination of any remote connection, at the chairperson's discretion.

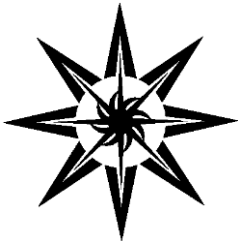
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Rendering set	Standard

Legend:	
Insertion	
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Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	26
Deletions	12
Moved from	0
Moved to	0
Style changes	0
Format changes	0

Total changes	38
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City Council Policy: CP028 - Remote Participation for Public Meetings

Effective Date: _____, 2022

Amends: April 20, 2020

Approved By: City Council

I. SCOPE

Any meeting of the Governing Body, the Council Committee of the Whole, the Planning Commission and Board of Zoning Appeals, and any other established committee (unless otherwise specified in this Policy, each a "Body" or collectively, the "Bodies"), and any other meeting which is or would be subject to the requirements of the Kansas Open Meetings Act, as amended (each, a "Public Meeting").

[NOTE TO DRAFT: The Planning Commission is authorized by City Code 16-102 to adopt its own bylaws for the transaction of business and hearing procedures. Except where this Policy reflects requirements of the Kansas open meetings act (KOMA), the Planning Commission may be authorized to operate outside the terms of this Policy; provided, that this Policy may govern the extent to which City staff is authorized by the City Council to handle Remote Participation for the Planning Commission. This Policy nevertheless includes the Planning Commission as a "Body" so as to not have to draw a distinction for the Planning Commission in every case. The Planning Commission should consider proper updates to its own bylaws.]

II. PURPOSE

To establish a policy allowing for and regulating:

- (1) the holding of Public Meetings by a Body with only or predominantly by Remote Participation (defined below); and
- (2) Remote Participation by members of any Body (each, a "Member" or collectively, "Members") who are not physically present at otherwise in-person Public Meetings, so that such Members may participate in the decision process for matters of high importance to the City.

Members of such Bodies are strongly encouraged to physically attend Public Meetings whenever possible.

III. RESPONSIBILITY

City Administrator

IV. DEFINITIONS

"Remote Participation" is defined as the participation of a Member in a Public Meeting via electronic or other means of telecommunication, when such Member is not or cannot be present at an in-person Public Meeting.

As used herein, the term "predominantly" as to Remote Participation shall mean a Public Meeting held pursuant to Section V.A below, such that a quorum of the Body is participating or is called to participate via Remote Participation. The term "in-person" as to a Public Meeting shall mean a Public Meeting not held predominantly by Remote Participation.

Other terms used herein shall be as defined herein.

V. POLICY

A. Public Meetings Held Predominantly by Remote Participation.

1. It is the intent of the City that each Body meeting for a Public Meeting meet physically, in person; provided, that Remote Participation is allowable pursuant to this Policy. Regular and special Public Meetings of any Body may only be held predominantly via Remote Participation to the extent that the Mayor (or other authorized official) has exercised his or her authority under Chapter 1, Article 13 of the Prairie Village City

Code, or to the extent that, in the opinion of the chairperson of such Body in consultation with the City Administrator, any other lawful order of applicable governmental authorities prohibits (or makes impracticable) the holding of in-person Public Meetings.

2. If any Public Meeting is to be held predominantly via Remote Participation, the City and the Body shall comply with all requirements of the Kansas Open Meetings Act, as amended ("KOMA") and any regulations, temporary or otherwise, issued in accordance with KOMA. This includes, but is not limited to, making provision for proper notifications and the ability of the public to view, listen, or otherwise participate in the Public Meeting, subject to the requirements and limitations of KOMA.
3. The Mayor (in the case of Public Meetings of the Governing Body and the Council Committee of the Whole) (or, in the absence of the Mayor, the Council President or his or her designee) and the chairperson of any other Body shall coordinate the holding of any Public Meeting held predominantly via Remote Participation with the City Administrator or his or her designee.
4. If the medium for Remote Participation by the full Body allows, the City shall provide an alternative means to access the Public Meeting for members of the public who do not have internet access; provided, that to the extent required by KOMA and any regulations, temporary or otherwise, issued in accordance with KOMA, the City shall provide an in-person alternative means to access and view the Public Meeting. The City Administrator, or his or her designee, shall provide directions describing how members of the public will be able to electronically access, listen to, or observe the Public Meeting, including in-person. Prior to any Public Meeting held predominantly by Remote Participation, the City Administrator, or his or her designee, shall provide electronic or paper copies of an agenda, if any, to any individual requesting the agenda.
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CP028 - Remote Participation for Public Meetings

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MAYOR'S ANNOUNCEMENTS
Monday, September 19, 2022

Environmental Committee	09/28/2022	5:30 p.m.
City Council	10/03/2022	6:00 p.m.
Coffee with a Cop	10/05/2022	
Fall Tree Seminar	10/05/2022	7:00 p.m.
Board of Zoning Appeals/Planning Commission	10/11/2022	6:30 p.m.
Parks and Recreation Committee	10/12/2022	5:30 p.m.
Diversity Committee	10/13/2022	5:30 p.m.
City Council	10/17/2022	6:00 p.m.

INFORMATIONAL ITEMS
September 19, 2022

1. Parks and Recreation Committee meeting minutes – May 11, 2022
2. Tree Board meeting minutes – August 3, 2022
3. Arts Council meeting minutes – August 10, 2022

PARKS AND RECREATION COMMITTEE
5:30 p.m., May 11, 2022
Santa Fe Park Pavilion

Minutes

In Attendance:

Chair Terrence Gallagher, Vice Chair Lauren Wolf, Carey Bickford, Matthew Geary, Randy Knight, Diane Mares, Jayme Merklein, Caety Meyer, Jay Moorman, Kevin Murphy, Lauren Ozburn

Staff: Meghan Buum, James Carney, Melissa Prenger

Public Participation

None

Reports

1. Chairperson's Report – Mr. Gallagher welcomed the committee to the May meeting. He reported on the following:
 - The proposed Parks CIP that the committee developed over the last 6 months has been approved by the City Council. It is expected to be approved as part of the broader budget later this summer.
 - The Parks CIP review triggered a broader conversation among the Council regarding the need for continued investment in Harmon and Santa Fe Parks in light of the upcoming destination playground installation. The restroom and Harmon shelter renovation were outside the typical budget request for the annual CIP. This project is now slated for 2024/2025, with proposed funding to begin in the 2023 budget. Mr. Gallagher suggested committee members review the Council recording if interested in the dialogue.
 - Mr. Gallagher provided a City Council update, including aid to Ukraine, Arbor Day recognitions, and the new police K-9, Blitz.

2. Recreation Report – Ms. Buum reported on the following:
 - The YMCA will be holding a community meeting on May 12 at Meadowbrook Park Clubhouse. The City will hold an Ad-Hoc Civic Center Committee meeting the following Thursday, May 19. Committee members Lauren Ozburn and Randy Knight are serving on the ad-hoc group.
 - Staffing at the pool has been complete since March, and we are in great shape to open on May 28.
 - JCPRD, who provides both swimming lessons at the pool and tennis lessons at the Harmon Park courts, have been less successful in their hiring. The first two sessions of swimming lessons have been canceled, and the tennis pro recently resigned. They are still hoping to find a tennis pro in time to hold the summer sessions.

3. Public Works Report – Mr. Carney provided an overview of the work done at the pool:

Bath House:

- New roof & skylights
- Added new exhaust system to women's locker room (shower)
- Removed floor of crow's nest, replaced load-bearing structure, re-built floor
New stucco on crow's nest
- Painted the entryway, locker rooms, exterior of bath house, crow's nest, lockers
Replaced crow's nest windows
- Built new desks in crow's nest
- Replaced concession stand sliding windows Replaced sewer line in men's locker room
New epoxy floors in all pool buildings
- New counter for pool entryway ordered New benches installed in locker rooms
New shower heads in all locker rooms New freezer for concession stand
Replaced concession stand A/C

Outside:

- Upgraded two drinking fountains with bottle fillers Removed old shelter over concession area pavilion
Replaced all umbrellas throughout pool complex
Replaced five shade structure awnings
- Moved one shade structure awning at Adult Pool Painted & resurfaced two slides
- Replaced entry tub at top of slides Replaced one diving board; one on order
Repaired leak in Adult Pool
- Repaired two large Lap Pool leaks in '21 and one in '22 Installed valve system to isolate Adult & Lap Pools
- Re-painted the Lap & Wading Pools
- Installed new Diamond Brite surfacing in Yard & Wading Pools Built two gates for closing off Lap/Adult Pools from swimmers
- Repairing two sections of Yard Pool surface (warranty) Repairing slide surfacing (warranty)
- Finishing stucco touch-up around windows
- Painting concession stand interior walls & staff guard room/lockers Painting slide pool steps

Ms. Prenger reported that due to material delays, construction on the Taliaferro shelter and restroom has been delayed to mid-June.

Consent Agenda

1. Meeting Minutes – March 9, 2022 – The minutes were approved unanimously.

New Business

1. Windsor Restroom – Ms. Prenger shared three restroom concepts for consideration prior to beginning the public input process. All three plans are designed to create a focal point of entry for the park. This park will be a candidate for solar power, however material prices have skyrocketed so it will likely be installed at a point in the future.

The committee showed support for concepts two and three to be vetted further and presented to the public for feedback. (see attachment)

2. Park Walk Through – The committee toured Santa Fe and Harmon Park, with topics including:
 - a. Review of upcoming changes to Santa Fe and Harmon Park related to the inclusive playground (see attachment)
 - b. Overview of recent updates to the pool house as outlined above
 - c. Consideration of community garden expansion – The committee revisited the request to expand the community garden at Harmon Park, and reviewed options to expand to the east and north. Mr. Moorman moved to authorize expansion in both directions, pending the outcome of the utility locates. Ms. Ozburn seconded the motion. The motion failed by a count of 5 to 3. Ms. Mares moved to allow expansion of three beds along the east side, pending the outcome of the utility locates. Mr. Knight seconded the motion and it passed by a count of 5 to 3.

Information Items

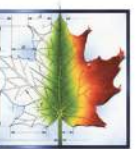
Meeting Schedule

- September 14, 2022
- October 12, 2022
- November 9, 2022

Adjournment

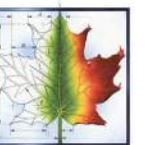


PRAIRIE VILLAGE WINDSOR PARK | RESTROOM LOCATION



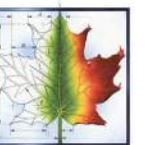


PRAIRIE VILLAGE WINDSOR PARK | OPTION 1



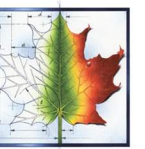


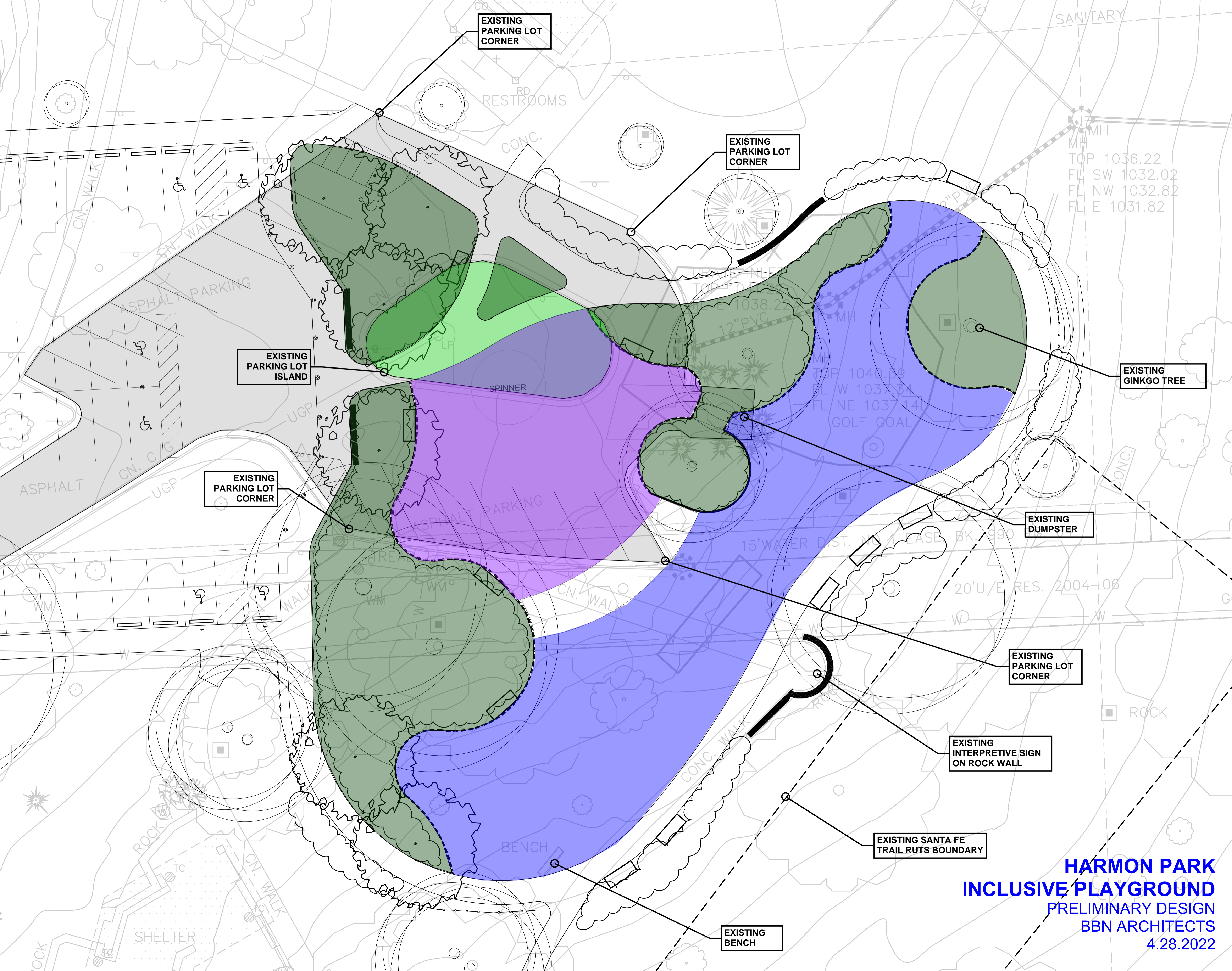
PRAIRIE VILLAGE WINDSOR PARK | OPTION 2





PRAIRIE VILLAGE WINDSOR PARK | OPTION 3





EXISTING
PARKING LOT
CORNER

EXISTING
PARKING LOT
CORNER

EXISTING
PARKING LOT
ISLAND

EXISTING
PARKING LOT
CORNER

EXISTING
GINKGO TREE

EXISTING
DUMPSTER

EXISTING
PARKING LOT
CORNER

EXISTING
INTERPRETIVE SIGN
ON ROCK WALL

EXISTING SANTA FE
TRAIL RUTS BOUNDARY

EXISTING
BENCH

HARMON PARK
INCLUSIVE PLAYGROUND
PRELIMINARY DESIGN
BBN ARCHITECTS
4.28.2022

Tree Board

Minutes of the Meeting Dated August 3, 2022

Attendees:

- Board members: Kevin Dunn; Beth Held; Mark Morgan; Kellan Jenkins; Deborah Brown; Pam Gagel; Karen Hogan; Kim Biagioli
- Other attendees: Nancy Silverforb; Laura and Jack Treml; Bridget Tolle; James Carney; Sarah Crowder

Kevin Dunn brought the meeting to order shortly after 6pm.

1. Introduce New Board Member: Kevin Dunn welcomed new Tree Board member Pam Gagel.
2. Fall Tree Planting: Sarah Crowder spoke about the upcoming tree planting that will take place in October or November of 2022. The budget for fall tree planting this year is \$5000, which will provide approximately 15 trees. Members of the Tree Board will visit south Prairie Fields and the Meadowlake neighborhoods to determine if those locations are good candidates for the fall tree planting program. The Tree Board will make a final decision on location by the September meeting so that Sarah Crowder's team can start outreach and planning.
3. Review and approve minutes from June 1, 2022: The Tree Board voted to approve the minutes from the June 1, 2022 meeting.
4. Jazz Festival: The Tree Board will have a booth at the Prairie Village Jazz Festival on September 10, 2022. Tree Board members will volunteer for shifts at the booth. The Tree Board discussed providing a half-page advertisement for the Fall Seminar and the Sustainable Landscape Solutions Reimbursement Program. The Tree Board also discussed creating a QR code that directs attendees to the Tree Board website where they can sign up for a raffle by providing their email address. James Carney will inquire about any city requirements to conduct the raffle and collect email addresses. Beth Held proposed using the Jazz Festival as an opportunity to obtain public feedback regarding the Prairie Village Strategic Plan.
5. Fall Seminar Update: The Fall Seminar will take place on October 5, 2022 at 7pm in the Meadowbrook Clubhouse Birch Room. The panel of speakers will discuss the aging tree canopy and how to protect it. Members of the Tree Board will arrange for refreshments.
6. Strategic Plan for Tree Board: Beth Held provided an update on the Strategic Plan for the Tree Board. A draft of the Strategic Plan is currently under review by Greg Shelton.
7. Villas at Corinth Bradford Pears: The Villas at Corinth requested that Prairie Village pay for the removal of Bradford pear trees on public right of way areas. The trees are otherwise healthy. The Tree Board and Public Works will monitor the situation going forward.
8. Agenda for next meeting: Deborah Brown requested that the Arbor Day poster contest be added to the agenda for the next meeting.

9. Tree Board Response to tree removal at 5225 W. 69th Street: Bridget Tolle provided an overview of the procedure that Public Works followed prior to the removal of the tree at 5225 W. 69th Street. Since the enactment of the tree protection ordinance one year ago, 346 trees have been saved. Prairie Village has permitted the removal of 90 private trees and 8 right of way trees. 132 trees have been or will be planted on private property and 28 right of way trees have been or will be planted. The Tree Board discussed how to ensure neighbors receive notice prior to a tree removal and documentation of the procedure the city followed prior to approving the tree removal.

Kevin Dunn adjourned the meeting at 7:47pm.

PRAIRIE VILLAGE ARTS COUNCIL | MEETING MINUTES
Zoom
Wednesday, August 10, 2022 5:30 PM

BUSINESS MEETING

Bonnie Limbird called the meeting to order at 5:46 pm. Council members present were Shelly Trewolla, Inga Selders, Bonnie Limbird, and Abby Margariel. Not in attendance: Jessie Cartwright, Trudy Williams, and Laurel Thomas.. (We are currently at a committee size of seven.) Staff member, Nickie Lee, was also in attendance.

Inga and Shelly moved and seconded respectively to approve the **Agenda**. The agenda was approved unanimously.

Public Participation none

Bonnie recorded these minutes.

Abby moved to approve the **Consent Agenda**. A second is not required for consent agenda. The Consent Agenda was unanimously approved.

Bonnie and Inga gave a **City Council Update**. Bonnie and Inga report on happenings with the Ad Hoc Housing committee and Nickie Lee's promotion to Deputy City Administrator from Finance Director.

Current Year Financial Update: Current balance of \$39,275.

Old Business:

Consider the opportunity to collaborate with the Environmental Committee for the **Mayor's Monarch Pledge** in spring of 2023 at the Native Plant Sale. We discussed this again, and updated Abby on the opportunity. Abby indicated interest in helping with that event, and Shelly wondered if it might be an opportunity to do a piece of public art inspired by a butterfly at/near the Master's Gardeners garden at Wassmer Park. Shelly moved that Arts Council continue to be involved in a matter to be decided, and Abby seconded. Motion carried on a 3-1 vote.

Consider \$150.00 cost to print additional/updated **ArtWalk** cards for JazzFest. Shelly moved to allot \$150 for new ArtWalk cards, and Inga seconded. Motion carries.

New Business:

Consider a **different meeting date/time** for the remainder of 2022 to accommodate a Vice Chair conflict.

- September - Friday, Sept. 9 at 4:00 pm - right before SotA 2022 reception
- October - cancel
- November - Thursday, Nov. 10 at 5:30pm - recap last reception and year
- December - cancel

Inga moved and Shelly seconded to accept these dates. Motion carries.

Consider the cost for volunteers to attend **KS State Arts Council Symposium** with ACJC during Early

Bird registration. (\$20-\$35-\$45 per person)

- Shelly would like to go Friday.
- Bonnie would like to go both days
- Inga would maybe like to do Friday.
- Abby would get back to us on which/if any days.
- Bonnie will check with Laurel and Trudy.

Shelly moved and Abby seconded to approve the cost for all 6 attendees. Motion carries.

Bonnie will confirm attendees in a few days for Nickie to register us.

The meeting was adjourned at 6:32 PM.

PLANNING COMMITTEE AS A WHOLE

EVENT REPORTS

Sunflowers for Ukraine @ MBPC (Bonnie)

This partner event had 90+ pieces of donated artwork that was pretty much all auctioned off. Small event but great speakers. All money will go through the US Ukraine Foundation to the Kyiv Rotary Refugee Initiative.

Painted Chairs at Corinth Square (Bonnie & Laurel)

All chairs were auctioned off. First Washington is working on our donation check from the net proceeds of the auction.

Jul/Aug Exhibit w/ Stanziola/McNerney @ RGE (Bonnie)

We had around 20 attendees to the reception, most were friends/contacts of Lori Stanziola.

Aug/Sep Collab with Images Art members @ MBPC (Bonnie)

The installation went smoothly. No reception for this show.

PLANNING AHEAD

Sep 10th - JazzFest - Shelly

- Shelly updated us on the backdrop and blow-up instruments. Shelly is working on the design for the backdrop, which she will paint and then blow up to 6 feet and print on a banner.
- Need to bring supplies for sanitizing blow up instruments at JazzFest between kids.
- Gates open at 2:00, and sign up on the sign-up ...
- Kid friendly.

Sept/Oct - State of the Arts 2022 @RGE, winners travel to MBPC in Oct - Bonnie & Shelly

- Shelly will lead the install because Bonnie will be OOT.
- We can ask artists to hang their piece, and then our volunteers will make it all look good
- Public Works will bring in our 3D cases on Friday afternoon.
- Nickie will leave keys out for us somewhere.
- Shelly suggested letting the winners know that they will be receiving an award, not specifically the award, but that they will receive some award on Thursday.

Nov/Dec – Stemp/Nye/Charpentier

- Shelly and Laurel are still coordinating.

MARKETING

- Bonnie will schedule a KCUR ad for SotA, update the website, work on the newsletter.

ONGOING/FUTURE MEETING ISSUES

Homesteaders Plaque - on order!

OTHER

Volunteers - We will be looking at onboarding new volunteers, and finding the right number of volunteers for our committee. Inga expressed concern that we should try to get back up to 12 members, and Bonnie shared that it's been hard to find volunteers for the amount of work that we do.

The Planning Committee as a Whole meeting ended around 7:05 PM.

END