

The public may attend the meeting in person or view it online at

<http://pvkansas.com/livestreaming>

**COUNCIL MEETING AGENDA  
CITY OF PRAIRIE VILLAGE  
Monday, August 7, 2023  
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**

Discussion of petitions – David Waters

**VII. PUBLIC PARTICIPATION**

Participants may speak for up to three minutes. To submit written comment to the Council regarding current agenda items, please email [cityclerk@pvkansas.com](mailto:cityclerk@pvkansas.com) prior to 3 p.m. on August 7. 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. Consider approval of regular City Council meeting minutes – July 17, 2023
2. Consider approval of expenditure ordinance 3028
3. Consider approval of 2024 Mission Hills contract and 2024 Mission Hills budget
4. Consider agreement with Evergy Metro, Inc., for MIRD0008: Mission Road, 83<sup>rd</sup> Street to 95<sup>th</sup> Street mill and overlay project

**IX. COMMITTEE REPORTS**

**X. MAYOR'S REPORT**

**XI. STAFF REPORTS**

**XII. OLD BUSINESS**

**XIII. NEW BUSINESS**

COU2023-47 Consider approval of agreement with Pro Electric to perform electrical service repairs at Windsor Park  
Melissa Prenger

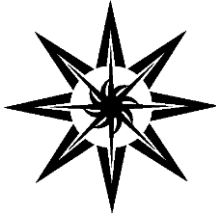
COU2023-48 Consider approval of construction contract for Windsor Park restroom improvements  
Melissa Prenger

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

XV. **EXECUTIVE SESSION**

XVI. **ANNOUNCEMENTS**

XVII. **ADJOURNMENT**



**DISCUSS PETITIONS PERTAINING TO REZONING AND THE CITY'S FORM OF GOVERNMENT THAT WERE RECENTLY SUBMITTED TO CITY AND COUNTY OFFICIALS**

The Council and City Attorney will have an opportunity to publicly discuss the petitions that were submitted to the City and Johnson County Election Office.

**BACKGROUND**

On August 1, the City of Prairie Village received an Administrative Petition with a proposed Ordinance related to the City's existing zoning processes, including changing the definition of rezoning, with the goal of limiting the City's ability to add allowable housing types to existing residential zones.

Two additional Petitions were submitted to the Johnson County Election Office since they were considered Legislative, as required by State Statute. One petition calls for an election of the city to vote on the abandonment of the mayor-council form of government, which has been Prairie Village's form of government since receiving its charter in 1951. The third and final petition calls for an election of the city to vote on the adoption of the mayor-council-manager form of government.

**ATTACHMENTS:**

- Johnson County Legal Review Petition(s) Statutory Compliance
- Copy of Submitted Petitions w/Cover Letters from Rex Sharp Law Firm
- Copy of City Attorney's Letter to the Johnson County Election Commissioner

**PREPARED BY**

Wes Jordan  
City Administrator  
August 3, 2023

**JOHNSON COUNTY**  
KANSAS  
**Legal Department**

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MARY BUHL  
ASSISTANT COUNTY COUNSELOR  
(913) 715-1900  
MARY.BUHL@JOCOGOV.ORG

rsharp@midwest-law.com

May 1, 2023

SENT BY U.S. MAIL AND ELECTRONICALLY

Rex A. Sharp  
Sharp Law  
4820 W. 75th Street  
Prairie Village, KS 66208

Re: Review of Petition Forms Submitted on April 25, 2023

Dear Mr. Sharp:

This office received your cover letter and five petition forms on Tuesday, April 25, 2023. Your cover letter and the petition forms were hand delivered to the office. Your letter lists the five petition forms as: Initiative Regarding Rezoning, Initiative Regarding Rental Safety, Initiative Regarding Term Limits, For Abandonment of the Mayor-Council Form of Government, and For Adoption of Mayor-Council-Manager Form of Government.

As before, I have reviewed the petition forms for County Counselor Peg Trent. The Johnson County District Attorney's Office has also reviewed the petition forms. You have submitted five forms, although we approved, with caveats, the form of the question for some on previous submissions. Therefore, we are treating these as new petition forms. The petition forms differ from each other, in part, and differ from previous submissions; therefore, we will address each petition form individually.

K.S.A. 25-3601, et seq., requires that a copy of a petition be submitted to the county counselor for an opinion as the legality of the form of the question, and our opinion is limited to that issue. In our review of your petition question form, we have considered certain legal authority, including K.S.A. 25-3601, et seq., K.S.A. 25-620, K.S.A. 12-184 et seq., K.S.A. 12-3013, K.S.A. 12-1039, et seq., and K.S.A. 12-10a01, et seq.

Kansas law provides for the determination of the sufficiency of the substantive portions of the petition, which requires the exercise of discretionary judgment, as the responsibility of the

governing body of the public entity to which the petition is addressed. Accordingly, the sufficiency of the petition and of the questions stated, and form in which the question is presented, will be determined by the City of Prairie Village. However, a letter from this office that approves the legality of the form of the question would give a rebuttable presumption that the form of the question complies with the requirements of K.S.A. 25-3601, et seq.

### **I. Initiative Regarding Rezoning:**

As noted above, K.S.A. 25-3601(a) requires that "[s]ubject to the provisions of subsection (d), if a petition is required or authorized as a part of the procedure applicable to the state as a whole or any legislative election district or to any county, city, school district or other municipality, or part thereof, the provisions of K.S.A. 25-3601 et seq., and amendments thereto shall apply."

Subsection (d) provides that when there is another statute with specific requirements that differ from K.S.A. 25-3601, et seq., the provisions of the more specific statute shall control.

This petition form states a request that the City of Prairie Village pass an ordinance and references an ordinance set forth above the remaining petition form.

K.S.A. 12-3013 (b) states that "[e]ach proposed ordinance set forth in full or submitted by title generally descriptive of the contents thereof shall be preceded by the words "[s]hall the following be adopted?" The form you have submitted presents an ordinance preceded by the words "[s]hall the following be adopted?" as required by K.S.A. 25-620 and K.S.A. 12-3013.

Therefore, we believe that the form of the question presented in this petition form conforms with statutory requirements, with these caveats: the ballot question must include the entire ordinance or the ordinance title "generally descriptive of the contents," as required by K.S.A. 12-3013(b), and you must be sure that the ordinance you propose is in proper form, pursuant to Kansas law.

Please note that we do not provide an opinion as to whether the petition form is appropriate under K.S.A. 12-3013, whether the petition or ordinance you have submitted is in proper form, or whether the statements made in the ordinance are accurate, including whether Kansas statutes delegate rezoning issues to a governing body.

In addition, we offer the following comments for your consideration. The petition form adds certain language that either does not match statutory language or is in addition to required statutory language. The heading for the signature column is "Printed Name/Signature," which could be considered as acceptable alternatives, instead of the required signatures. K.S.A. 25-3602(b) and K.S.A. 12-3013. Some of the "Whereas" clauses seem to be in incorrect order. The circulator's recital appears to be missing language required by K.S.A. 12-3013.

Although this opinion is limited to the form of the question, we again recommend careful review of the legal requirements for the petition form, the form of the question, the signature, verification, and circulation requirements, the timing, and the filing requirements. We also note that you have submitted five petitions, so we caution that combining or mixing petition forms or signature pages could affect the validity of the petition process.

## **II. Initiative Regarding Rental Safety:**

As previously stated, K.S.A. 25-3601 (a) requires that "Subject to the provisions of subsection (d), if a petition is required or authorized as a part of the procedure applicable to the state as a whole or any legislative election district or to any county, city, school district or other municipality, or part thereof, the provisions of K.S.A. 25-3601 et seq., and amendments thereto shall apply." Subsection (d) provides that when there is another statute with specific requirements that differ from K.S.A. 25-3601, the provisions of the more specific statute shall control.

This petition form states a request that the City of Prairie Village pass an ordinance and references an ordinance set forth above the remaining petition form.

K.S.A. 12-3013 (b) states that "[e]ach proposed ordinance set forth in full or submitted by title generally descriptive of the contents thereof shall be preceded by the words "[s]hall the following be adopted?" The form you have submitted presents an ordinance preceded by the words "Shall the following be adopted?" as required by K.S.A. 25-620 and K.S.A. 12-3013.

Therefore, we believe that the form of the question presented in this petition form conforms with statutory requirements, with these caveats: the ballot question must include the entire ordinance or the ordinance title "generally descriptive of the contents," as required by K.S.A. 12-3013(b), and you must be sure that the ordinance you propose is in proper form, pursuant to Kansas law.

Please note that we do not offer an opinion as to whether the petition form is appropriate under K.S.A. 12-3013, whether the petition or ordinance you have submitted is in proper form, or whether the statements made in the ordinance are accurate.

In addition, we offer the following comments for your consideration. The petition adds certain language that either does not match statutory language or is in addition to required statutory language. The heading for the signature column is "Printed Name/Signature," which could be considered as acceptable alternatives, instead of the required signatures. The circulator's recital appears to be missing language required by K.S.A. 12-3013.

Although this opinion is limited to the form of the question, we recommend a careful review of the legal requirements for the petition form, the form of the question, the signature, verification, and circulation requirements, the timing, and the filing requirements. We also note that you have submitted five petitions, so we caution that combining or mixing petition forms or signature pages could affect the validity of the petition process.

## **III. Initiative Regarding Term Limits:**

As before, K.S.A. 25-3601(a) requires that "[s]ubject to the provisions of subsection (d), if a petition is required or authorized as a part of the procedure applicable to the state as a whole or any legislative election district or to any county, city, school district or other municipality, or part thereof, the provisions of K.S.A. 25-3601 et seq., and amendments thereto shall apply."

Subsection (d) provides that when there is another statute with specific requirements that differ from K.S.A. 25-3601, the provisions of the more specific statute shall control.

K.S.A. 12-3013(b) states that "Each proposed ordinance set forth in full or submitted by title generally descriptive of the contents thereof shall be preceded by the words "[s]hall the following be adopted?" The form you submitted presents an ordinance preceded by the words "Shall the following be adopted?" as required by K.S.A. 25-620 and K.S.A. 12-3013.

Therefore, we believe that the form of the question presented on this petition form conforms with statutory requirements, with these caveats: the ballot question must include the entire ordinance or the ordinance title "generally descriptive of the contents," as required by K.S.A. 12-3013(b), and you must be sure that the ordinance you propose is in proper form, pursuant to Kansas law.

Please note that we do not offer an opinion as to whether your petition form is appropriate under K.S.A. 12-3013, whether the petition or ordinance you have submitted is in proper form, or whether the statements made in the ordinance are accurate.

In addition, we offer the following comments for your consideration. The petition adds certain language that either does not match statutory language or is in addition to required statutory language. The form does not contain a request to the governing body. K.S.A. 12-3013(a). The heading for the signature column is "Printed Name/Signature," which could be considered as acceptable alternatives, instead of the required signatures. The heading for the address does not reference the statutory language indicating a residence street and number. K.S.A. 25-3602(b) and K.S.A. 12-3013. The circulator's recital is missing language required by K.S.A. 12-3013.

Although this opinion is limited to the form of the question, we recommend a careful review of the legal requirements for the petition form, the form of the question, the signature, verification, and circulation requirements, the timing, and the filing requirements. We also note that you have submitted five petitions, so we caution that combining or mixing petition forms or signature pages could affect the validity of the petition process.

#### **IV. For Abandonment of the Mayor-Council Form of Government:**

Again, K.S.A. 25-3601(a) requires that "[s]ubject to the provisions of subsection (d), if a petition is required or authorized as a part of the procedure applicable to the state as a whole or any legislative election district or to any county, city, school district or other municipality, or part thereof, the provisions of K.S.A. 25-3601 et seq., and amendments thereto shall apply." Subsection (d) provides that when there is another statute with specific requirements that differ from K.S.A. 25-3601, the provisions of the more specific statute shall control.

The title to this petition form states the purpose is to vote on the abandonment of the "Mayor-Council" form of government. The petition form cites K.S.A. 12-184 as its authority. It is our understanding that the City of Prairie Village is a mayor council form of government. K.S.A. 12-184b and, by reference, K.S.A. 12-184, permits the certification of a petition requesting the submission of a question to the voters. K.S.A. 12-184(a). A petition would need to comply with K.S.A. 25-3601, et seq.

K.S.A. 25-3602 (b)(1) requires the petition to "...[s]tate the question which the petitioners seek to bring to an election in the form of a question as it should appear on the ballot in accordance with the requirements of K.S.A. 25-620 and K.S.A. 25-3601 ...." If the statutory authorization provided different direction, the more specific statute would govern; however, we do not see that in this instance. K.S.A. 25-620 requires that the language "Shall the following be adopted?" precede the proposition or question to be voted on. Because this petition form does not include the language required by K.S.A. 25-620, we do not believe the form of the question complies with statutory requirements.

In addition to this issue, we add these caveats. K.S.A. 12-184b(b) states, in part: "Any city which has operated for four or more years under a form of government may abandon such form and adopt a different form of government." We believe that Prairie Village has operated for more than four years under its current form of government; however, if it has not, our opinion would change because K.S.A. 12-184b and K.S.A. 12-184 would not provide the authority for this petition. Also, please note that we do not offer an opinion as to whether the petition or ordinance you have submitted is in proper form, and whether the statements made in the ordinance are accurate.

The following comments are for your consideration. Your petition adds certain language that either does not match statutory language or is in addition to required statutory language. The heading for the signature column is "Printed Name/Signature," which could be considered as acceptable alternatives, instead of the required signatures. Finally, this format leaves the possibility of an election result in which one of the last two petition forms submitted (IV and V), passes but the other does not, which could produce contradictory results and may not be appropriate for a ballot.

Although this opinion is limited to the form of the question, we recommend a careful review of the legal requirements for the petition form, the form of the question, the signature, verification, and circulation requirements, the timing, and the filing requirements. We also note that you have submitted five petitions, so we caution that combining or mixing petition forms or signature pages could affect the validity of the petition process.

#### **V. For Adoption of the Mayor-Council-Manager Form of Government:**

K.S.A. 25-3601(a) requires that "[s]ubject to the provisions of subsection (d), if a petition is required or authorized as a part of the procedure applicable to the state as a whole or any legislative election district or to any county, city, school district or other municipality, or part thereof, the provisions of K.S.A. 25-3601, et seq., and amendments thereto shall apply." Subsection (d) provides that when there is another statute with specific requirements that differ from K.S.A. 25-3601, the provisions of the more specific statute shall control.

The title to this petition form states the purpose is to vote on the adoption of the "Mayor-Council Manager" form of government. The petition form cites K.S.A. 12-1030 as authority its authority.



K.S.A. 25-3602 (b)(1) requires the petition to "...[s]tate the question which the petitioners seek to bring to an election in the form of a question as it should appear on the ballot in accordance with the requirements of K.S.A. 25-620 and K.S.A. 25-3601 ...." If the statutory authorization provides different direction, the more specific statute would govern. K.S.A. 12-1039(c) provides "the form of the ballot." However, K.S.A. 12-1039(a) also provides that the petition shall conform to requirements of Article 36 of Chapter 25. K.S.A. 25-3602(b)(1) requires that the question shall comply with K.S.A. 25-620, which requires that the language "Shall the following be adopted?" precede the proposition or question to be voted on. Because this petition form does not include the language required by K.S.A. 25-620, we do not believe the form of the question complies with statutory requirements.

In addition to this issue, we add these caveats. We do not offer an opinion as to whether the petition or ordinance you have submitted is in proper form, and whether the statements made in the ordinance are accurate.

We offer the following comments for your consideration. The petition form adds certain language that either does not match statutory language or is in addition to required statutory language. The heading for the signature column is "Printed Name/Signature," which could be considered as acceptable alternatives, instead of the required signatures. Finally, this format leaves the possibility of an election result in which one of the last two petition forms submitted (IV and V), passes but the other does not, which could produce contradictory results and may not be appropriate for a ballot.

This opinion is limited to the form of the question, and we again recommend careful review of the legal requirements for the petition form, the form of the question, the signature, verification, and circulation requirements, the timing, and the filing requirements. We also note that you have submitted five petitions, so we again caution that combining or mixing petition forms or signature pages could affect the validity of the petition process.

Sincerely,

  
Mary Martin Buhl  
Assistant County Counselor

Cc: Shawn Minihan, Asst. District Attorney  
Jacob Gontesky, Asst. District Attorney  
Peg Trent, Chief Counsel, Johnson County  
David E. Waters, City Attorney, Prairie Village

# SHARP LAW

RECEIVED

APR 25 2023

JO CO. LEGAL DEPT  
→ Recd. 4-25-23, hand delivered  
late p.m.

April 25, 2023

Rex A. Sharp\*  
Manager, Sharp Law, LLP  
4820 W. 75<sup>th</sup> Street  
Prairie Village, KS 66208  
(913) 901-0500  
[rsharp@midwest-law.com](mailto:rsharp@midwest-law.com)

Peggy Trent  
Johnson County Counselor  
111 S. Cherry Street, Suite 3200  
Olathe, KS 66061

Dear Ms. Trent,

Thanks for your prompt response to my April 6 submission. I have considered your response, and provide the revised versions for your further consideration and County Counselor approval of the enclosed Petitions:

1. Initiative Regarding Rezoning
2. Initiative Regarding Rental Safety
3. Initiative Regarding Term Limits
4. For Abandonment of the Mayor-Council Form of Government
5. For Adoption of the Mayor-Council Manager Form of Government

If you have any questions, please email me.

Sincerely,



Rex A. Sharp

**INITIATIVE PETITION UNDER K.S.A 12-3013 FOR AN ORDINANCE REGARDING LIMITING REZONING THAT WOULD ALLOW ACCESSORY DWELLING UNITS OR OTHER DWELLINGS FOR MORE THAN ONE FAMILY TO RESIDE ON A LOT IN A SINGLE FAMILY RESIDENTIAL ZONING DISTRICT**

Shall the following be adopted?

**AN ORDINANCE REGARDING LIMITING REZONING THAT WOULD ALLOW ACCESSORY DWELLING UNITS OR OTHER DWELLINGS FOR MORE THAN ONE FAMILY TO RESIDE ON A LOT IN A SINGLE FAMILY RESIDENTIAL ZONING DISTRICT**

WHEREAS, Kansas statutes do not address (a) whether two or more families should be allowed to reside at the same time in a single family residential zone, or (b) whether accessory dwelling units (ADUs) or other dwellings in addition to the single family dwelling house in single family residential zoning districts should be allowed;

WHEREAS, the City Council of the City of Prairie Village, Kansas has been considering these subjects for almost a year, and over 200 people have publicly oppose any legislation or ordinance that would permit them;

WHEREAS, the City Council of the City of Prairie Village, Kansas has indicated it can legislate to allow both (a) and (b) above, it stands to reason that local legislation can also refuse to or limit how;

WHEREAS, the broad and overall public purpose of single family residential zoning districts is (a) to permit one family to reside on a lot at a time, not two or more families on a lot at a time; and, (b) to permit only the single family dwelling house on a lot;

WHEREAS, enacting this Ordinance would provide the ways and means to accomplish that broad and overall public purpose;

WHEREAS, the City of Prairie Village, Kansas has been completely zoned and built out for decades, with over 90% of all of the land being in a single family residential zoning district;

WHEREAS, the local public Purpose and Intent of zoning is set forth in The Code of the City of Prairie Village, Kansas, Chapter 19.01.010;

WHEREAS, the local public Purpose and Intent of the local zoning code is geared to the single family residential zoning district to ensure the quiet enjoyment of the land by preventing congestion and overuse of a residential lot, encourage green space, and prevent increased density further burdening governmental services such as water, sewer, stormwater, electricity, internet, roads, sidewalks, parking, police, fire, parks, and schools;

WHEREAS, the City of Prairie Village, Kansas already is one of the most densely populated cities in Kansas;

WHEREAS, enacting this Ordinance would provide the ways and means to accomplish the local public purpose and intent stated above;

WHEREAS, determining whether to allow a single or multiple families on a lot or allowing one or more dwellings per lot in a single family residential zoning district does not require specialized municipal knowledge or intimate knowledge of the city's finances;

WHEREAS, the City of Prairie Village, Kansas has been for decades and continues to be welcoming to all people to reside within it;

WHEREAS, the City of Prairie Village, Kansas has received state and national awards for livability as is;

WHEREAS, the current residents of the City of Prairie Village, Kansas were aware of and relied on the stability of the zoning rules and the zoning district when buying their residences in single family residential zones;

WHEREAS, it is the public purpose to allow owners of land to have control over the zoning of their land, and those nearby to have notice, opportunity to be heard, and protest if something is done which may impact their quiet enjoyment of their single family dwelling;

WHEREAS, Kansas statutes do not address whether an owner's land can be rezoned by the government without the owner's consent, and this Ordinance would address that issue;

WHEREAS, rezoning is not done statewide;

WHEREAS, Kansas statutes do not delegate rezoning exclusively to the governing body; and,

WHEREAS, this Ordinance provides a simple, general, and permanent solution to all of these unresolved local public issues.

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

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

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

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

**Section 3:** If any provision in this Ordinance is deemed unconstitutional, contrary to law, or not permitted by initiative, that provision shall be read as if not a part of the Ordinance and the rest of the Ordinance shall remain in full force and effect.

**Section 4:** This ordinance shall take effect and be in force from and after its publication in the official city newspaper as provided by law.

**PASSED** by the City Council of the City of Prairie Village, Kansas on \_\_\_\_\_, 2023.

**APPROVED:**

\_\_\_\_\_  
Eric Mikkelson, Mayor

**ATTEST:**

\_\_\_\_\_  
Adam Geffert, City Clerk

**APPROVED AS TO LEGAL FORM:**

\_\_\_\_\_  
David E. Waters, City Attorney

The electors (voters) of Prairie Village, Kansas signed below request that the governing body pass the Ordinance referenced above or submit the same to a vote of the electors.

Petition Signatures

I have personally signed this Petition. I am a registered elector of the state of Kansas and of Prairie Village, Kansas and my residence address is correctly written after my name.

Printed Name/Signature

Residence Address (Street and Number)/PV/Zip Code

Date of Signing

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State of Kansas ss:  
County of Johnson

I am the circulator of this petition, I believe the statements therein, and I am qualified to circulate this petition and I personally witnessed the signing of the petition by each person whose name appears thereon. I am a U.S. citizen, at least 18 years of age, have not been convicted of a felony, and agree to submit to the jurisdiction of the State of Kansas, including its agencies, political subdivisions and election officials, for purposes of subpoena enforcement regarding the integrity and reliability of the petition process.

\_\_\_\_\_  
(Signature of circulator)

\_\_\_\_\_  
(Circulator's residence address)

Subscribed and sworn to before me this \_\_\_\_ day of \_\_\_\_\_, 2023.

\_\_\_\_\_  
[Signature of Notary Public]

My Commission Expires: \_\_\_\_\_

Notary Public

SEAL



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

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

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

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

Yes  No

The electors (voters) of Prairie Village, Kansas signed below request that the governing body submit the question above to a vote of the Prairie Village electorate pursuant to K.S.A. 12-184 to abandon the mayor-council (strong mayor) form of government.

Petition Signatures

I have personally signed this Petition. I am a registered elector of the state of Kansas and of Prairie Village, Kansas and my residence address is correctly written after my name.

Printed Name/Signature

Residence Address (Street and Number)/PV/Zip Code

Date of Signing

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- 36. \_\_\_\_\_
- 37. \_\_\_\_\_
- 38. \_\_\_\_\_

State of Kansas ss:  
County of Johnson

I am the circulator of this petition and I am qualified to circulate this petition and I personally witnessed the signing of the petition by each person whose name appears thereon. I am a U.S. citizen, at least 18 years of age, have not been convicted of a felony, and agree to submit to the jurisdiction of the State of Kansas, including its agencies, political subdivisions and election officials, for purposes of subpoena enforcement regarding the integrity and reliability of the petition process.

\_\_\_\_\_  
(Signature of circulator)

\_\_\_\_\_  
(Circulator's residence address)

Subscribed and sworn to before me this \_\_\_\_ day of \_\_\_\_\_, 2023.

\_\_\_\_\_  
[Signature of Notary Public] My Commission Expires: \_\_\_\_\_

Notary Public SEAL

**PETITION FOR AN ELECTION OF THE CITY OF PRAIRIE VILLAGE, KANSAS TO VOTE ON THE ADOPTION OF THE MAYOR-COUNCIL MANAGER FORM OF GOVERNMENT**

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

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

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

Yes  No

Pursuant to K.S.A. 12-1039(b), the membership of the Prairie Village City Council under the new mayor-council manager form of government shall be one member from each of the six wards plus an at large Mayor, all with staggered terms as follows: Only the 2023 elected City Council member from each ward shall continue to serve in the new City Council along with the currently elected at large Mayor. Those 2023 elected City Council members from Wards 1, 2, and 3 shall serve four year terms, while those 2023 elected City Council members from Wards 4, 5, and 6 as well as the current at large Mayor shall serve two year terms. Thereafter, all wards will elect just one member to the City Council to serve four year terms.

The electors (voters) of Prairie Village, Kansas signed below request that the governing body submit the above question, and terms of office, to the Prairie Village electorate pursuant to K.S.A. 12-1039 to adopt the mayor-council manager form of government.

Petition Signatures

I have personally signed this petition. I am a registered elector of the state of Kansas and of Prairie Village, Kansas and my residence address is correctly written after my name.

Printed Name/Signature

Residence Address (Street and Number)/PV/Zip Code

Date of Signing

1. \_\_\_\_\_
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- 35. \_\_\_\_\_
- 36. \_\_\_\_\_
- 37. \_\_\_\_\_
- 38. \_\_\_\_\_

State of Kansas ss:  
County of Johnson

I am the circulator of this petition and I am qualified to circulate this petition and I personally witnessed the signing of the petition by each person whose name appears thereon. I am a U.S. citizen, at least 18 years of age, have not been convicted of a felony, and agree to submit to the jurisdiction of the State of Kansas, including its agencies, political subdivisions and election officials, for purposes of subpoena enforcement regarding the integrity and reliability of the petition process.

\_\_\_\_\_  
(Signature of circulator)

\_\_\_\_\_  
(Circulator's residence address)

Subscribed and sworn to before me this \_\_\_\_ day of \_\_\_\_\_, 2023.

\_\_\_\_\_  
[Signature of Notary Public]

My Commission Expires: \_\_\_\_\_

Notary Public

SEAL

# SHARP LAW

Rex A. Sharp\*  
Manager, Sharp Law, LLP  
4820 W. 75<sup>th</sup> Street  
Prairie Village, KS 66208  
(913) 901-0500  
[rsharp@midwest-law.com](mailto:rsharp@midwest-law.com)

August 1, 2023

## **HAND DELIVERED**

Adam Geffert  
Prairie Village City Clerk  
7700 Mission Road  
Prairie Village, KS 66208

Dear Sir/Madam,

The PV Ad Hoc Housing Committee was comprised of UCS housing members and, with scant public input, unanimously recommended changing R-1 Single Family Residential zones to allow two or more families per lot, not on a certain lot, but City-wide. Without much discussion, the PV City Council unanimously voted to send that recommendation to the Planning Commission for implementation.

PV United was formed by Prairie Village residents, including several former City Council Members, to stop this rezoning effort. PV United does not cater to outside interests, and crosses party lines as local politics should be and is nonpartisan.

PV United supporters came to the PV City Council in unprecedented numbers to stop the city-wide R-1 rezoning. Resident after resident took time out of their schedules to address their concerns. The PV City Council ignored this unprecedented outpouring of concern. Literally closing its eyes and ears. Instead, the PV City Council cut down citizen participation at its meetings (even contemplating doing away with it altogether). When that did not work, the Council and Mayor encouraged residents to join and support an alternative group called PV4All (started by the Mayor's former campaign manager). The PV4All organization suggested that PV was racist and called out those who opposed R-1 rezoning as extremists, trolls, and racists. This politics of name-calling, labeling, and division emanated directly from the PV City Council.

PV United placed Stop Rezoning signs in the front yards of supporters, numbering in the several hundreds. PV4All countered with its signs numbering in the dozens and had to invite people from outside PV to speak at PV Council meetings to support it. PV City Council



Page 2  
Adam Geffert  
August 1, 2023

continued to ignore the overwhelming majority of its PV constituents. The Stop Rezoning movement is now 3,600 strong and growing in PV. Enclosed are 82 Stop Rezoning Petitions submitted as a group totaling 3,707 PV voter signatures, as well as an accompanying proposed Ordinance matching the Stop Rezoning Petition language. It's time to put this issue to a vote, to rest, and let the City heal.

We urge you to set aside party politics, personal agendas, and outside interests, and place the Stop Rezoning Petition on the November 7, 2023 ballot. The PV City Council may either (1) adopt the ordinance within 20 days *without alteration*, or (2) call a special election after 20 days, unless a regular city election is to be held within 90 days thereafter in which case the ordinance should be submitted at that election, to see if a majority of the voters in the city approve of the ordinance. If approved, the ordinance goes into effect and may not be repealed or amended without another election or without having been in effect for ten years.

Further, we would urge the PV Council Members to stop attacking the Stop Rezoning Petition and the other initiative petitions from the PV Council chambers as you are supposed to represent your 3,707 and growing group of PV resident petition signers. Nor should their taxpayer money (or anyone's taxpayer money) be spent against it or in furtherance of your personal agenda. As an interested PV resident, if you feel so inclined, engage in honest debate about how city-wide rezoning of R-1 will benefit existing PV residents and oppose it, if you will, with your own money and time as the 3,707 Stop Rezoning supporters have done.

The same goes for bringing the form of government into a more mainstream size and type. PV sits on an island of one with its form of government. Every ward will maintain its 1/6<sup>th</sup> representation, the mayor will be elected at large, and the size will be more streamlined, efficient, and cheaper (if the PC City Council decides to pay itself salaries and benefits). And if the voters like your governance, they will elect your representatives at the ballot box on November 7. Let PV residents' vote.

Sincerely,



Rex A. Sharp

Enclosure

cc: w/o Enclosure Prairie Village City Council

**Rezoning  
Petition**

- 11
- 25
- 6
- 54
- 38
- 99
- 55
- 28
- 53
- 16
- 22
- 91
- 100
- 90
- 68
- 81
- 99
- 23
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- 87
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- 97
- 56
- 42
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- 97
- 14
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93  
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13  
Total 3,707

ORDINANCE NO. \_\_\_\_

**AN ORDINANCE REGARDING LIMITING REZONING THAT WOULD ALLOW ACCESSORY DWELLING UNITS OR OTHER DWELLINGS FOR MORE THAN ONE FAMILY TO RESIDE ON A LOT IN A SINGLE FAMILY RESIDENTIAL ZONING DISTRICT**

WHEREAS, Kansas statutes do not address (a) whether two or more families should be allowed to reside at the same time in a single family residential zone, or (b) whether accessory dwelling units (ADUs) or other dwellings in addition to the single family dwelling house in single family residential zoning districts should be allowed;

WHEREAS, the City Council of the City of Prairie Village, Kansas has been considering these subjects for almost a year, and over 200 people have publicly oppose any legislation or ordinance that would permit them;

WHEREAS, the City Council of the City of Prairie Village, Kansas has indicated it can legislate to allow both (a) and (b) above, it stands to reason that local legislation can also refuse to or limit how;

WHEREAS, the broad and overall public purpose of single family residential zoning districts is (a) to permit one family to reside on a lot at a time, not two or more families on a lot at a time; and, (b) to permit only the single family dwelling house on a lot;

WHEREAS, enacting this Ordinance would provide the ways and means to accomplish that broad and overall public purpose;

WHEREAS, the City of Prairie Village, Kansas has been completely zoned and built out for decades, with over 90% of all of the land being in a single family residential zoning district;

WHEREAS, the local public Purpose and Intent of zoning is set forth in The Code of the City of Prairie Village, Kansas, Chapter 19.01.010;

WHEREAS, the local public Purpose and Intent of the local zoning code is geared to the single family residential zoning district to ensure the quiet enjoyment of the land by preventing congestion and overuse of a residential lot, encourage green space, and prevent increased density further burdening governmental services such as water, sewer, stormwater, electricity, internet, roads, sidewalks, parking, police, fire, parks, and schools;

WHEREAS, the City of Prairie Village, Kansas already is one of the most densely populated cities in Kansas;

WHEREAS, enacting this Ordinance would provide the ways and means to accomplish the local public purpose and intent stated above;

WHEREAS, determining whether to allow a single or multiple families on a lot or allowing one or more dwellings per lot in a single family residential zoning district does not require specialized municipal knowledge or intimate knowledge of the city's finances;

WHEREAS, the City of Prairie Village, Kansas has been for decades and continues to be welcoming to all people to reside within it;

WHEREAS, the City of Prairie Village, Kansas has received state and national awards for livability as is;

WHEREAS, the current residents of the City of Prairie Village, Kansas were aware of and relied on the stability of the zoning rules and the zoning district when buying their residences in single family residential zones;

WHEREAS, it is the public purpose to allow owners of land to have control over the zoning of their land, and those nearby to have notice, opportunity to be heard, and protest if something is done which may impact their quiet enjoyment of their single family dwelling;

WHEREAS, Kansas statutes do not address whether an owner's land can be rezoned by the government without the owner's consent, and this Ordinance would address that issue;

WHEREAS, rezoning is not done statewide;

WHEREAS, Kansas statutes do not delegate rezoning exclusively to the governing body; and,

WHEREAS, this Ordinance provides a simple, general, and permanent solution to all of these unresolved local public issues.

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

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

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

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

**Section 3:** If any provision in this Ordinance is deemed unconstitutional, contrary to law, or not permitted by initiative, that provision shall be read as if not a part of the Ordinance and the rest of the Ordinance shall remain in full force and effect.

**Section 4:** This ordinance shall take effect and be in force from and after its publication in the official city newspaper as provided by law.

**PASSED** by the City Council of the City of Prairie Village, Kansas on \_\_\_\_\_, 2023.

**APPROVED:**

---

Eric Mikkelson, Mayor

**ATTEST:**

---

Adam Geffert, City Clerk

**APPROVED AS TO LEGAL FORM:**

---

David E. Waters, City Attorney

# SHARP LAW

Rex A. Sharp\*  
Manager, Sharp Law, LLP  
4820 W. 75<sup>th</sup> Street  
Prairie Village, KS 66208  
(913) 901-0500  
[rsharp@midwest-law.com](mailto:rsharp@midwest-law.com)

August 1, 2023

**HAND DELIVERED**

Fred Sherman  
Johnson County Election Officer  
2101 E. Kansas City Road  
Olathe, KS 66061

Dear Mr. Sherman,

Enclosed are 41 Adopt Petitions submitted as a group totaling 2,176 signatures. Please determine their sufficiency as provided by law, and advise if the Adopt question will be placed on the ballot for November 7, 2023.

Sincerely,



Rex A. Sharp

Enclosure

cc: w/o Enclosure [peg.trent@jocogov.org](mailto:peg.trent@jocogov.org)  
w/o Enclosure [mary.buhl@jocogov.org](mailto:mary.buhl@jocogov.org)

Adopt/Reduce  
Petition Signatures

	12
	4
	8
	73
	21
	67
	42
	66
	24
	29
	27
	16
	21
	67
	22
	100
	84
	78
	101
	80
	96
	100
	100
	11
	14
	19
	79
	93
	58
	21
	25
	73
	99
	77
	97
	90
	94
	29
	38
	12
	9
Total	2176



# SHARP LAW

Rex A. Sharp\*  
Manager, Sharp Law, LLP  
4820 W. 75<sup>th</sup> Street  
Prairie Village, KS 66208  
(913) 901-0500  
[rsharp@midwest-law.com](mailto:rsharp@midwest-law.com)

August 1, 2023

**HAND DELIVERED**

Fred Sherman  
Johnson County Election Officer  
2101 E. Kansas City Road  
Olathe, KS 66061

Dear Mr. Sherman,

Enclosed are 41 Abandon Petitions submitted as a group totaling 2,178 signatures. Please determine their sufficiency as provided by law, and advise if the Abandon question will be placed on the ballot for November 7, 2023.

Sincerely,



Rex A. Sharp

Enclosure

cc: w/o Enclosure [peg.trent@jocogov.org](mailto:peg.trent@jocogov.org)  
w/o Enclosure [mary.buhl@jocogov.org](mailto:mary.buhl@jocogov.org)

Abandon  
Petitions

- 11
- 4
- 8
- 97
- 28
- 38
- 92
- 98
- 79
- 100
- 99
- 81
- 71
- 19
- 14
- 71
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- 42
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- 16
- 22
- 21
- 11
- 100
- 78
- 83
- 56
- 68
- 98
- 12
- 9

Total 2,178



DAVID E. WATERS  
DIRECT DIAL: 913-327-5189  
dwaters@spencerfane.com

August 2, 2023

**VIA HAND DELIVERY  
AND EMAIL TO [FRED.SHERMAN@JOCOGOV.ORG](mailto:FRED.SHERMAN@JOCOGOV.ORG)**

Mr. Fred Sherman  
Johnson County Election Office  
2101 E. Kansas City Rd.  
Olathe, Kansas 66061

Re: City of Prairie Village, Kansas; Election Office Review of Petitions

Dear Mr. Sherman:

I serve as city attorney for the City of Prairie Village, Kansas (the "City"). On August 1, 2023, the following petition for adoption of a municipal ordinance was submitted to the City Clerk, copies of which will be included with the hand-delivered original of this letter we expect to deliver tomorrow:

- An Ordinance Regarding Limiting Rezoning That Would Allow Accessory Dwelling Units or Other Dwellings for More Than One Family to Reside on a Lot in a Single Family Residential Zoning District (the "Rezoning Petition").

I further understand that two other petitions may have been submitted to your office:

- Petition for an Election of the City of Prairie Village, Kansas to Vote on the Abandonment of the Mayor-Council Form of Government (the "Mayor-Council Abandonment Petition"); and
- Petition for an Election of the City of Prairie Village, Kansas to Vote on the Adoption of the Mayor-Council Manager Form of Government (the "Mayor-Council-Manager Adoption Petition").

Each of these petitions have been provided to your office for certification as to signatures and otherwise for your review as to legal requirements.

**Rules Applicable to all Petitions.**

We first offer the following summary of legal requirements applicable to your review of the petitions.

Signatures must include the residence address of each signer (K.S.A. 12-3013(a)), and above the spaces provided for signatures, the petitions must contain the following recital:

*I have personally signed this petition. I am a registered elector of the state of Kansas and of the City of Prairie Village and my residence address is correctly written after my name.*

K.S.A. 25-3602(b). The recital shall be followed by blank spaces for the signature, residence address and date of signing for each person signing the petition. *Id.* Per K.S.A. 12-3013(a), one person signing “each paper” must have made an oath before an officer competent to administer oaths that such person believes that each signature to the paper appended is a genuine signature of the person whose name it purports to be.

At the end of each set of documents carried by each circulator, the petition must contain a recital in substance as follows:

*I am the circulator of this petition and I am qualified to circulate this petition and I personally witnessed the signing of the petition by each person whose name appears thereon.*

---

*(signature of circulator)*

---

*(circulator's residence address)*

K.S.A. 25-3602(b)(4). This recital must be verified upon oath or affirmation before a notarial officer in the manner prescribed by K.S.A. 53-501 *et seq.* K.S.A. 25-3602(b)(4).

The "petition circulator" must be a United States citizen, at least 18 years of age, must not have been convicted of a felony unless such person has been pardoned or restored to such persons' civil rights, and must submit to the jurisdiction of the state for purposes of subpoena enforcement regarding the integrity and reliability of the petition process. K.S.A. 25-3608. See also Kansas Secretary of State, Kansas Election Standards, Chapter 5, Petitions, pg. V-5.

There is a “staleness” factor applied to petitions. Per K.S.A. 25-3602(d), “any petition shall be null and void unless submitted to the county election officer or other designated official (city clerk under K.S.A. 12-3013) within 180 days of the date of the first signature on the petition.” The county clerk is the county election officer, except in those counties served by election commissioners. See K.S.A. 19-3422. Of course, Johnson County is served by an election commissioner, your office.

The county election officer is the entity that verifies signature requirements. See K.S.A. 25-3601(a):

*The sufficiency of each signature and the number thereof on any such petition shall be determined in accordance with the provisions of K.S.A. 25-3601 through 25-3607, and amendments thereto, by the county election officer or such other official as designated in the applicable statute.*

In addition to K.S.A. 25-3601(a), the Kansas Secretary of State acknowledges in its guidance that petitions are transmitted to the county election officer for processing because the election office has custody of the voter registration records. See <https://www.kssos.org/forms/elections/Petition%20Circ.%20Guide.pdf>. The Kansas Secretary of State also sets out guidelines for the verification of petitions in Chapter V of its published Elections Standards. See <https://sos.ks.gov/elections/election-standards/Kansas-Election-Standards-Chapter-V-Petitions.pdf>.

As to the Mayor-Council Abandonment Petition and the Mayor-Council-Manager Adoption Petition, the county election officer should also make all determinations as to whether other requirements of K.S.A. 25-3601 *et seq.* have been met, per K.S.A. 12-184(c):

*Any petition requesting the submission of a question hereunder shall be filed with the county election officer of the county in which the city is located. Such petition shall conform to the requirements of article 36 of chapter 25 of the Kansas Statutes Annotated and amendments thereto, and **its sufficiency shall be determined in the manner therein provided and shall be certified to the city clerk by the county election officer.** (Emphasis supplied.).*

### **Rezoning Petition**

The Rezoning Petition appears to have been submitted under the authority of K.S.A. 12-3013. Per K.S.A. 12-3013(a) and K.S.A. 25-3602(b), the Rezoning Petition must have been validly signed by at least twenty-five percent (25%) of the electors who voted at the last preceding regular City election. The City would request verification from your office, as provided and in accordance with the requirements set forth above. The City offers the following comments to aid in your review:

- K.S.A. 25-3601(a) requires that the Rezoning Petition have been submitted to the county attorney or county counselor for a determination of the legality of the form of the question contained in the petition. The City understands that at least three (3) versions of the Rezoning Petition were so submitted, on March 20, 2023, then on April 6, 2023, and last on April 25, 2023. The Johnson County Legal Department provided its last response on May 1, 2023. Accordingly, to the extent any signatures pre-date the last version submitted to the County, it may be the case that such signatures were for a different form of Rezoning Petition than that submitted now to your office, and such signatures were subsequently appended to this later form.
- The circulator's recital at the end of the Rezoning Ordinance states:

*I am the circulator of this petition, I believe the statements therein, and I am qualified to circulate this petition and I personally witnessed the signing of the petition by each person whose name appears thereon. I am a U.S. citizen, at least 18 years of age, have not been convicted of a felony, and agree to submit to the jurisdiction of the State of Kansas, including its agencies, political subdivisions and election officials, for purposes of subpoena enforcement regarding the integrity and reliability of the petition process.*

Missing from this is the mandated language of K.S.A. 12-3013(a) that the circulator believes "that each signature to the paper appended is the genuine signature of the person whose name it purports to be." The upshot of this omission is that while the circulator may have witnessed a signature, there is no verification that the persons signing the petition were in fact who they purported to be.

- It appears that many of the signature pages do not contain the recital required by K.S.A. 25-3602(b). Those signatures must be invalidated because if someone signed a blank signature page, that page did not include the required affirmation.
- We note that the Rezoning Petition may not be placed on the ballot by your office without further actions or approvals by the City Council, including but not limited to a determination that the Rezoning Petition is administrative in nature. See K.S.A. 12-3013. The City Council reserves all of its rights in this respect.

### **Mayor-Council Abandonment Petition.**

The Mayor-Council Abandonment Petition appears to have been submitted under the authority of K.S.A. 12-184 and K.S.A. 12-184b which, taken together, provide that a city must submit the question of abandoning its form of government if it receives a petition signed by at least 10% of all electors in the City. The City would request verification from your office, as provided and in accordance with the requirements set forth above. The City offers the following comments to aid in your review:

- K.S.A. 25-3602(a) provides that the petition must be filed with the county election officer or other official, if another official is designated in the applicable statutes. K.S.A. 12-184(c) requires that the petition be filed “with the county election officer of the county in which the city is located”. K.S.A. 12-184b does not provide for filing with any other official. If the Mayor-Council Abandonment Petition has not been filed with your office, then this statutory requirement would not have been satisfied.
- K.S.A. 25-3601(a) requires that the Mayor-Council Abandonment Petition have been submitted to the county attorney or county counselor for a determination of the legality of the form of the question contained in the petition. The City understands that at least three (3) versions of the Mayor-Council Abandonment Petition were so submitted, on March 20, 2023, then on April 6, 2023, and last on April 25, 2023. The Johnson County Legal Department provided its last response on May 1, 2023, and the County specifically stated that the form of the question does not comply with statutory requirements. This should, by itself, serve to not have the question placed on a ballot. A copy of the County’s May 1 letter is attached to or enclosed herewith.
- Furthermore, to the extent any signatures pre-date the last version submitted to the County (which, again, was rejected), it may be the case that such signatures were for a different form of Mayor-Council Abandonment Petition than that submitted now to your office, and such signatures were subsequently appended to this later form.
- In addition, and as stated by the County in rejecting the form of the Mayor-Council-Abandonment Petition, K.S.A. 25-3602(b)(1) requires the petition to “... [s]tate the question which the petitioners seek to bring to an election in the form of a question as it should appear on the ballot in accordance with the requirements of K.S.A. 25-620 and K.S.A. 25-3601 ...” K.S.A. 25-620 requires that the language “Shall the following be adopted?” precede the proposition or question to be voted on. Because this petition form does not include the language required by K.S.A. 25-620, the form of the question does not comply with statutory requirements.
- Considering the Mayor-Council Abandonment Petition with the Mayor-Council-Manager Adoption Petition (discussed below), the County Counselor further stated that “this format leaves the possibility of an election result in which one of [the Mayor-Council Abandonment Petition and the Mayor-Council-Manager Adoption Petition] passes but the other does not, which could produce contradictory results and may not be appropriate for a ballot.” The City would agree and submits that your office should not approve petitions that could produce conflicting election results.
- It appears that many of the signature pages do not contain the recital required by K.S.A. 25-3602(b). Those signatures must be invalidated because if someone signed a blank signature page, that page did not include the required affirmation.

### **Mayor-Council-Manager Adoption Petition.**

The Mayor-Council-Manager Adoption Petition appears to have been submitted under the authority of K.S.A. 12-184, K.S.A. 12-184b, and K.S.A. 12-1039 which, taken together, provide that a city must submit the question of adopting a manager form of government if it receives a petition signed by at least 10% of all electors in the City. The City would request verification from your office, as provided and in accordance with the requirements set forth above. The City offers the following comments to aid in your review:

- K.S.A. 25-3602(a) provides that the petition must be filed with the county election officer or other official, if another official is designated in the applicable statutes. K.S.A. 12-184(c) requires that the petition be filed “with the county election officer of the county in which the city is located”. Neither K.S.A. 12-184b or K.S.A. 12-1039 provide for filing with any other official. If the Mayor-Council-Manager Adoption Petition has not been filed with your office, then this statutory requirement would not have been satisfied.
- K.S.A. 25-3601(a) requires that the Mayor-Council-Manager Adoption Petition have been submitted to the county attorney or county counselor for a determination of the legality of the form of the question contained in the petition. The City understands that at least three (3) versions of the petition were so submitted, on March 20, 2023, then on April 6, 2023, and last on April 25, 2023. The Johnson County Legal Department provided its last response on May 1, 2023, and the County Counselor specifically stated that the form of the question does not comply with statutory requirements. This should, by itself, serve to not have the question placed on a ballot.
- Furthermore, to the extent any signatures pre-date the last version submitted to the County (which, again, was rejected), it may be the case that such signatures were for a different form of Mayor-Council-Manager Adoption Petition than that submitted now to your office, and such signatures were subsequently appended to this later form.
- In addition, and as stated by the County Counselor in rejecting the form of the Mayor-Council-Abandonment Petition, K.S.A. 25-3602(b)(1) requires the petition to “... [s]tate the question which the petitioners seek to bring to an election in the form of a question as it should appear on the ballot in accordance with the requirements of K.S.A. 25-620 and K.S.A. 25-3601 ...” K.S.A. 25-620 requires that the language “Shall the following be adopted?” precede the proposition or question to be voted on. Because this petition form does not include the language required by K.S.A. 25-620, the form of the question does not comply with statutory requirements.
- Considering the Mayor-Council-Manager Adoption Petition with the Mayor-Council Abandonment Petition (discussed above), the County Counselor further stated that “this format leaves the possibility of an election result in which one of [the Mayor-Council Abandonment Petition and the Mayor-Council-Manager Adoption Petition] passes but the other does not, which could produce contradictory results and may not be appropriate for a ballot.” The City would agree and submits that your office should not approve petitions that could produce conflicting election results.
- It appears that many of the signature pages do not contain the recital required by K.S.A. 25-3602(b). Those signatures must be invalidated because if someone signed a blank signature page, that page did not include the required affirmation.
- K.S.A. 12-1039(c) provides that, should the question presented by the Mayor-Council-Manager Adoption Petition pass (presumably, in this case, at the November 2023 election),

then “at the next regular city election [that being in 2025] the governing body of the city shall be elected as provided in the resolution or petition”. However, the Mayor-Council-Manager Adoption Petition conflicts with this statutory directive, in that it would have that, immediately upon approval of the question in 2023:

*Only the 2023 elected City Council member from each ward shall continue to serve in the new City Council along with the currently elected at large Mayor.*

The Mayor-Council-Manager Adoption Petition does not provide for waiting until the next regular election, as required by K.S.A. 12-1039(c), and seeks immediately to alter the membership of the governing body. Accordingly, the Mayor-Council-Manager Adoption Petition conflicts with Kansas statute and is not appropriate for the ballot.

- K.S.A. 12-1039(b) further requires that the “petition shall establish the membership and terms of office of the governing body”. As to the mayor (a member of the governing body), the Mayor-Council-Manager Adoption Petition merely states that the “the **currently elected** at large Mayor” would continue to serve, but that such “**current** at large Mayor shall serve two year terms” (emphasis supplied). However, the petition does not establish the terms of office for the position of mayor moving forward, or beyond the “current” person serving as mayor. Therefore, the Mayor-Council-Manager Adoption Petition does not satisfy the requirements of Kansas statute and is not appropriate for the ballot.

Thank you for your attention to these matters. Please do not hesitate to contact the undersigned if you have any questions.

Best regards,

**SPENCER FANE LLP**



By: David E. Waters

cc: The Honorable Eric Mikkelson (via email)  
Mr. Wes Jordan (via email)  
Mr. Adam Geffert (via email)  
Ms. Peg Trent, County Counselor (via email)

Enclosures





**CITY COUNCIL  
CITY OF PRAIRIE VILLAGE  
JULY 17, 2023**

The City Council of Prairie Village, Kansas, met in regular session on Monday, July 17, at 6:00 p.m. Mayor Mikkelson presided.

**ROLL CALL**

Roll was called by the City Clerk with the following Councilmembers in attendance: Chad Herring, Cole Robinson, Inga Selders, Ron Nelson, Lauren Wolf, Dave Robinson, Greg Shelton, Courtney McFadden, and Ian Graves. Staff present: Byron Roberson, Chief of Police; Keith Bredehoeft, Director of Public Works; Melissa Prenger, Public Works; City Attorney David Waters, attorney with Spencer Fane LLP; Wes Jordan, City Administrator; Nickie Lee, Deputy City Administrator; Meghan Bum, Assistant City Administrator; Jason Hannaman, Finance Director; Adam Geffert, City Clerk.

**PLEDGE OF ALLEGIANCE**

**APPROVAL OF AGENDA**

Mayor Mikkelson noted that the agenda had been amended to include a debrief on the recent storm that had caused widespread damage in the City, as well as a request to authorize City staff to remove tree debris caused by the storm.

**Mr. Cole Robinson made a motion to approve the modified agenda as presented. Mr. Herring seconded the motion, which passed 9-0.**

**INTRODUCTION OF STUDENTS AND SCOUTS**

No students or scouts were present at the meeting.

**PRESENTATIONS**

- Storm debrief - Mayor Mikkelson shared information about the strong thunderstorm that caused significant damage and sustained power outages in the City on Friday, July 14, 2023, and noted that he had declared a local state of emergency. Winds nearing 100 MPH caused substantial damage to over 50 homes, about a dozen of which remained uninhabitable. There were no known serious injuries or deaths due to the storm. The Mayor added that 186,000 customers were without power at the outage peak, with 8,200 of those located in Prairie Village.
- Chief Steve Chick of Consolidated Fire District #2 said that 196 calls for service were received in the first 24 hours after the storm began. Firefighters



responded to a total of 12 structure fires and three structure collapses, as well as 23 other types of fires. Chief Chick added that the department was still dealing with an increased call load three days after the event, including several responses to generator fires.

- Mr. Bredehoeft provided a Public Works update, noting that crews worked Friday evening as well as full days Saturday and Sunday to clear roads, and that information about a citywide debris pickup effort would be shared soon.
  - Chief Roberson stated that during the four-hour period after the storm began, officers responded to 72 calls for service, which was about three times the typical number of calls received on a busy Friday night. In total, officers responded to 234 calls over the weekend.
- **COU2023-46 Authorize the City Administrator and/or Public Works Director to remove tree debris caused by storm damage**

Mr. Jordan said that Council Policy 215 stated that “Council must authorize the collection and disposal of tree debris for public and/or private trees requiring more than two days of Public Works Department efforts.” He added that as part of the City’s emergency management planning efforts, contractual agreements were in place when assistance from outside organizations was needed with debris management, and that Council had approved a debris management agreement with AshBritt on September 6, 2022.

Mr. Jordan stated that costs for the cleanup were not easy to determine. He noted that the City spent \$183,000 to handle the winter storm damage in January 2019, and the current damage was estimated to be 1.5 to 2 times greater. Including manpower, the estimated cleanup cost was thought to be between \$500,000 and \$750,000.

He stated that the City was in communication with Johnson County Emergency Management about FEMA public assistance, the primary mechanism used by the federal government to assist local governments after a disaster. The threshold to receive FEMA funds for Johnson County in 2023 is \$2,707,791.72, and the state threshold is \$5,200,047.60.

Mr. Jordan said that tree debris would begin being picked up on Monday, July 24, and would likely continue for several weeks. Funds would be expended from the solid waste management contingency fund and/or reserve fund.

**Mr. Dave Robinson made a motion to authorize expenditure authority for the City Administrator and/or Public Works Director to manage, approve, and oversee plans to remove tree debris caused by storm damage. The motion was seconded by Mr. Herring and passed 9-0.**



- Stacey Hammond with BT&Co., P.A., gave a presentation on the 2022 audit of the City. She noted that the company had issued an unmodified audit opinion, which was the best opinion that could be received.

### **PUBLIC PARTICIPATION**

- Pam Justus, Ward 5, shared concerns about certain proposals recommended by the Ad Hoc Housing Committee.
- Nancy Ash, 9 LeMans Court, stated her opposition to the proposed community center.
- Jim Handley, Ward 2, noted his concerns about rising property taxes.
- Marilyn Thomas, 7862 Howe Circle, stated her opposition to the proposed community center.
- Leon Patton, Ward 5, shared his thoughts on the recent housing forums and noted problems with the housing survey.
- Karen Gibbons, 71<sup>st</sup> Street, stated her support of petitions to address zoning matters and the City government's structure.

### **CONSENT AGENDA**

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

1. Consider approval of regular City Council meeting minutes - June 20, 2023
2. Consider renewal of franchise agreement with Unite Private Networks, LLC
3. Consider an ordinance approving the Prairie Village Jazz Festival as a special event and authorizing the sale, consumption and possession of alcoholic liquor and cereal malt beverages within the boundaries of a barricaded public area of the event
4. Consider request for alcoholic beverage waiver for Harmon Park for the Prairie Village Jazz Festival
5. Consider approval of short-term special use permit for the KU Kickoff event at Corinth Square

**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, D. Robinson, Shelton, McFadden, Graves. The motion passed 9-0.**

### **COMMITTEE REPORTS**

- **Discuss City Hall improvement options as presented to Finance Committee**

Ms. Prenger shared information about several potential improvement options to address inadequacies at City Hall. She noted that when the presentation was shared with the Finance Committee, its recommendation was to move forward with



new construction with a cost ceiling of \$30 million rather than remodeling the existing structure. She added that if the recommendation was approved by Council, a design agreement with an architect would be presented at an upcoming meeting.

Ms. Prenger noted that the existing building had several issues that would need to be dealt with if a remodel were selected, such as a lack of thermal zoning, an electrical system that no longer met code, inefficient windows, and lack of proper fire protection, as well as an overall lack of space. The following construction items were presented:

- Option 1: Basic renovation - would separate staff and public areas and maintain existing footprint. Cost would be approximately \$12 million.
- Option 2: Heavy renovation - would separate staff and public areas, add separate entrances, improves staff proximity, maintain similar footprint, and achieve LEED Gold status. Cost would be approximately \$22 million.
- Option 3: New construction - would add a courtroom, separate entrances, give the Police Department the ability to use existing City Hall space and allow for future expansion, and would achieve LEED Platinum status.
  - Phase A option: Police Department would stay in current location and expand into MPR space, new City Hall building would be placed on south end of parking lot, existing driveway remains. Cost would be approximate \$31 million.
  - Phase B option: Would include Phase A options along with the addition of a central entrance, park lawn and plaza area. Cost would be approximately \$4 million.

Ms. Prenger said that the Finance Committee had recommended Option 3, Phase A, with a cost ceiling of \$30 million.

Mr. Nelson asked what the useful life of a new building would be, and whether the design would anticipate future changes and needs. Ms. Prenger said the useful life would be approximately 50 - 75 years, and that the building would be designed to allow for future growth.

**Mr. Shelton made a motion to proceed with Option 3, Phase A, per the recommendation of the Finance Committee. The motion was seconded by Ms. Wolf and passed 9-0.**

Ms. Prenger said that the design team would come back Council with three options for new construction prior to moving forward with schematic design.

- Mrs. McFadden provided a summary of the annual VillageFest event on July 4, noting that there were an estimated 10,000 attendees. She thanked those who helped plan the event and served as volunteers.



- Mr. Shelton shared details about the Environmental Committee’s booth at VillageFest, at which information about Monarch butterflies and beekeeping were shared.
- Mr. Cole Robinson noted that the police pension fund had a strong second quarter and had grown by 8.37% since the beginning of the year. He also provided a recap of the Diversity Committee’s recent town hall event on transgender issues, and the “PV Seen” inclusive playdate event at Porter Park on June 24.
- Mr. Dave Robinson said that planning for JazzFest continued, and that the event was less than two months away.

### **MAYOR’S REPORT**

- The Mayor stated the following events had taken place since the prior Council meeting:
  - Two housing forums to discuss ideas for R-2, R-3, R-4, and commercial zoning districts, on June 22 and July 13
  - The Prairie Village community gardeners’ summer solstice party
  - The United Community Services’ Human Services Summit on June 21
- The Mayor noted there was an Arts Council gallery reception on July 12
- The Mayor noted the following upcoming events:
  - A ribbon-cutting event at the remodeled Meadowbrook Shopping Center on July 19
  - A First Suburbs Coalition meeting on July 21
  - The Ward 3 primary election on August 1
- The Mayor also read a list winners of Ingram’s “Best in Business Kansas City”, which included several businesses in Prairie Village.

### **STAFF REPORTS**

- Mr. Jordan noted that the July plan of action was included in the meeting packet.
- Ms. Buom stated that the City would be hosting a blood drive on July 19.

### **OLD BUSINESS**

None

### **NEW BUSINESS**

**COU2023-42**

**Consider approval of agreement with Holmes Murphy and Associates (HMA) for employee benefit consulting and broker services**



Ms. Volanti stated that the City had submitted an RFP for consulting and broker services to obtain professional assistance in support of the City's current health, dental, vision, life and accidental death/disability, long term disability, employee assistance program, and Section 125 programs for 117 full time employees.

Five responses were received and reviewed by the selection committee, and four firms were interviewed. After making reference calls and reviewing all factors, HMA finished at the top of the rankings and offered the most competitive pricing for the requested services.

Ms. Volanti noted that HMA was a local company that has provided similar services to cities such as Leawood, Merriam, Lee's Summit, and Raymore. Local municipalities that were contacted for reference checks all highly recommended HMA.

Beginning in January 2024, the annual consulting fee would total \$45,000, paid on a quarterly basis.

**Mr. Dave Robinson made a motion to approve the agreement with Holmes, Murphy and Associates (HMA) as presented. The motion was seconded by Mrs. McFadden and passed 9-0.**

**COU2023-43      Consider separate memorandums of understanding with the YMCA and Johnson County Library to complete the public engagement and site design study for a community center and relocation of the Corinth Library branch within the project study area**

Mr. Jordan said at the April 17, 2023, Council meeting, staff was directed to work on a next phase memorandum of understanding (MOU) between the City, YMCA, and Johnson County Library in which all parties agreed to complete the public engagement and site design study for a community center and relocation of the library. Like the first MOU, funding for the study would be shared at a cost not to exceed \$150,000, with the three parties each contributing up to \$50,000.

He noted that the following motions were needed:

- Motion #1: Move to approve the memorandum of understanding with the Johnson County Library as outlined by staff
- Motion #2: Move to approve the memorandum of understanding with the YMCA as outlined by staff

Mr. Jordan stated that participants would procure one or more qualified, third-party professionals and architects to conduct the initial design process, which would include engagement of the public on the site design study for the project study area, as well as



designs for the community center and library branch. The purpose of the engagement process would be to give individual members and stakeholders in the local community the opportunity to review concepts, site designs, and renderings and offer feedback to advise participants on the project concepts and designs that appeal to the community and public, including the project as a whole and the center and branch individually.

Mr. Jordan also said that the purpose of the project site design study was to accomplish the following:

- (1) Develop architectural renderings and designs of the community center, library branch, and public open spaces within the project for consideration in the community engagement evaluation
- (2) Engage in programming planning to determine what activities would occur and how much space would be required for the library and City with respect to building sizes and associated parking needs
- (3) Study site feasibility with respect to where each programmatic element would occur; and
- (4) Engage in cost estimating to determine anticipated costs.

County Librarian Tricia Suellentrop was present to answer questions. She noted that the library had partnered with other Johnson County cities in the construction of new branches.

Mrs. McFadden asked how the project would proceed if the Council approved the MOU with the library buy not the YMCA. Ms. Suellentrop stated that the library would be a separate building than the proposed community center, and that failure to approve the YMCA MOU would have no effect on the library, apart from the division of costs of the site design and public engagement process.

Mr. Cole Robinson asked why the library wanted to have a separate MOU from the YMCA, and if that would cause the process to proceed more slowly. Ms. Suellentrop said that the purpose was to give the Library Board time to determine how they wished to proceed. She added that it had been the board's practice to do the same in other cities when considering a cooperative campus.

**Mr. Graves made a motion to approve the memorandum of understanding with the Johnson County Library as outlined by staff. Mr. Shelton seconded the motion, which passed 9-0.**

Mark Hulet, President and CEO of the YMCA of Greater Kansas City was also present to answer questions. He stated that if the memorandum of understanding was approved, the YMCA would begin a feasibility study for fundraising to help pay for a new facility.

**After discussion, Mr. Graves made a motion to approve the memorandum of understanding with the YMCA as outlined by staff. Mr. Nelson seconded the motion, which passed 8-1, with Mrs. McFadden in opposition.**



**COU2023-44          Consider agreement with Benson Method for owner’s representative services for the community center project (BG500002)**

Mr. Bredehoeft said that at its April 17, 2023, meeting, Council directed staff to move forward with an owner’s representative contract for the community center project. Given the complexity of this project it was determined by staff that owner representative services would be needed to assist the City in managing the project.

Mr. Bredehoeft noted that three firms were interviewed, and that Benson Method was selected through a qualification-based selection. He added that Benson Method had worked on similar projects in Johnson County and that funding would come from the economic development fund, as well as ARPA funds.

**Mr. Graves made a motion to approve the agreement with Benson Method for owner’s representative services for the community center project in the amount of \$143,100.00. The motion was seconded by Mr. Nelson and passed 9-0.**

**COU2023-45          Consider Resolution #2023-02 of the City’s intent to exceed the revenue neutral rate and establishing the date and time of a public hearing for the 2024 budget.**

Mr. Hannaman stated that Council and staff had worked to develop the 2024 budget over the last several months, and that Council approved the preliminary budget on June 20. The proposed budget would maintain the same level of services as the 2023 budget as well as transfer an additional \$1,150,000.00 to the bond and interest fund in preparation for potential City Hall improvements. The 2024 proposed budget included a total mill rate of 18.309, the same as the 2023 rate. Mr. Hannaman said that the final mill rate could vary slightly based on the results of ongoing appraisal appeals.

Per Senate Bill 13, the proposed budget required a revenue neutral rate hearing to exceed the rate provided by the County Clerk. During the 2021 legislative session, the tax lid was removed and the legislature enacted SB13 and HB2104, establishing new notice and public hearing requirements if a proposed budget would exceed the property tax levy’s revenue neutral rate.

Mr. Hannaman explained that the revenue neutral rate was 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. In Prairie Village, the revenue neutral rate for 2024 would be 15.806 mills; since the proposed budget necessitated 18.309 mills, a public hearing was required. The public hearing would be held at the regular Council meeting on Tuesday, September 5, 2023. The budget public hearing and adoption of the 2024 budget would





immediately follow the revenue neutral rate hearing. Approval of this item would authorize the publishing of both the budget and revenue neutral rate public hearings.

**Mr. Graves made a motion to approve Resolution #2023-02 of the City's intent to exceed its revenue neutral rate, establishing the date and time of a public hearing on such matter, and providing for the giving of notice of such public hearing. The motion was seconded by Mr. Cole Robinson. A roll call vote was taken with the following votes cast: "aye": Herring, C. Robinson, Selders, Nelson, Wolf, D. Robinson, Shelton, McFadden, Graves. The motion passed 9-0.**

### **COUNCIL COMMITTEE OF THE WHOLE**

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

### **EXECUTIVE SESSION**

At 9:30 p.m., Mr. Nelson made the following motion:

**"I move that the Governing Body recess into Executive Session for 30 minutes for consultation with an attorney regarding petitions which would be deemed privileged in the attorney-client relationship pursuant to KSA 75-4319(b)(2). Present will be the members of the Governing Body, the City Administrator, Deputy City Administrator, Assistant City Administrator, and the City Attorney. The regular meeting will resume at 10:00 p.m."**

The regular meeting reconvened at 10:00 p.m. At this time, Mr. Waters ensured that no one was present in the Council Chambers or hallways, and Mr. Nelson made the following motion:

**"I move that the Governing Body recess into Executive Session for 15 minutes for consultation with an attorney regarding petitions which would be deemed privileged in the attorney-client relationship pursuant to KSA 75-4319(b)(2). Present will be the members of the Governing Body, the City Administrator, Deputy City Administrator, Assistant City Administrator, and the City Attorney. The regular meeting will resume at 10:15 p.m."**

The regular meeting reconvened at 10:15 p.m.

### **ANNOUNCEMENTS**

Announcements were included in the Council meeting packet.

### **ADJOURNMENT**

Mayor Mikkelson declared the meeting adjourned at 10:16 p.m.



PRAIRIE VILLAGE  
KANSAS

Adam Geffert  
City Clerk

## CITY TREASURER'S WARRANT REGISTER

DATE WARRANTS ISSUED:

Warrant Register Page No. 1

August 7, 2023

**Copy of Ordinance**  
3028

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.

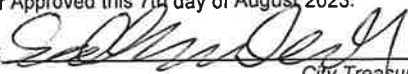
Section 1. That in order to pay the claims hereinafter stated which have been properly audited and approved, there is hereby appropriated out of funds in the City treasury the sum required for each claim.

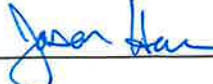
NAME	DATE	AMOUNT	TOTAL
<b>EXPENDITURES:</b>			
Accounts Payable			
28596-28603	6/2/2023	10,146.61	
28604-28691	6/9/2023	788,484.91	
28692-28695	6/16/2023	3,045.23	
28696-28770	6/22/2023	1,060,321.38	
28771-28780	6/28/2023	15,165.00	
28781-28786	6/30/2023	4,044.53	
Payroll Expenditures			
6/2/2023		451,457.05	
6/16/2023		508,067.43	
6/30/2023		507,468.46	
Electronic Payments			
Electronic Pmnts	6/1/2023	30,890.32	
	6/6/2023	19,464.44	
	6/14/2023	4,841.12	
	6/20/2023	959.18	
	6/21/2023	663.17	
	6/23/2023	152.92	
	6/26/2023	43,889.39	
<b>TOTAL EXPENDITURES:</b>			<b>3,449,061.14</b>
Voided Checks	Check #	( Amount )	
<b>TOTAL VOIDED CHECKS:</b>			-
<b>GRAND TOTAL CLAIMS ORDINANCE</b>			<b>3,449,061.14</b>

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

Passed this 7th day of August 2023.

Signed or Approved this 7th day of August 2023.

ATTEST:   
City Treasurer

ATTEST:   
Finance Director



## CONSENT AGENDA

Council Meeting Date: August 7, 2023

### Consider Approval of the 2024 Mission Hills Contract and the 2024 Mission Hills Budget

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#### RECOMMENDATION

The Prairie Village Police Department recommends the City Council formalize its law enforcement relationship with the City of Mission Hills for the 2024 calendar year by approving the attached 2024 Mission Hills Contract and the 2024 Mission Hills Budget.

**COUNCIL ACTION REQUESTED ON: August 7, 2023**

#### BACKGROUND

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

The 2024 Mission Hills Budget is calculated to be \$1,890,287, which is a 9.23% percent increase (\$159,705) compared to 2023. A breakdown of program costs is specified in the attached 2024 Mission Hills Budget spreadsheet.

The Mission Hills Contract does reflect a 3.75 percent increase, from \$49.90 to \$51.77 per hour, in Animal Control Services to account for merit and benefit costs.

The Mission Hills City Administrator has agreed with the contents of the attached 2024 Mission Hills Contract, as well as the 2024 Mission Hills Budget.

**ATTACHMENTS:**      2024 Mission Hills Contract  
                                 2024 Mission Hills Budget Comparison  
                                 10-Year Crime Summary  
                                 2024 Mission Hills Shared Costs

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Prepared By:

Byron Roberson  
Chief of Police

Date: July 19, 2023

# MISSION HILLS AGREEMENT – 2024

THIS AGREEMENT, made this \_\_\_\_ day of \_\_\_\_\_, 2023, between the City of Prairie Village, Kansas, a municipal corporation, hereinafter referred to as "Prairie Village," and the City of Mission Hills, Kansas, a municipal corporation, hereinafter referred to as "Mission Hills."

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**4. Humane Officer.** For purposes of animal control, Prairie Village shall provide to Mission Hills the services of a humane officer, when such services are needed. Said humane officer shall be under the supervision of the Chief of Police. It is agreed that when on duty, the humane officer shall respond to calls for service within Mission Hills that are the normal function of this service. In addition, the Mayor or City Administrator of Mission Hills can request scheduled hours in Mission Hills on a regular basis, which shall be provided if personnel are available. The cost of this service is not included in the contract amount as provided in Paragraph B, and shall be documented and billed at the rate of **\$51.77** per hour.

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



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

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

**B. Reimbursement Costs.** Mission Hills shall reimburse Prairie Village for the cost of services and equipment provided to the City of Mission Hills as heretofore provided, the total amount of *one million, eight hundred and ninety thousand, two hundred and eighty seven dollars (\$1,890,287.00)*, said amount to be paid by Mission Hills at the rate of *one hundred fifty seven thousand, five hundred and twenty three dollars and ninety two cents (\$157,523.92)*, per month during the term of this Agreement, said payment to be made not later than the 15<sup>th</sup> day of each month.

Said amount is based on the standard employee work schedule of the City of Prairie Village and includes the cost of supervision and insurance, radio dispatching, officer supplies, uniform replacement, salary of personnel, overhead and other costs which will be incurred by Prairie Village in fulfilling the obligations of this Agreement. The estimated costs of services and equipment to be provided under this Agreement have been compiled in a proposed budget for the year 2024, previously furnished to Mission Hills by Prairie Village. This budget was used in determining the costs to be reimbursed by Mission Hills; however, the parties recognize that the actual costs for the items furnished may differ from those estimated.

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

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

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

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

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

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

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

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

**E. Effective Date.** This Agreement shall be in effect from January 1, 2024, through December 31, 2024, and shall not be assigned. It is agreed that during the term of this Agreement neither party may terminate or modify the Agreement without the consent of the other, except as otherwise provided by this Agreement.

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

**THE CITY OF PRAIRIE VILLAGE, KANSAS**

By: \_\_\_\_\_  
**Eric Mikkelson – Mayor**

**ATTEST:**

\_\_\_\_\_  
**Adam Geffert – City Clerk**

**APPROVED AS TO FORM:**

\_\_\_\_\_  
**David Waters – City Attorney**

**THE CITY OF MISSION HILLS, KANSAS**

By: \_\_\_\_\_  
**David W. Dickey – Mayor**

**ATTEST:**

\_\_\_\_\_  
**Meghan E. Woolbright - City Clerk**

**APPROVED AS TO FORM:**

\_\_\_\_\_  
**Anna M. Krstulic – City Attorney**

### 10-YEAR BUDGET COMPARISON

YEAR	BUDGET	INCREASE	% INCREASE
2014	\$1,234,828	(\$6,965)	-0.56%
2015	\$1,256,272	\$21,444	1.74%
2016	\$1,271,896	\$15,624	1.24%
2017	\$1,295,631	\$23,735	1.87%
2018	\$1,367,807	\$72,176	5.57%
2019	\$1,427,045	\$59,238	4.33%
2020	\$1,492,028	\$64,983	4.55%
2021	\$1,524,388	\$32,360	2.17%
2022	\$1,539,311	\$14,923	0.98%
2023	\$1,730,582	\$191,271	12.43%
2024	\$1,890,287	\$159,705	9.23%

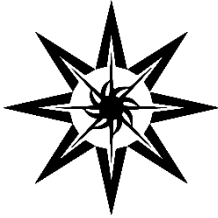
## 10-YEAR CRIME SUMMARY

YEAR	PRAIRIE VILLAGE	MISSION HILLS	PERCENTAGE
2013	486	56	10.33%
2014	428	85	16.57%
2015	529	102	16.16%
2016	516	88	14.57%
2017	437	74	14.48%
2018	489	76	13.45%
2019	439	54	10.95%
2020	415	61	12.82%
2021	564	112	16.57%
2022	620	152	19.69%

<b>TOTAL</b>	<b>4,923</b>	<b>860</b>	<b>14.87%</b>
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## SHARED COSTS vs. MISSION HILLS COSTS

<b>PROGRAM</b>	<b>2024 SHARED COSTS</b>	<b>MISSION HILLS COST</b>
Administration	\$753,110	\$102,950
Staff Services	\$1,252,792	\$211,287
Community Services	\$0	\$0
Crime Prevention	\$116,688	\$17,353
Patrol	\$4,497,285	\$1,268,761
Investigations	\$924,506	\$137,474
Special Investigations	\$0	\$0
D.A.R.E.	\$147,364	\$14,736
Professional Standards	\$307,733	\$42,067
Traffic	\$0	\$0
Court	\$548,614	\$95,659
School Crossing Guards	\$0	\$0
Accounting	\$0	\$0
<b>TOTAL</b>	<b>\$8,548,092</b>	<b>\$1,890,287</b>



## PUBLIC WORKS DEPARTMENT

Consent Agenda: August 7, 2023

### CONSIDER AGREEMENT WITH EVERGY METRO INC. FOR MIRD0008: MISSION ROAD, 83<sup>RD</sup> STREET TO 95<sup>TH</sup> STREET MILL AND OVERLAY PROJECT

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#### RECOMMENDATION

Move to approve the interlocal agreement with Evergy Metro, Inc (Evergy) for Project MIRD0008: Mission Road from 83rd Street to 95th Street.

#### BACKGROUND

On May 21, 2018, the Governing Body awarded the CARS project of Mission Road, City Limits to 95<sup>th</sup> Street to O'Donnell and Sons (now Superior Bowen). The county and cities adjacent to this corridor were planning to mill/overlay this corridor along with sidewalk and curb/gutter construction. This project was paused so that Johnson County Wastewater (JCW) could complete their construction of a new force main in the northbound lanes of Mission Road. As staff prepared again for the mill and overlay, Evergy contacted the cities about an impending project on Mission Road. The Evergy project constructs many vaults and new ductbank for power in the southbound lanes. Staff paused the roadway project again in order to allow the utility project to proceed.

Supplementing the original corridor, PV will be adding the mill/overlay of Mission to 83<sup>rd</sup> Street. The change order includes 90<sup>th</sup> Terrace, Mission to Roe (PV and Evergy). The Evergy share is from Mission to the distribution site, PV will participate in the remaining 100 feet in order to complete the street.

The County requested a new quote from the original contractor to complete this work. The original project split will now include Evergy's responsibility for their work represented in this agreement with Evergy.

ESTIMATED TOTALS for all of the above work are:

County (CARS)	\$ 124,103.28
PV	\$ 121,196.40
Leawood	\$ 62,051.64
Evergy	\$ 303,639.52
JCW	\$ 224,003.76
Total	<hr/> \$ 834,994.60

#### FUNDING

On May 15, 2023 the Governing Body approved the project with the funding as shown above.

#### ATTACHMENTS

1. Evergy Metro Inc. agreement

#### PREPARED BY

Melissa Prenger, City Engineer

July 27, 2023



**AGREEMENT BETWEEN EVERGY ELECTRIC SERVICES COMPANY AND THE CITY OF  
PRAIRIE VILLAGE, KANSAS, FOR THE CONSTRUCTION OF ROADWAY  
IMPROVEMENTS**

THIS AGREEMENT is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2023 by and between **Evergy Metro, Inc.**, a Missouri corporation, with its address at 1200 Main St., Kansas City, Missouri 64105 (the "Utility"), and the **City of Prairie Village, Kansas** (the "City") (hereinafter, the Utility and the City may be referred to singularly as the "Party" and collectively as the "Parties").

WHEREAS, the Parties have determined that it is in their best interest to collaborate on work for Utility's upgrade to services on Mission Road, from 79th Street to 90th Terrace, and on 90th Terrace, from Mission to Roe, all within Prairie Village, and for City's mill and overlay roadway improvements in the same area, as such work and improvements are hereinafter described and defined (the "Project"); and

WHEREAS, the Project will relocate or remove and replace the existing duct bank on Mission Road, from 79th Street to 90th Terrace, and on 90th Terrace, from Mission to Roe, within the roadway and right-of-way limits, and per applicable right-of-way agreements, regulations, and permits, the standard procedure is for the Utility to repair and replace any roadway to City standards; and

WHEREAS, as part of the Project, the the City can perform the final repairs and replacements of such roadways as part of the Project, subject to reimbursement by the Utility as detailed in Exhibit A attached hereto and incorporated by reference; and

WHEREAS, the Parties have determined it is in the public interest to consolidate the different aspects of the above-described work into one Project and into one bid set awarded and managed by the City.

NOW THEREFORE, in consideration of the mutual covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and Utility agree as follows:

1. **PURPOSE OF AGREEMENT.** The Parties hereto enter into this Agreement for the purpose of constructing the Project. The Project consists of two portions: (1) the Utility's work in upgrading its services as described above (the "Utility Improvements"), and (2) the City's work, including repairs and replacements arising out of the Utility Improvements, in the above-described areas (the "Roadway Improvements").

2. **UTILITY IMPROVEMENTS.** The Utility shall perform the Utility Improvements in accordance with all applicable contract franchises, right-of-way regulations, and other applicable laws and permit requirements that govern such work. The Utility shall coordinate its work with Prairie Village and perform and complete such work (subject to the City's obligations hereunder as to the Roadway Improvements) in a timely fashion so as to not hinder or delay the Roadway Improvements.

3. **COSTS OF ROADWAY IMPROVEMENTS.** The parties acknowledge that the City will incur certain construction costs as part of the Roadway Improvements construction costs. The estimated cost of the Roadway Improvements for which the Utility shall be responsible is **\$321,027.90**, as further described on Exhibit A hereto. The Utility agrees to reimburse the City for the actual cost of construction of the Roadway Improvements, which will include the following costs:

A. Labor and material used in constructing the Roadway Improvements; and

- B. Such other expenses which are necessary in constructing the Roadway Improvements. These costs include but are not limited to design engineering, project administration, construction inspection, material testing, utility relocations, as-built drawings, traffic control and other items incidental to constructing the Roadway Improvements.

After completion of the Roadway Improvements, the City will certify to the Utility that the City has accepted the same, as constructed. Within thirty (30) days from certification of final completion and acceptance of the Roadway Improvements, the City shall submit to the Utility a final accounting of all Roadway Improvement construction costs. The Utility agrees to reimburse the City no later than sixty (60) days following receipt of the final accounting and invoice for the actual cost of construction of the Roadway Improvements. The Utility shall be responsible for, and reimburse the City for, any costs of the Roadway Improvements that exceed the estimate provided in this Section 3.

4. CITY ADMINISTRATION OF ROADWAY IMPROVEMENTS. The City agrees to act as the Administrator of the consolidated Project to be built in accordance with the proposed plans. As Administrator for the City Project, the City agrees to assume and perform the following duties:

- A. Obtain costs for and enter into a contract for completion of the Roadway Improvements in the manner required by law, and use reasonable commercial efforts to require the contractor to comply with all applicable laws and regulations governing public contracts, including all non-discrimination laws and regulations.
- B. The City shall award the Roadway Improvements contract to the winning contractor in accordance with City contracting requirements. Construction of the Roadway Improvements shall be completed in accordance with the plans prepared by City Engineer. The City shall inspect the Roadway Improvements and enforce the Prairie Village standards and specifications contained in the City Project Technical Specifications, during the construction phase of the Roadway Improvements.
- C. Require indemnity covenants and evidence of insurance from contractors for loss or damage to life or property arising out of the contractors' intentional or negligent acts or omissions in an amount not less than \$2,000,000.00 for any contractor.
- D. Require a two-year maintenance bond from the contractor payable to City in the amount of 100 percent (100%) of the total construction cost of the Roadway Improvements, effective from the date of acceptance of such facilities by that City.
- E. Use reasonable commercial efforts to include in contracts for construction a requirement that the contractor defend, indemnify and save City and Utility harmless from and against all liability for damages, costs, and expenses arising out of any claim, suit or action for injuries or damages sustained to persons or property by reason of the act or omissions of the contractor and the performance of his or her contract. City shall further use reasonable commercial efforts to ensure that all insurance certificates provided by the contractor pursuant to the contract documents name the City and Utility as additional insureds.
- F. The City contractor shall be required to coordinate utility relocations for the Roadway Improvements.

5. DURATION AND TERMINATION OF AGREEMENT. This Agreement shall continue until the construction as described herein is complete and until such time as all financial obligations of the Parties have been met.

6. AMENDMENTS. This Agreement cannot be modified or changed by any verbal statement, promise or agreement, and no modification, change nor amendment shall be binding on the Parties unless it shall have been agreed to in writing and signed by both Parties.
7. NOTICES. For purposes of this Agreement, any required notices are deemed sufficiently given on the third business day following deposit in the U.S. mail, certified, return receipt requested, postage prepaid, and addressed as follows:

If to City of Prairie Village:

City of Prairie Village  
Keith Bredehoeft, Public Works Director  
3535 Somerset Drive  
Prairie Village, Kansas 66208

If to Evergy Electric Services:

David Kohart  
\_\_\_\_\_  
4400 E Front St  
\_\_\_\_\_  
Kansas City, MO 64120  
\_\_\_\_\_

Notice shall also be deemed sufficiently given upon actual delivery by reliable courier service or other method.

8. JURISDICTION. This Agreement shall be construed according to the laws of the State of Kansas and may be enforced in any Kansas court of competent jurisdiction.
9. COUNTERPARTS. Each of the Parties shall cause sufficient copies of this Agreement to be executed so as to provide each Party with duly executed copies and any copy duly executed by both Parties shall be deemed an original for all purposes.

IN WITNESS WHEREOF, the above and foregoing Agreement has been executed by each of the Parties hereto on the day and year first above written.

**CITY OF PRAIRIE VILLAGE, KANSAS**

By: \_\_\_\_\_  
Eric Mikkelson, Mayor

**ATTEST:**

\_\_\_\_\_  
Adam Geffert, City Clerk

**EVERGY METRO, INC.**

By: Brandon Tiesing  
Printed Name: BRANDON TIESING  
Title: SR MGR. DESIGN + PLANNING

**EXHIBIT A**

Estimate for Mission Road and 90th Terrace  
Mill/Overlay

90th Terrace		
LENGTH	AREA	
1196	2858	SY
1062	2596	TONS
MILL	5454	SY
OVERLAY	590	TONS

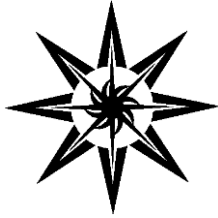
Mission Road (2 SB LANES)		
LENGTH	AREA	
7233	19288	
MILL	19288	SY
OVERLAY	2085	TONS

Every Costs*				
	QUANTITY	UNIT	UNIT COST	TOTAL
MOBILIZATION	1	LS	\$ 5,000.00	\$ 5,000.00
TRAFFIC CONTROL	1	LS	\$ 11,000.00	\$ 11,000.00
MILL	24742	SY	\$ 2.70	\$ 66,803.40
OVERLAY	2675	TON	\$ 85.00	\$ 227,375.00
PAVEMENT MARKING	7233	LF	\$ 1.50	\$ 10,849.50
			<b>TOTAL EST</b>	<b>\$ 321,027.90</b>

\* based off of StateLine Road estimate (2022 Superior Bowen)

original estimate sent in April 2022

\$ 311,000.00



## PUBLIC WORKS DEPARTMENT

Council Meeting Agenda: August 7, 2023

**COU2023-47: CONSIDER APPROVAL OF AGREEMENT WITH PRO ELECTRIC TO PERFORM ELECTRICAL SERVICE REPAIRS AT WINDSOR PARK**

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### RECOMMENDATION

Move to approve the proposal from Pro Electric L.C. for the repairs at Windsor Park.

### BACKGROUND

Windsor Park Courts and Pavilion currently do not have power. The electrical cables in the court electrical box have been damaged by small animal activity and subsequently overloaded/fried all the connections in the box. The cables running north from the courts, through the conduit under the creek, and up to the box on the north side of the park are fused. This prevented the electrical contractor from simply pulling new cables through the old conduit. Additionally, a new service is required for the upcoming restroom construction at Windsor Park.

The items have been paired together in a request to 4 contractors to reduce the overall costs of boring new individual services. Staff received 3 bids from:

Pro Electric	\$32,684.00
Black and McDonald	\$39,600.00
Pro Circuit	\$46,310.47

### FUNDING SOURCE

This is a coordinated project between Public Works Operations and CIP to reduce overall costs. The cost will be shared between the maintenance funds and the CIP project BG900004.

Maintenance Funds	\$16,342
Windsor Park Restroom (BG900004)	\$16,342

### ATTACHMENTS

1. Pro Electric Proposal

### PREPARED BY

Melissa Prenger, City Engineer

July 28, 2023



**PRO ELECTRIC L.C.**  
**CONTRACTORS-ENGINEERS**  
**DESIGN-BUILD**

510 MIAMI AVENUE – KANSAS CITY, KS 66105  
(913) 621-6611 FAX (913) 621-0843  
www.proelectriclc.com

Proposal Information		
<b><u>Proposal Submitted To:</u></b> James Carney Field Superintendent Prairie Village Public Works Department <a href="mailto:jcarney@pvkansas.com">jcarney@pvkansas.com</a> 913-385-4644	<b><u>PM/Estimator:</u></b> Justen Waters Service Manager Pro Electric LC <a href="mailto:justenw@proelect.com">justenw@proelect.com</a> 913-565-2529	<b><u>Date:</u></b> 7/11/23  <b><u>Expiration Date:</u></b> 8/11/23
<b><u>Project/Job Name:</u></b> Windsor Park Repairs	<b><u>Job Location:</u></b> 7200 Windsor St. Prairie Village, KS 66208	<b><u>Addendums:</u></b> N/A

James,

We are pleased to offer the following proposal for the above referenced project based on drawings and information provided.

**Base Scope:**

Provide and install new electrical wireway.

Provide all required coordination with Evergy to complete SOW.

Provide and install all required Unistrut to complete SOW.

Reinstall existing meter.

Provide and install (1) 240V, 1P, 2 pole, N3R, F, disconnect with 100A RK1 fuses.

Provide for the reinstallation of (1) existing 100A panelboard.

Provide and install (1) 2" SCH. 40 PVC conduit with (3) #1 & (1) #6 directionally bored from existing panelboard/new wire way to existing tennis court panel.

(NTE 225LF)

Provide and install (1) empty 2 1/2" SCH. 40 PVC conduit with pull string, directionally bored from new fused disconnect to new in grade junction box location.

(NTE 160LF)

Provide and install (1) in grade junction box.

Reconnect existing conduit and conductors for existing tennis court panelboard.

Test all circuits and photocell operation to ensure all connected loads are operational.

Provide and install (1) 3" conduit with (3) 250MCM from existing panel to existing meter location.

(NTE 50LF)

Provide and install (1) 3" GRC conduit riser with conductors for connection by utility.

Provide and install turf restoration for any disturbed turf caused by SOW above.

**Inclusions to the Proposal:**

1. Permits
2. Based on free and clear access to perform our work

**Exclusions to the Proposal:**

1. Taxes
2. Concrete Work and pole bases unless specified above
3. Rock excavation and removal
4. All utility / Evergy fees including survey and easement fees
5. BIM drawings/Cad drawings/Engineering/Signed and Sealed
6. Relocation of any utilities
7. Demo of existing electrical unless associated with SOW above
8. Refeeding of existing electrical unless associated with SOW above.
9. Temporary power/lighting
10. Fire stopping and acoustical sound proofing
11. Attic stock
12. Performance / payment bonds
13. Allowances
14. Any work outside of normal business hours
15. Miscellaneous cost due to unforeseen conditions
16. Anything not included in above scope

<b>Proposal Pricing</b>		
<b><u>Base Price:</u></b> \$32,684	<b><u>Taxes:</u></b> Excluded	<b><u>Payment Terms:</u></b> Net 30 W/ Monthly Progress Billing

<b>Authorized</b>	
<p>All material is guaranteed to be as specified. All work to be completed in a workmanlike manner according to standard practices. Any alteration or deviation from the above specifications involving extra costs will be executed only upon written orders and will become an extra charge over and above the estimate. All agreements contingent upon strikes, accidents or delays beyond our control. Owner to carry fire, tornado and other necessary insurance. Our workers are fully covered by Workmen’s Compensation Insurance.  <b>See next page for terms and conditions</b></p>	<p>_____</p> <p><b>Signature</b></p> <p><b>Note: We may withdraw this proposal if not accepted within 30 days.</b></p>

<b>Acceptance of Proposal</b>	
<p>The above prices, specifications, and conditions are satisfactory and are accepted. You are authorized to do the work as specified. Payment will be made as outlined above.</p> <p>If options/breakouts are listed above, please indicate which ones you accept by marking up the document and initial beside it.</p>	<p>_____</p> <p><b>Signature</b></p> <p>_____</p> <p><b>Date</b></p>

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## Terms & Conditions

1. No liquidated damages will be accepted.
2. Damage of our work by others is not our responsibility.
3. We will dispose of debris created by our work into a Contractor/Owner furnished trash bin at the site.
4. We will accept no back-charges which have not been previously agreed to by us.
5. Late payments will bear interest at the standard commercial rate prevailing at the site at the time the interest is due.
6. Retention, if any, shall not exceed that withheld from payments made on our behalf.
7. We shall be paid monthly progress payments on or before the 10<sup>th</sup> day of each month for the value of our work in place plus the materials suitably stored on or off site. Final payment shall be due 30 days following the completion of the project. No provisions of this agreement shall serve to void our entitlement to timely payments for properly performed work or suitably stored materials.
8. The Contractor/Owner shall furnish and make available to us free of charge, manned hoisting facilities, required utilities, water, temporary power and lighting, temporary heat and sanitary facilities.
9. The Contractor/Owner shall furnish and make available to us at the site, reasonable storage and parking facilities, and convenient delivery access to our work.
10. The Contractor/Owner shall provide uncluttered access for us to perform our work.
11. The Contractor/Owner schedule shall be made in consultation with us and shall provide time for us to perform our work on an 8-hour, 40-hour week basis. This proposal does not include provision for our being required to perform overtime work for delays not caused by us.
12. Nothing in the subcontract shall be construed to require us to continue performance of work if we do not receive timely payment for suitably performed work and for suitably stored materials.
13. We shall not be responsible for delays or defaults that are occasioned by causes of any kind which extend beyond our fault and control, including (but not limited to) delays and/or subcontractors or third parties, civil disorders, labor disruptions, and Acts of God. We shall be entitled to equitable adjustment in the subcontract amount for delays caused by the acts of negligence of the Architect, Engineer, Owner, or Contractor.
14. We guarantee our work against defects in labor or material for a period of one (1) year from the date of substantial completion of the project, or from the date the work or portion thereof is placed into service, whichever is earlier. The exclusive remedy for said defect is that we will replace or repair any part of our work which is found to be defective during this guaranty period. We shall not be responsible for damage to our work caused by other parties or by the improper use of equipment by others.
15. The subcontractor format for use as the Subcontractor shall be AIA Document A401-STANDARD FORM SUBCONTRACT 1978 Edition.
16. The Contractor shall furnish to us, free of charge, copies of all contract documents, before the execution of the Subcontract.
17. The Contractor shall, if the Owner does not, purchase and maintain all-risk builder's insurance upon the full value of the entire work including material delivered to the jobsite, which shall include the interests of Subcontractor.



18. In case of dispute, the prevailing party shall be entitled to reasonable attorney's fees.

19. Pro Electric reserves the right to amend, withdraw or otherwise alter this submission without penalty or charge as a result of any event beyond its control arising from or due to the current Covid-19 epidemic or events subsequent to this epidemic / pandemic including changes in laws, regulations, by laws or direction from a competent authority.

If you have any questions or need additional information, please do not hesitate to call.

Cordially,

Justen Waters  
Service Manager  
Pro Electric L.C.  
Office 913-621-6611



## PUBLIC WORKS DEPARTMENT

Council Meeting Agenda: August 7, 2023

### **COU2023-48: CONSIDER APPROVAL OF CONSTRUCTION CONTRACT FOR WINDSOR PARK RESTROOM IMPROVEMENTS**

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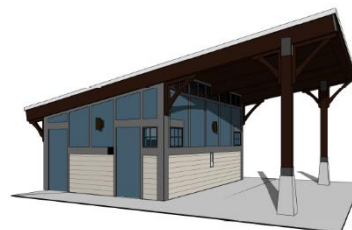
#### **RECOMMENDATION**

Move to authorize the Mayor to sign the construction contract with Combes Construction LLC for the Windsor Park Restroom Improvements (BG90 0004).

#### **BACKGROUND**

This bid package includes the new construction of a permanent restroom at Windsor Park, 7170 Windsor Street.

The restroom is styled like the restrooms at Porter and Wassmer with a similar color pallet. The restroom also has a small shelter attached (shown to the right). This space will not be rentable, rather it serves the purpose of shelter for drop off/pick up at the park and consolidates the many pedestrian entrances.



On May 25, 2023, the City Clerk opened bids for the project. Two (2) acceptable bids were received; however one had math errors that changed the total of the bid:

Corrected Bids	Amount
Combes	\$ 416,127.01
Infinity Group	\$ 429,948.00
Consultant's Est.	\$ 458,631.50

The overall project budget is \$450,000 and the award amount of \$416,127.01 would push the budget to approximately \$60,000 over budget. To control costs and overages, the design team and contractor sought to value engineer the project. The new award amount for this project is \$401,047.60 with a deficit of funds of approximately \$45,000. Costs included in the project total include design, construction, utility hook ups and the electrical repair. Approval of this award would transfer the monies needed from the reserve funds.

#### **FUNDING SOURCES**

Funding is available in the CIP project BG90004 for the Shelter and Restroom Improvements supplemented with transfer from Park Reserve.

BG900004	\$450,000
Park Reserve	\$ 45,000
<b>Total</b>	<b>\$495,000</b>

#### **ATTACHMENTS**

1. Construction Agreement with Combes Construction LLC

#### **PREPARED BY**

Melissa Prenger, City Engineer

July 28,2023

**CONSTRUCTION AGREEMENT**



**BG90 0004  
WINDSOR PARK Restroom**

**BETWEEN**

**CITY OF PRAIRIE VILLAGE, KS**

**AND**

**CONTRACTOR**

CONSTRUCTION CONTRACT  
FOR  
BG90 0004 WINDSOR PARK Restroom

BETWEEN  
THE CITY OF PRAIRIE VILLAGE, KANSAS  
AND  
COMBES CONSTRUCTION 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 COMBES CONSTRUCTION LLC, hereinafter termed in this agreement, “**Contractor**”, for the construction and completion of Project WINDSOR PARK Restroom , (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 FOUR HUNDRED-ONE THOUSAND, FORTY SEVEN AND 60/100 **DOLLARS (\$401,047.60)** for all Work covered by and included in the Contract; payment thereof to be made in cash or its equivalent and in a manner provided in the Contract Documents.

#### 5. WORK SUPERINTENDENT

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

## 6. PROJECT MANAGER

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

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

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

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

## 7. WORK SCHEDULE:

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

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

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

## **8. DELAYS AND EXTENSIONS OF TIME**

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

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

**9. ADVERSE WEATHER:**

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

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

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

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

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

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

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

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

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

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

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

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

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

## 10. LIQUIDATED DAMAGES

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



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

## 11. PAYMENT PROCEDURE

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

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

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

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

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

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

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

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

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

## 12. COMPLETION AND FINAL PAYMENT

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

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

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

### **13. CLAIMS BY THE CONTRACTOR**

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

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

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

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

#### **14. CHANGES IN THE WORK**

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

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

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

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

## 15. INSURANCE AND BONDS.

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

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

15.3 Minimum Requirements Commercial General Liability Policy Limits -

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

Policy MUST include the following conditions:

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

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

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

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

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

Limits -

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

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

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

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

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

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

## 16. INDEMNITY

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

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



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

## 17. SUCCESSORS AND ASSIGNS

- 17.1 The City and Contractor bind themselves, their successors, assigns and legal representatives to the other party hereto and to successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in this Contract.
- 17.2 The Contractor shall not assign or sublet the work, or any part thereof, without the previous written consent of the City, nor shall it assign, by power of attorney or otherwise, any of the money payable under this Contract unless by and with the like written consent of the City. In case the Contractor assigns all, or any part of any moneys due or to become due under this Contract, the instrument of assignment shall contain a clause substantially to the 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

COMBES CONSTRUCTION LLC

(typed company name)

By: \_\_\_\_\_  
(signed)

By: \_\_\_\_\_  
(signed)

Eric Mikkelson

(typed name)

Mayor

(typed title)

City of Prairie Village

COMBES CONSTRUCTION LLC

(typed company name)

7700 Mission Road

6946 W 207TH STREET

(typed address)

Prairie Village, Kansas 66208

BUCYRUS, KS 66013

(typed city, state, zip)

913-782-9400 / awallace@combesconstruction.net

(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.)



**MAYOR'S ANNOUNCEMENTS**  
**Monday, August 7, 2023**

Diversity Committee	08/08/2023	4:00 p.m.
City Council	08/21/2023	6:00 p.m.
JazzFest Committee	08/22/2023	5:30 p.m.
Planning Commission work session	08/22/2023	6:00 p.m.
Environmental Committee	08/23/2023	5:30 p.m.
Labor Day – City offices closed	09/04/2023	
City Council	09/05/2023	6:00 p.m.

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**INFORMATIONAL ITEMS**  
**August 7, 2023**

1. JazzFest Committee meeting minutes – July 25, 2023
2. VillageFest Committee meeting minutes – July 27, 2023
3. August plan of action

## **Prairie Village Jazz Fest 2023**

### **Committee Meeting**

Tuesday July 25, 5:30 p.m.

Multipurpose Room

#### Attendees

Dave Hassett	Food and Beverage Chair
Dave Robinson	City Council Liaison
J.D. Kinney	Special Events Coordinator, Committee Chair
Joyce Hagen Mundy	Volunteer Chair
Kyle Vanlanduyt	Master of Ceremonies
Jim Barnes	Stage and Technical Chair
Elissa Andre	Marketing Chair
John Wilinski	Artist Relations and Backstage Chair
Libby Morris	Miss Kansas – Preteen Division
Emily Morris	Parent and Prairie Village resident

#### **Committee Chair's Report**

Alcohol sales permit and Ordinance approval passed by City Council 7/17/23

4 credit card terminals have been ordered from Elavon. They worked well at VillageFest but needed to be recharged under heavy use. Electricity will be available via extension cord in the beverage tent and at the main gate and pool gate

Hillcrest Covenant Church has requested 100 presale tickets to Jazz Fest. They agreed to a price of \$4.25 each (15% discount) Hard copy tickets are produced and are being hand numbered for security. Plan to make transaction week of 8/7.

Libby Morris, a PV resident has been named Miss Kansas: PreTeen Division. She and her family are fans of Jazz Fest and Libby plays cello and piano. Libby requested to play a small role at Jazz Fest. She will be introduced on stage and will in turn introduce one of our acts. Libby's "cause" is JoCo IHN which is a homelessness support organization. She was offered a tent on the hill to bring attention to her cause and her accomplishment to Festival attendees. She and JoCo IHN will be included in the prerecorded announcements.

#### **Talent**

Contracts for all acts are fully executed. Deposits for all acts except Blue Knights have been issued. An email to begin scheduling sound checks and confirming backline needs has been sent to all.

Have any acts requested a tent to sell items/CDs?

#### **F&B**

Butterfluff Kettlecorn payment received. Seeking one additional truck.

JD to send Dave inventory of the return to Rimann.

Selection of beer and seltzer for 2023 from Crawford TBD.

New ice vendor is The Ice Hut.

We need to order 500 wine cups. 2019 notes mention 7 oz pours in a 10 oz cup

### **Stage, Lighting and Technical Services**

Need the contract from SECT so we can pay the deposit.

How many levels of risers do we need for KCJO (@ 6x8 x2). If one level, what is the height?

### **Infrastructure**

AAA to supply Beverage sales and VIP tent, round banquet tables, high tops, hightop barstools, linens and all folding chairs. Sales Order received, approval and deposit pending.

PV Public works to provide all tents other than beverage sales and VIP, and all 6' rectangular tables

New vendor for porta potties still TBD

### **Marketing**

Press release created and approved

Shawnee Mission Post lineup release scheduled week of 7/24

PV City website update pending, following SM Post release

KCPT August listeners guide about to drop.

PV Village Voice copy deadline 8/7.

Resized creative supplied to Folly Theater, they will reshare our social media.

Stage banner design underway

Planning for 1500 fans, design underway. Need art approval from Inn at Meadowbrook. Shooting to have them by KU kickoff 8/23

Yard signs design underway; quantity TBD ; pickup date 8/22

Volunteer T shirts planning 30-40 white cotton T; design underway

Mission Road banners hung the week of 7/11

Park vinyls update in process.

### **MC/Backstage/Artist Hospitality**

Recorded announcements script TBD

### **City Committees/Exhibitor Tents**

State Farm requested a 10x10 tent with electricity. Agreements received payment pending

GoodVets requested a 10x10 tent; agreement and payment pending

Johnson County Library confirmed they want a tent

Folly Theater requested a tent to recruit volunteers for their productions. They have agreed to give us marketing space in exchange.

Libby Morris will have a tent.

PV Arts Council, Environmental Committee, Diversity Committee TBD

The next Jazz Fest Committee meeting was scheduled for Tuesday August 22 at 5:30 pm in the MultiPurpose Room.

The meeting concluded at 6:15 p.m.

Respectfully submitted: JD Kinney

## VillageFest Wrap Up 2023

Meeting Information	
Location	Multipurpose Room - PV City Hall
Date & Time	Thursday July 27, 2023 5:30PM - 6:30PM
Attendees	<ul style="list-style-type: none"> <li>● Amber Fletcher</li> <li>● JD Kinney</li> <li>● Dale Warman</li> <li>● Joel Crown</li> <li>● Steve Meyer</li> <li>● Toby Fritz</li> </ul>

Pancake Breakfast	<ul style="list-style-type: none"> <li>● Is it possible to separate the speakers at the pancake breakfast</li> <li>● Ran out of coffee &amp; sausage</li> <li>● Need to find more coffee</li> <li>● Bring in more singles in cash</li> <li>● Need electricity to plug in both machines</li> <li>● Need more roles of paper for machines</li> <li>● Machines work faster on the base</li> <li>● Kids price on plates?</li> <li>● 879 plates sold</li> </ul>
Patriotic Program & Spirit Awards	<ul style="list-style-type: none"> <li>● Went well</li> </ul>
KS National Guard History Museum	<ul style="list-style-type: none"> <li>●</li> </ul>
History Display	<ul style="list-style-type: none"> <li>● Well received - people looked through them</li> </ul>
Vendors & Exhibitors	<ul style="list-style-type: none"> <li>● Sausage vendor                             <ul style="list-style-type: none"> <li>○ Wanted a map to know where to go</li> <li>○ Ran out of sausage</li> </ul> </li> <li>● Face Paint</li> </ul>

	<ul style="list-style-type: none"> <li>○ Liked their new spot, said it stayed shaded most of the day. No one complained about the wait in the sun.</li> <li>○ At one point the line extended close to road, but wasn't worrisome to vendor.</li> <li>● Booths seemed to pack up early</li> <li>● Masons didn't use their booth space</li> <li>● Animals <ul style="list-style-type: none"> <li>○ Need more supervision of animals</li> </ul> </li> <li>●</li> </ul>
Live Entertainment	<ul style="list-style-type: none"> <li>● Corbin Cycle off move to pies</li> </ul>
Pie Contest	<ul style="list-style-type: none"> <li>● Put a PDF of the judging sheet on the website</li> <li>● Too many people randomly showing up to help with pies.</li> <li>● If people bring real pie plates they need to be picked up by 11:30. Also need to ask when they drop them off if they want it back.</li> <li>● Pictures went over well.</li> <li>● Almost everyone donated.</li> <li>● Could use 9 judges.</li> <li>● Judging needs to be randomized, judges were talking too much.</li> <li>● Well organized.</li> <li>● Camera ran out of power.</li> </ul>
Activities	<ul style="list-style-type: none"> <li>● Mayor Ladder Toss <ul style="list-style-type: none"> <li>○ The mayor had an appropriate amount of things to throw, but wouldn't get less. The microphone cut in and out</li> </ul> </li> <li>● Little Village <ul style="list-style-type: none"> <li>○ It was crowded in new shady location, need to expand it next year.</li> <li>○ There was a tent next to Little Village that wasn't necessary this year, but if expanded may be needed.</li> <li>○ Bubbles were good in the Little Village</li> <li>○ Get another small bouncehouse</li> </ul> </li> <li>● Balloons <ul style="list-style-type: none"> <li>○ Need a tent at balloon</li> </ul> </li> <li>● Carnival Games <ul style="list-style-type: none"> <li>○ Is there some sort of jumping thing that attaches next to rock wall</li> </ul> </li> <li>● No yard games, no one missed them</li> <li>● Booths and vendors need to bring their own chairs.</li> <li>● Children's Craft Area <ul style="list-style-type: none"> <li>○ Not sure if the church helped with craft area</li> <li>○ Need more coordination between committees and arrival time.</li> </ul> </li> </ul>
Infrastructure	<ul style="list-style-type: none"> <li>● Sign Gypse sign was great</li> <li>● Police Report</li> </ul>


	<ul style="list-style-type: none"><li>○ 2 reported lost children during the event. Both were reunited with parents within a couple of minutes after information was broadcast to officers.</li><li>○ 0 medical incidents. No reports of injuries or heat related illnesses brought to our attention or medical staff's attention.</li><li>○ 1 escaped donkey from the petting zoo...corralled a short time later by attendees and workers 😊</li><li>○ Children's parade was a success with no reported issues.</li><li>○ Went through all giveaways</li><li>● Do Port A Potties get used?</li><li>●</li></ul>
Marketing	<ul style="list-style-type: none"><li>●</li></ul>

# THE CITY OF PRAIRIE VILLAGE

## STAR OF KANSAS

DATE: July 25, 2023

TO: Mayor Mikkelson  
City Council

FROM: Wes Jordan 

SUBJECT: AUGUST PLAN OF ACTION

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

- Teen Council Recruitment - Piper/Meghan/Ashley (08/23)
- Sept/Oct Village Voice - Ashley (08/23)
- Back to School with a Firefighter - Meghan/PV Foundation (08/23)
- Crime Stats - 6 month Review - Chief (08/23)
- Project Updates and Cleanup to Website - Staff (08/23)
- Community Center
  - RFQ for Community Engagement/Project Design Study - Keith (08/23)
- City Hall Design/Cost Options - Melissa (08/23)
- Storm Damage/Tree Debris Cleanup - Staff (08/23)
- 2024 Budget
  - Publish Budget - Jason
- Housing Forum Follow Up Discussion in R-2/R-3/R-4/Commercial - Nickie/Chris (08/23)
- State of the Arts Planning for September 13 Event - Nickie/Arts Council (08/23)
- LKM League Policy Committee Meetings - Nickie (08/23)

### In Progress

- JazzFest - JD/Staff (07/23)
- 2<sup>nd</sup> Quarter Financial Report - Jason (07/23)
- City Hall Rebuilding Options Presentation - Melissa (07/23)
- Accounting Software Upgrade Implementation - Jason (06/23)
- Update Design Guidelines in R1-B - Nickie/Chris (05/23)
- Short Term Rental Zoning Update - Nickie/Chris (05/23)
- KERAMIDA Sustainability Program Implementation - Meghan/Ashley (03/23)
- Marketing Strategy Evaluation - Ashley/Meghan (01/23)
- Annual Everyg Update - Wes (12/22)
- Research Federal Infrastructure/Jobs Act Grants - Jason/Nickie/Keith (12/22)
- Public Arts Fund program planning - Nickie/Meghan (11/22)



- Park Sign Replacement and Branding Process - Melissa (9/22)
- Recycle Right Initiative - Ashley/Adam (07/22)
- Subdivision Regulations Amendments/Easement Vacation - Nickie/Chris (04/22)
- Agenda Management Software Evaluation - Adam/Ashley (12/21)
- Phone System Replacement - IS (11/21)
- Researching Department of Energy Solar App+ Program - Nickie (10/21)
- American Rescue Plan Act Fund Uses & Expiration - Staff (04/21)
- Research Viability of Interior Rental Inspections - Nickie (06/19)

### Completed

- VillageFest - JD/Staff (07/23)
- KU Kickoff Permitting - Adam (07/23)
- Recommendation of Employee Benefits Broker - Tim/Cindy (07/23)
- 2024 Budget Process
  - Resolution to Exceed Revenue neutral Rate - Jason (07/23)
  - Permission to Publish Budget - Jason (07/23)
- 2<sup>nd</sup> Quarter Police Pension Board Meeting - Cindy (07/23)
- Finalize 2022 Annual Comprehensive Financial Report - Jason (05/23)
- 2022 Financial Audit - Jason/Nickie (03/23)
- 2022 Audit Presentation/ACFR - Jason (06/23)
- Annual CID Report - Jason (06/23)
- Planning for Housing Forums in R-2/R-3/R-4/Commercial - Nickie/Chris (05/23)
- 2024 Budget Process - Staff (05/23)
  - Mission Hills Budget
- Diversity Training - Tim/Cindy (06/22)
- Community Center - Wes/Keith (05/23)
  - MOU w/YMCA
  - MOU w/Library
  - Owner's Representative

### Ongoing

- City Hall/PD Project - Melissa/Staff (04/22)
- Business Continuity Plan - Tim/Dan/Nickie (03/22)
- Disaster Recovery Plan - Dan/Tim (03/22)

### Tabled Initiatives

- Pool Mural Project - Meghan (04/21) [placed on hold until the Community Center discussion is decided upon]
- Review & update the City Code/Ordinances
- Review & Update City Policies
- Review of Smoking Ordinance/e-cigs
- Single Use Plastic Bag Discussion - Staff (02/20) [pending Council direction]

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